

there is no language in Section 4785-72, *supra*, which would preclude such a person from signing the petitions of both candidates.

The view that the legislature in providing the form of petition set forth in Section 4785-72, *supra*, intentionally omitted a provision as to a pledge to vote for the candidate at the primaries is strengthened by a consideration of Section 4785-91 of this same act, providing the form of petition to be used in the nomination of candidates for office in addition to the nominations made at party primaries. This nominating petition contains the following clause: "We individually pledge ourselves to support and vote for the above candidate for the above office at said election and that we have not signed the petitions of more candidates than there are candidates to be elected for said office."

Specifically answering your question, it is my opinion that a person may sign the petition provided in Section 4785-72, General Code, of more than one candidate of such person's political party for a given office.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1822.

HIGHWAY IMPROVEMENT—DEVELOPMENT OF LANDSLIDES—AWARDING OF EXTRA WORK CONTRACT BY HIGHWAY DIRECTOR CONSIDERED.

SYLLABUS:

Power of Director of Highways to award extra work contract discussed.

COLUMBUS, OHIO, May 2, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—In your recent communication you request my opinion upon the following statement of facts which you enclose:

"A contract was awarded to The H. B. Watters Company on November 30, 1928, for grading and constructing bridges and culverts on a section of highway 4.75 miles long, known as State Highway No. 7, Sections 'C', 'C-2' and 'Powhattan', located in Belmont County, between Dilles Bottom and Powhattan. The contract price was \$353,526.28, the principal item being 368,681 cubic yards of roadway excavation.

During the progress of the work several landslides developed and others were apprehended so that building the highway to the lines and grades shown on the plans for its entire length would have been very impracticable if not impossible. It has been deemed advisable by the engineers of the State Highway Department to relocate a section of the highway to avoid these landslides. The alignment has been changed at no point more than one hundred feet from the old line and the grades and type of excavation will be no more difficult but it will be necessary to haul a considerable portion of the excavated material farther than was required in the original contract. It is probable that the work as set forth on the new plan cannot be done as cheaply per cubic yard as that shown on the original plan.

The contract was awarded on a unit price basis and the standard State Highway Specifications in force at the date of the award govern.

The portion relocated involves approximately 25% of the excavation in the original contract and the proposed change will mean an addition of between 60,000 and 70,000 cubic yards. Several thousand cubic yards have already been excavated on that portion of the line which is to be abandoned.

The questions arising are:

1. Can the contractor be required to do this work at his contract unit price?

2. Can the contractor and the Highway Director agree upon a new unit price for this portion of the work and enter into an extra work contract?

3. In case this cannot be done or if the contractor and the Highway Director cannot agree on a unit price can the Highway Director withdraw the relocated portion from the original contract and take bids and award a new contract for this section?"

In connection with your inquiries, it is believed pertinent to consider the provisions of Section 1210 of the General Code, which reads:

"In connection with any project the Director may by written instructions to the contractor increase the quantities of any item specified to the extent of twenty per cent of any such item, but in no event shall the cost of the increase of any one item made under this provision exceed two thousand dollars. In making such increase of any item or items in the above manner the Director need not enter into an extra work contract covering the same, but such increase shall be regarded as covered by the original contract. The Director may likewise make deductions from any item or items specified in any contract.

In connection with any project where the Director desires to increase the quantities of any item or items in excess of twenty per cent of such items, or in excess of two thousand dollars in connection with any one item on account of unforeseen contingencies not included in the original contract, he shall enter into an extra work contract covering such increase and the provisions relating to the advertisement for bids shall apply to the letting of such extra work contract. Provided, that, if an emergency exists which will not permit of the delay necessary to advertise said extra work, such contract for extra work may then be let without any advertising whatever. The Director shall make a finding of such fact on his journal. When it is deemed necessary by the Director to perform extra work in connection with any project and the proposal of the contractor contains no unit price bid covering the item or items involved in such extra work and the cost of such work does not exceed two thousand dollars, the Director may enter into a contract covering such extra work without advertising for and receiving bids therefor."

It will be noted that the section above quoted authorizes the Director to increase the quantities of any item in connection with any project by giving written notice to the contractor. However, such increase is limited to twenty per cent of any such item and in no event shall the cost of the increase of any item exceed two thousand dollars. To the extent that an increase is made within the limitations provided in the section the same is to be regarded as a part of the original contract. The section also grants the Director authority to make deductions from any item or items specified in the contract. The section further provides, in unambiguous language, that when in connection with any project the Director decides to increase the cost of any items in excess of two thousand dollars, on account of unforeseen contingencies not included in the original contract, he shall enter into an extra work contract covering such increase and the provisions relating to the advertising for bids shall apply to letting

of such extra work contract. However, in the case of an emergency which will not permit of the delay necessary to advertise, the Director may let the contract without advertising, when he has made a finding of such fact on his journal.

Applying the provisions of the above section to the facts stated, it would appear that the excavation is increased about twenty-five per cent by reason of the relocation of the highway and that the cost thereof will be far in excess of two thousand dollars. Therefore it will be seen that it will be necessary to let an extra work contract in pursuance of advertising or competitive bids unless, of course, there is an emergency which will not permit of such delay and the Director so concludes and makes a finding of such fact upon his journal.

While I have not had before me the provisions of the contract to which you refer it is believed unnecessary to consider its provisions upon the question presented for the reason that the statute above mentioned must be regarded as a part of the contract and will be the controlling factor irrespective of any provisions that may be contained therein.

Based upon the foregoing and in specific answer to your inquiries, it is my opinion that, under the circumstances you present:

1. The contractor cannot be required to do the extra work which you describe at the unit price stated in the contract.

2. The contractor and the Director of Highways, under such facts and circumstances, may not agree upon a new unit price for the extra work unless an emergency exists which will not permit of the delay necessary to advertise said extra work contract and the Director makes a finding of such fact upon his journal.

3. In the event an emergency does not exist the Director of Highways should proceed to advertise for bids for the extra work and award a contract to construct the same.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1823.

APPROVAL, FINAL RESOLUTION FOR ROAD IMPROVEMENT IN FULTON COUNTY.

COLUMBUS, OHIO, May 3, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

1824.

APPEARANCE BOND—GIVEN TO STATE IN BASTARDY PROCEEDING—
PROPER PARTY TO INSTITUTE SUIT ON SUCH BOND, WHEN FOR-
FEITED, DETERMINED.

SYLLABUS:

An action upon a recognizance given for the appearance of a defendant in a bastardy proceeding may be brought by the prosecuting attorney in the name of the State of Ohio.