

4213.

APPROVAL, CONTRACT FOR GENERAL WORK FOR PROJECT KNOWN AS COMPLETION OF T. B. COTTAGE, LONGVIEW STATE HOSPITAL, CINCINNATI, OHIO, \$37,389.00, AETNA CASUALTY AND SURETY COMPANY OF HARTFORD, CONN., SURETY—C. LOUIS ZULL.

COLUMBUS, OHIO, May 2, 1935.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Department of Public Welfare, and C. Louis Zull of Cincinnati, Ohio. This contract covers the construction and completion of Contract for General Work for a project known as Completion of T. B. Cottage, Longview State Hospital, Cincinnati, Ohio, in accordance with Item No. 1 of the form of proposal dated March 15, 1935. Said contract calls for an expenditure of thirty-seven thousand three hundred and eighty-nine dollars (\$37,389.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted a certificate of the Controlling Board, showing that such board has released funds for this project in accordance with section 1 of House Bill No. 69 of the second special session of the 90th General Assembly, appropriating the money for this contract.

In addition, you have submitted a contract bond upon which the Aetna Casualty and Surety Company of Hartford, Connecticut, appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law, and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon, and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4214.

DEPARTMENT OF INDUSTRIAL RELATIONS—REQUIRED TO COLLECT FEE FROM DEPARTMENT OF PUBLIC WORKS FOR CERTIFICATE OF INSPECTION OF ELEVATOR OR STEAM BOILER OWNED OR USED BY DEPARTMENT OF PUBLIC WORKS.

SYLLABUS:

The Department of Public Works of the state of Ohio, as the owner or user of steam boilers and elevators, is required under the provisions of Section 280, General

Code, to pay to the Department of Industrial Relations the statutory fees for the inspection of such steam boilers and certificates of operation of such elevators.

COLUMBUS, OHIO, May 2, 1935.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“A question has arisen between the Department of Public Works and the Department of Industrial Relations over the matter of fees for the inspection of State-owned and operated boilers.

We have the feeling that this service, if required, should be gratis, inasmuch as it involves no additional expense to the department making the inspection and it is no more reasonable to bill this department for this service than it would be for this department to render the Department of Industrial Relations a bill for janitor service, light or heat for their quarters in the Ohio Departments Building.

We are not taking the position that the boilers should be operated without inspection. In the particular case at hand the boilers are insured in two separate companies and are and have been inspected by a licensed inspector.

This said Boiler Insurance Company cannot issue to this department a certificate, so they say, unless we deliver to it the cost of the certificate, one (\$1.00) dollar.

We are in receipt of a statement from the Department of Industrial Relations for one inspection of No. 2 Boiler of five (\$5.00) dollars and certificate fee of one (\$1.00) dollar, making a total of six (\$6.00) dollars.

They support this act by an opinion rendered by Attorney General Edward C. Turner, February 26th, 1927. We are wondering if later laws and court decisions would not lead you to a different conclusion from that of Mr. Turner.

We wish that you would also include in your investigation, an opinion on the subject of inspection and fees of state-owned and operated elevators.

We will state that we are quite sure that it costs the taxpayers as much more in clerical work in making out these bills and running the accounts through the books than it costs to make the inspections. Why multiply expense by two?”

Sections 1058-7, 1058-19, 1058-20, 1058-21, 1058-24 and 1058-25, General Code, are pertinent to your first question. Section 1058-7 reads:

“All steam boilers and their appurtenances, except boilers of railroad locomotives subject to inspection under federal laws, portable boilers used in pumping, heating, steaming and drilling, in the open field, for water, gas and oil, and portable boilers used for agricultural purposes, and in construction of and repairs to public roads, railroads and bridges, boilers on automobiles, boilers of steam fire engines brought into the state for temporary use in times of emergency for the purpose of checking conflagrations, boilers carrying pressure of less than fifteen pounds per square inch, which are equipped with safety devices approved by the board of boiler rules, and boilers under the jurisdiction of the United States, shall be thoroughly inspected, internally and exter-

nally, and under operating conditions at intervals of not more than one year, and shall not be operated at pressures in excess of the safe working pressure stated in the certificate of inspection hereinafter mentioned. And shall be equipped with such appliances to insure safety of operation as shall be prescribed by the board of boiler rules."

Section 1058-19 provides in part:

"The owner or user of a boiler required to be inspected shall, after due notice, prepare the boiler for internal and external inspection at the appointed time, by drawing the water from the boiler and removing the manhole and hand-hole plates and thoroughly cleaning the boiler and its setting. The inspector of steam boilers shall give such owner or user at least fourteen days' notice to prepare the boiler for his inspection, but shall not be required to give notice for inspection under operating conditions. It shall be the duty of the inspector when making inspections under operating conditions to observe the pressure of steam carried, the general condition of each boiler, to ascertain if the safety valve and the appliances for indicating the pressure of steam and level of water in the boiler are in proper working order. * * "

Section 1058-21 provides:

"The certificate of inspection shall state the name of the owner or user, the location, size and number of each boiler, the date of inspection, and the maximum pressure at which the boiler may be operated, the name of the person that made the inspection, and of the chief inspector of steam boilers, and shall also contain such quotations from the statutes as shall be deemed necessary by the board of boiler rules, and shall be so placed as to be easily read in the engine room or boiler room of the plant where the boiler is located, except that the certificate of inspection for a portable boiler shall be kept on the premises and shall be accessible at all times.

The owner or user of a steam boiler herein required to be inspected shall pay to the chief inspector of steam boilers the sum of one dollar for each certificate issued."

Section 1058-25 reads in part:

"The owner or user of a boiler herein required to be inspected shall pay to the chief inspector upon inspection five dollars for each boiler internally and externally inspected, and two dollars for each boiler inspected while in operation. * * "

The sole question raised by your inquiry is whether the State of Ohio, through the Department of Public Works, is required to pay for certificates of inspection of boilers, as provided in Section 1058-25, General Code, for the inspection of boilers in the various buildings owned or controlled by the state and used for the purpose of housing the activities of the state.

There is, of course, an underlying question in connection with your inquiry which should first be commented upon, viz., whether or not the foregoing sections requiring boiler inspection are applicable to the state as the owner or user of steam boilers in its

various departments or institutions. There is a line of authorities in Ohio to the effect that the state is not bound by the terms of a general statute unless such statute is expressly so enacted. *State, ex rel. Parrott vs. Board of Public Works*, 36 O. S. 409; *State, ex rel. Ogelvee vs. Cappeller*, 39 O. S. 207; *State, ex rel. James vs. Brown*, 112 O. S. 590, 597; and *State, ex rel. Nixon vs. Merrell*, 126 O. S. 239. With respect to this phase of your inquiry, however, it is sufficient to direct your attention to the provisions of Sections 154-21 and 154-23, General Code, which sections provide as follows:

Sec. 154-21.

"Under the direction of the governor, the directors of departments shall devise a practical and working basis for cooperation and coordination of work and for the elimination of duplication and overlapping functions. They shall, so far as practicable, cooperate with each other in the employment of services and the use of quarters and equipment. The director of any department may empower or require an employe of another department, subject to the consent of the superior officer of the employe, to perform any duty which he might require of his own subordinates."

Sec. 154-23.

"Whenever power is vested in any of the departments created by this chapter, or in any other state department, board or commission, to inspect, examine, secure data or information, or to procure assistance from another department, office or institution, a duty is hereby imposed upon the department, office or institution, upon which demand is made, whether created by this chapter or otherwise, to make such power effective."

I am advised that it has been the administrative practice under authority of these sections, when read as in pari materia with the sections relating to the inspection of boilers, for the Department of Industrial Relations to inspect boilers owned and operated by the state and its various institutions. Administrative interpretation of a given law, while not conclusive, is to be reckoned with most seriously and not to be disregarded unless judicial construction makes it imperative so to do. *Industrial Commission vs. Brown*, 92 O. S. 309, 311; *State, ex rel. vs. Brown*, 121 O. S. 73. See also 25 R. C. L. 1043. Since the underlying reason for the theory of law that the state is not bound by its own laws is based upon the presumption that the sovereignty will exercise the same degree of care for the protection of its citizens as it demands of its citizens by express enactment, it would appear that there is ample justification for the administrative practice hereinabove indicated.

Coming then to your specific inquiry as to the matter of paying to the Department of Industrial Relations the fee for the certificate of inspection provided by Section 1058-25, General Code. Section 280, General Code, provides as follows:

"All service rendered and property transferred from one institution, department, improvement, or public service industry, to another, shall be paid for at its full value. No institution, department, improvement, or public service industry, shall receive financial benefit from an appropriation made or fund created for the support of another. When an appropriation account is closed, an unexpended balance shall revert to the fund from which the appropriation was made."

The foregoing section is dispositive of your first question and under authority thereof

it is my opinion that your department is required to pay the Department of Industrial Relations the fees for certificates of inspection of steam boilers provided by Section 1058-25, General Code.

The reasoning and conclusion reached in the consideration of your first question apply with like force to your second question relating to the inspection of elevators under the provisions of Section 1038-1, et seq., General Code.

Respectfully,

JOHN W. BRICKER,

Attorney General.

4215.

COUNTY COMMISSIONERS—AUTHORIZED TO PURCHASE SURGICAL INSTRUMENTS FOR CORONER WHEN.

SYLLABUS:

1. *County commissioners by virtue of section 2419 General Code may, if they deem it necessary, purchase with county funds a set of surgical instruments for the use of the coroner in performing autopsies and post mortems.*

2. *The authority of the county commissioners to purchase surgical instruments is not limited by the fact that the coroner, because of the population of his county, receives fees rather than a salary and maintains his office as such coroner and practicing physician in his own home.*

COLUMBUS, OHIO, May 2, 1935.

HON. JESSE H. LEIGHNINGER, *Prosecuting Attorney, Youngstown, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“A request has been received by the County Commissioners to furnish the County Coroner with a set of surgical instruments for his use in autopsies and post mortems.

I should like to have your advice as to whether or not you find in section 2419 General Code or elsewhere, authority for the purchase by the Commissioners of such equipment for the Coroner, and if so, is such authority limited by virtue of the fact that our county is less than 400,000 in population, the Coroner therefore receiving fees rather than a salary and maintains his office as such Coroner and practicing physician in his own private home.”

A coroner may investigate a death which occurred under questionable circumstances by means of an autopsy or post mortem provided he is authorized to do so by the prosecuting attorney of the county. Section 2856 Ohio General Code.

The Board of County Commissioners, being a creation of the legislature, has only those powers which are conferred upon it through legislative enactment. Especially in financial transactions the authority to impose an obligation upon the county must be clearly granted. *State, ex rel. vs. Menning*, 95, O. S. 97, 99.

Section 2419, General Code, to which you refer, was amended in 1919 to read as follows: