In Ohio, cumulative sentences may be made, and also sentences may be made to commence in the future. *Williams* vs. *State,* 18 O. S. 46; Opinions of the Attorney General for 1913, Vol. 2, page 1000.

In the case you present, it is apparent that the Common Pleas Court of Franklin County knew that the defendant was serving a sentence in the Ohio Penitentiary before it ordered the suspended sentence into execution, for the action of the Common Pleas Court of Franklin County was taken immediately after defendant began serving a sentence imposed by the Common Pleas Court of Licking County. If the Common Pleas Court of Franklin Court desired that its sentence should be served at the expiration of the sentence imposed by the Common Pleas Court of Licking County, it could have so ordered, by providing that the execution of its sentence should commence at the expiration of the sentence of the Common Pleas Court of Licking County. The failure of the Common Pleas Court of Franklin County to make such an order, in my judgment, indicates that it was not the intention of the court that the sentences should be served consecutively.

Since there are no statutes in Ohio pertaining to consecutive sentences, applicable to such a case as you present, and for the reasons set forth herein, I am of the opinion that where a prisoner was sentenced in Franklin County, and the execution of the sentence suspended, and he was placed on probation, and while on probation, the person is convicted in Licking County, and sentenced to the Ohio Penitentiary, and while he is in the penitentiary, the sentence in Franklin County is ordered into execution, the prisoner is serving both sentences concurrently.

Respectfully,
GILBERT BETTMAN,
*Attorney General.*

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874.

APPROVAL, CONTRACTS WITH ROBERT H. EVANS & CO. FOR THE CONSTRUCTION OF COTTAGE NO. 1, COTTAGE NO. 2, POWER HOUSE AND CHIMNEY AND WORKSHOP, RESPECTIVELY, AT THE INSTITUTION FOR FEEBLE-MINDED, APPLE CREEK, OHIO, AT AN EXPENDITURE OF $473,160.00—SURETY BOND EXECUTED BY THE AMERICAN SURETY COMPANY OF NEW YORK.

COLUMBUS, OHIO, September 16, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval four certain contracts entered into by and between the State of Ohio, through you as the Director of the Department of Public Works, and Robert H. Evans and Company, a corporation organized under the laws of the State of Ohio, the successful bidder for the construction of Cottage No. 1, Cottage No. 2, power house, and chimney and workshop, respectively, at the Institution for Feeble-Minded, Apple Creek, Ohio, which contracts call for an aggregate expenditure of $473,160.00. With said contracts there has likewise been submitted files of the various proceedings had preliminary to entering into said contracts and relating to the same.

Upon an examination of said files submitted, I find from a certificate over the signature of the Supervisor of Plans and Contracts that plans, specifications, bills of material, estimate of cost, and copy of notice to bidders with respect to said proposed

improvements have been filed in the office of the Auditor of State as required by law.

There has also been submitted, as a part of said file, encumbrance estimates over the signature of the Director of Finance showing that there are unencumbered balances legally appropriated in sums sufficient to cover the obligations of said contracts, and a certificate over the signature of the Director of Finance, as Secretary of the Board of Control, that the moneys necessary to meet said contracts have been released by said board.

There has been further presented to me in the file submitted evidence showing that said contractor has complied with the Workmen's Compensation Law of this state.

The contracts above referred to are accompanied by a contract bond given in compilance with the provisions of Sections 2316 and 2365-4 of the General Code. This bond, which has been executed by Robert H. Evans and Company as principal and The American Surety Company of New York as surety, is in the penal sum of $500,000.00, conditioned substantially as required by the above noted provisions of the General Code, with respect to the construction by said contractor of the public works and improvements above noted. Accompanying said contract bond is a copy of the minutes of a meeting of the Board of Trustees of said The American Surety Company of New York showing that the persons who executed said contract bond on behalf of said surety company were duly authorized so to do, also a certificate over the signature of the Superintendent of Insurance showing that said The American Surety Company of New York has complied in all respects with the law of this state and is authorized to transact in this state its appropriate business of fidelity and surety insurance.

It thus appears that as to the formal matters relating to said contracts and the required proceedings precedent to and accompanying the same, said contract proceedings are in all respects regular.

A question has been presented to me affecting three of said contracts above noted arising out of the acceptance of certain alternates provided for in the plans and specifications and in the form of proposal used by the bidders relating to the construction of the floors in the second story of Cottage No. 1 and Cottage No. 2 and in the engine room of the power house.

Under the general plans and specifications upon which the base bids for the construction of said improvements were submitted, it was provided that said floors, base and curbs, as shown on the drawings therefor, should be of cement as specified. In said plans and specifications it was stipulated that if Alternate G-7, therein provided for, was accepted fills for cement in the finished floors in the second story of said cottages and in the engine room of the power house were to be omitted, and the concrete slab in the second floor construction of said cottages and in the power house should be raised so that the finished floor level would be maintained, except the concrete bolster around the exterior walls of the cottages. In said plans, specifications and form of proposal another alternate was provided for, known as G-2B, providing for terrazzo floors instead of the cement floors with cement finish, as provided for in the general plans and specifications upon which the base bids were made. The provisions in the plans and specifications with respect to this alternate are therein stated under the general heading "Alternate 'G-2' " as follows:

> "Under the 'Base Bid' floors, base and curbs as shown on drawings shall be cement as specified.
>
> Bidders shall name in the space provided in the Form of Proposals the amount to be added to or deducted from the Base Bid for the General Contract, if floors, base and curbs are made of terrazzo as outlined in Alternate G-2A and G-2B.

Alternate G-2A terrazzo floors, base and curbs in lieu of cement in all toilet rooms, shower rooms, bath rooms and janitors closets in the second story. This includes the future attendants' toilet room.

Alternate G-2B, terrazzo floors, base and curbs in lieu of cement throughout the second story, including the terrazzo in alternate G-2A and filled treads and landings on interior steel stairs and from first to second floor. This does not include the stair landing at bottom of stairs in first story."

In the form of proposal used by the bidders, each bidder was asked to state how much as he would add to or deduct from the base bid if Alternate G-2B was accepted; he was likewise asked to state how much he would deduct from his base bid if Alternate G-7 was accepted.

Said Robert H. Evans and Company added $12,000.00 to the base bid on account of Alternate G-2B as against $10,000.00, added on account of this alternate by his nearest competitor. With respect to Alternate G-7, the successful bidder deducted the sum of $5300.00 from its bid as against a deduction of $1800.00 made on said alternate by its nearest competitor. I am advised that the difference in said figures on the deductions made respectively by Robert H. Evans and Company and by said competitor with respect to said alternate was sufficient on the acceptance of said alternate to make said Robert H. Evans and Company the low bidder on this proposal for the construction of said buildings and improvements.

Upon recommendation of the architect both of said alternates were accepted and the contracts, including said alternates, were awarded to said Robert H. Evans and Company.

The legality of the action of the responsible authorities of the state in awarding the contracts for the construction of said improvements to said Robert H. Evans and Company is challenged on the ground that the same was awarded to said company as the lowest bidder, that said Robert H. Evans and Company would not have been the lowest bidder but for the acceptance of Alternate G-7 above referred to and the deduction made by said bidder on account of said alternate, and that said Alternate G-7 is inconsistent in its requirements with those of Alternate G-2B, which was likewise accepted. It is claimed that the acceptance of both of said alternates and the award of the contracts, including both of said alternates, to said Robert H. Evans and Company as the low bidder was unauthorized and illegal.

After careful consideration of this matter, I am unable to entertain any view with respect to this question other than that said alternates above mentioned and discussed are inconsistent with each other, and that it will not be possible to construct the floors of the buildings to which said alternates apply by following the requirements of both of said alternates.

It likewise seems to me that the state by the acceptance of Alternate G-2B alone could have secured the same results as far as the construction of said floors is concerned, as the state through its authorized representatives seeks to obtain by the acceptance of both of said alternates. However, the question here presented is very largely, if not entirely, an engineering problem, and I am advised by the State Architect, as well as by an independent architect employed in connection with the construction of said buildings and improvements, that said alternates are not inconsistent, and that it was and is necessary that both of said alternates be accepted in order to accomplish the purpose of constructing said floors of terrazzo.

In this situation and in view of the desire expressed to me by the Director of Public Welfare to do all possible to avoid delay and in view of his statement that the acceptance of the proposed contract will mean a saving to the state, I do not feel that I am justified in setting up my views against those of the responsible authorities of the state where, as in this case, the question at issue is a practical engineering question.

For these reasons, I am constrained to approve said contracts as against the objection above noted and discussed; my approval to said contracts is evidenced by my endorsed approval thereon and upon the copies thereof.

I am herewith returning said contracts and the files therewith submitted.

Respectfully,
GILBERT BETTMAN,
*Attorney General.*

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875.

MUNICIPALITY—QUESTIONS OF BOND ISSUE FOR DISPOSAL PLANT AND AIRPORT SUBMITTED TO VOTERS—PROPOSITIONS MAY APPEAR ON SAME BALLOT.

*SYLLABUS:*

*A municipality may submit the question of issuing bonds for a disposal plant authorized under the provisions of paragraph* 10 *of Section* 3939, *General Code, and the question of a bond issue for a municipal airport, authorized under the provisions of paragraph* 22 *of the same section, upon the same ballot or paper instrument which is submitted to the voters, so long as the voter has a full and complete opportunity to separately express his wishes upon each separate question and the form provided in Section* 2293-23 *is clearly set forth thereon with reference to each question submitted.*

COLUMBUS, OHIO, September 16, 1929.

HON. A. M. RODGERS, *Prosecuting Attorney, Lima, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication, which reads:

> "At the coming election there are two bond issues to be submitted to the voters of this city, namely, disposal plant and municipal airport. The board of elections want an opinion as to whether or not these two matters can be placed on the same ballot.
>
> I have advised that under Section 5020 of the General Code separate ballots must be had for each matter.
>
> A member of the board of elections informs me that in the past more than one question has been placed on the ballot under authority of Section 5019 of the General Code. They desire your opinion."

Section 5020 of the General Code, to which you refer, provides:

> "When the approval of a question, other than a constitutional amendment, is to be submitted to a vote, such question shall be printed on a separate ballot and deposited in a separate ballot box, to be presided over by the same judges and clerks of election."

Section 5020, supra, was under consideration in an opinion found in Opinions of the Attorney General for the year 1915, at page 630. The syllabus of said opinion reads:

> "More than one question, which may be properly submitted to a vote of the people at the same election, may be placed on one ballot."