

1260.

APPROVAL, BONDS OF MAHONING COUNTY—\$100,000.00.

COLUMBUS, OHIO, December 5, 1929.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1261.

PUBLIC WORK—DEFAULT OF CONTRACTOR AND COMPLETION BY SURETY—DISPOSITION OF ESTIMATES EARNED BUT NOT PAID PRIOR TO DEFAULT DISCUSSED.

SYLLABUS:

Where a contractor defaults upon public work and the surety company takes over the work of completing the contract, estimates earned by the contractor prior to default but not paid when the work is taken over by the surety company should be withheld until such time as the relative rights of the interest'd parties may be determined.

COLUMBUS, OHIO, December 5, 1929.

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

DEAR SIR:—Your recent communication reads:

“On October 17, 1929, a contract which had been entered into between the State of Ohio and The Canton Sand & Gravel Company known as Section ‘D’ (Bridge) S. H. No. 70, Tuscarawas County was declared forfeited by the State and the contractor and surety company notified.

The Southern Surety Company furnished the bond for this work and they immediately elected, by notifying this Department in writing, to take over and complete this contract.

Shortly prior to the date of forfeiture of this contract several estimates had been submitted for this work and had not yet been paid on that date. These estimates, of course, were to be paid to The Canton Sand & Gravel Company.

It is respectfully requested that you advise me as to whether these estimates should now be paid to the Southern Surety Company, the present recognized contractor on this work, or to the original contractor The Canton Sand & Gravel Company. The work covered in these estimates, of course, was performed by The Canton Sand & Gravel Company.”

Section 1208, General Code, in part provides:

“* * * Before entering into a contract the director shall require a bond with sufficient sureties, conditioned, among other things, for the payment by the contractor and by all sub contractors for all labor performed or materials furnished in connection with the project involved, that the contractor will perform the work upon the terms proposed, within the time prescribed, and in accordance with the plans and specifications thereof, and that the contractor will indemnify the state, and in case of a grade separation