

2512.

APPROVAL, BONDS OF VILLAGE OF PERRYSBURG, WOOD COUNTY,
OHIO—\$53,530.00.

COLUMBUS, OHIO, November 6, 1930.

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

2513.

APPROVAL, BONDS OF VILLAGE OF GREENFIELD, HIGHLAND
COUNTY, OHIO—\$25,000.00.

COLUMBUS, OHIO, November 6, 1930.

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

2514.

PARTITION FENCE—BUILT BY CONTRACTOR UNDER CONTRACT
FROM TOWNSHIP TRUSTEES—NO AUTHORITY FOR TOWNSHIP
TRUSTEES TO EXPEND MONEY FROM GENERAL FUND WHEN
TAXPAYER IS DELINQUENT IN TAXES.

SYLLABUS:

Township trustees are not authorized to expend money from the general fund to pay a contractor who has built a partition fence pursuant to Section 5913, General Code, even though the tax payer upon whose land the fence was built has failed to pay his taxes to the county treasurer for over a year, and the amount can not be otherwise collected by the contractor.

COLUMBUS, OHIO, November 7, 1930.

HON. GEORGE S. MIDDLETON, *Prosecuting Attorney, Bellefontaine, Ohio.*

DEAR SIR:—This will acknowledge receipt of a communication over the signature of John P. Dickinson, Assistant Prosecuting Attorney, as follows:

“The township trustees of Monroe Township in this county pursuant to Section 5913 and 5914 of the General Code, have constructed a partition fence. The land owner against whom a portion of the costs have been assessed has failed to pay his taxes for over one year and there is little likelihood that he will pay them for some little time and the trustees feel that the contractor who built the fence should be paid and not have to wait for the collection of taxes to get his money.

Our question is, are the trustees authorized under the statute to pay the contractor for the fence constructed out of the general fund now, and wait for their reimbursement until the taxes are collected?"

Article X, Section 5, Ohio Constitution, provides :

"No money shall be drawn from any county or township treasury, except by authority of law."

Having in mind the above constitutional provision, it becomes necessary to see whether there is any authority of law which would allow township trustees to pay, from township funds, a contractor who builds a partition fence under a contract with said trustees. Sections 5913, et seq., General Code, provide in detail the procedure to be followed if parties fail to build the portion of a partition fence assigned to them by the township trustees. Section 5913, General Code, provides in substance that the township trustees shall sell the contract for erection of the fence to the lowest responsible bidder after advertisement. Sections 5914 and 5915, General Code, provide as follows :

Sec. 5914. "When the work is completed in conformity with such contract and to the satisfaction of the trustees, they shall forthwith certify the costs to the township clerk, and, if not paid within thirty days, such clerk shall certify them to the auditor of the county with a statement of the amount the fence sold for, adding thereto a proportionate amount of costs and expenses of such sale, with a correct description of each piece of land upon which the costs are assessed."

Sec. 5915. "The county auditor shall place such amounts upon the tax duplicate to be collected as other taxes, and the township trustees shall at the time certify the amount due each person for building such fence and the amount due each trustee and clerk for services rendered therein. The auditor may anticipate the collection thereof and draw orders for the payment of such amounts out of the county treasury."

It is to be observed from the above sections that the trustees upon fulfillment of the contract, must immediately certify all costs to the township clerk, who in turn must, if such costs are not paid in thirty days, certify them to the county auditor. Then the county auditor places the amounts on the tax duplicate and collects them as other taxes. It appears that, by the terms of the last sentence of Section 5915, supra, the auditor is empowered, if he sees fit, to immediately authorize the payment of such amounts by the county treasurer, without waiting for the collection of the taxes from the landowner.

Nowhere in the above provisions does there appear to be any express or implied authority whatever for the township trustees to advance money to the contractor for the cost of the fence pending the collection of the taxes. On the contrary, the Legislature has placed the burden on the county of paying the contractor and recovering the amount from the taxpayer whose duty it was to erect the fence. While it does work an unfortunate hardship on the contractor in the present instance that he can not be paid immediately by the trustees, yet it is to be remembered that the contractor is presumed to have contracted with a view to the then existing provisions of law and to have foreseen that there could be no claim against the township for the costs of the fence.

Accordingly, in specific answer to your question, I am of the opinion that town-

ship trustees are not authorized to expend money from the general fund to pay a contractor who has built a partition fence pursuant to Section 5913, General Code, even though the taxpayer upon whose land the fence was built has failed to pay his taxes to the county treasurer for over a year, and the amount can not be otherwise collected by the contractor.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2515.

APPROVAL, LEASE TO LANDS OF GEORGE C. AND MARTHA DITTIKOFER IN FULTON COUNTY FOR GAME REFUGE PURPOSES.

COLUMBUS, OHIO, November 7, 1930.

HON. J. W. THOMPSON, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR:—You have submitted Lease No. 2082 wherein George C. and Martha F. Dittikofer grant $40\frac{3}{4}$ acres of land situated in Pike Township, Fulton County, to the State for state game refuge purposes for the term of five years. Said lease in my opinion is in proper legal form and I have accordingly endorsed my approval thereon. Said lease has been properly executed by the lessor but should be executed by you on behalf of the Conservation Council. I am returning said lease herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2516.

APPROVAL, BONDS OF UPPER ARLINGTON VILLAGE SCHOOL DISTRICT, FRANKLIN COUNTY, OHIO—\$75,000.00.

COLUMBUS, OHIO, November 7, 1930.

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

2517.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND RONAN AND INGLESON, COLUMBUS, OHIO, FOR ARCHITECTURAL SERVICES IN CONNECTION WITH REMODELING MERRILL HALL AT KENT STATE COLLEGE, KENT, OHIO, AT AN EXPENDITURE OF \$4,800.00.

COLUMBUS, OHIO, November 7, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and opinion a contract between the State of Ohio, acting by and through the Department of Public Works,