

nor is there any discrimination between domestic and foreign corporations. It is not burdensome against a corporation engaged in interstate commerce as compared with other corporations. In fact, the burden is less on one engaged in interstate commerce than upon others. It does not attempt to reach property outside of the State of Ohio, and is not imposed as a condition precedent to doing business in this state. Its application to the corporation in question is, as I have pointed out, questionable under the authorities. While the question is one of grave doubt and uncertainty, I believe it to be my duty to resolve the doubt in favor of the applicability of the tax.

You are accordingly advised that the bridge company in question is required to file a foreign corporation franchise tax report and to pay such tax upon the termination thereof in accordance with law.

In this connection it is proper for me to point out that in the case of *Henderson Bridge Co. vs. City of Henderson*, 173 U. S. 592, 43 Law Ed. 823, the Supreme Court of the United States held that the boundary of Kentucky extends to low water mark on the Indiana shore of the Ohio River, and accordingly the city of Henderson was authorized to tax the bridge in question to the low water mark on the Indiana side. This principle would apply in the present instance and the only property which the State of Ohio would be justified in taking into consideration would be that tangible property of the bridge company, i. e., the portion of the bridge and the abutments thereof, as would extend to the low water mark on the Ohio side. The remainder would be taxable in the state of West Virginia.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1812.

DISAPPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE
WEGE MARBLE & TILE COMPANY, COLUMBUS, OHIO, FOR WORK
AT OHIO STATE UNIVERSITY.

COLUMBUS, OHIO, March 5, 1928.

HON. RICHARD T. WISDA, *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 and on behalf of the Board of Trustees of the Ohio State University, and The Wege Marble & Tile Company, of Columbus, Ohio.

The consideration named in the contract is the sum of nine thousand six hundred and three dollars (\$9,603.00). An examination of the estimate of cost reveals that the estimated cost of the marble, tile and terrazzo is the sum of six thousand eight hundred and fifty-six dollars (\$6,856.00). It is apparent, therefore, that the amount of the contract award is in excess of the estimated cost. Your attention is directed to Section 2323, General Code, which provides as follows:

“No contract shall be entered into pursuant to Section 2317 at a price in excess of the entire estimate thereof. Nor shall the entire cost of the construction, improvement, alteration, addition or installation including changes or estimates or expense for architects or engineers exceed in the aggregate the amount authorized by law for the same.”

In view of the provisions of Section 2323, supra, to the effect that no contract shall be entered into in excess of the entire estimate thereof, I am of the opinion that the contract under consideration may not be approved.

I am returning the contract herewith without my approval noted thereon.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1813.

ELECTIONS—SECTION 5175-2, GENERAL CODE, CONSTRUED—FILING OF EXPENSE ACCOUNTS—DIRECTORY AND NOT MANDATORY.

SYLLABUS:

Under the provisions of Section 5175-2, General Code, every candidate who is voted for at any election or primary election within this state, is required to file within ten days after such election an itemized statement of all expenditures pertaining to his candidacy. The ten day period, however, is directory and not mandatory as to time. Where persons are elected as members of a board of education and have not filed their expense accounts within said ten day period, they may do so thereafter if the vacancies have not been filled previously and may enter upon the discharge of the duties of the office.

COLUMBUS, OHIO, March 5, 1928.

HON. CARL Z. GARLAND, *Prosecuting Attorney, Batavia, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

“The following question has come to my attention and I would appreciate your opinion on the same.

At the election in the fall of 1927 three members of a local board of education were to be chosen, three of the members of the board of education as it then existed placing their names on the ticket as candidates, together with three other persons, residents of the district. The result of the election was as follows, the three persons who were not theretofore members of the board received the highest number of votes. These persons receiving the highest number of votes failed to file an expense account with the county board of elections, as required by the statute, and it is therefore the contention of the old board of education that the three persons receiving the highest number of votes are not now members of the board because they have failed to qualify in the filing of their expense account.

Under the above circumstances are these three persons legally elected and qualified as members of this board of education?

In the event the newly elected persons are not legally members of the board of education do the old members of the board still continue in office, with authority to transact and carry on all the business of the board?

This matter is somewhat pressing at this time in view of the fact there are outstanding bills which should be paid, and we are at a loss to know just who is responsible for the transaction of the business of the board. Will you please give me your opinion on the above matter as soon as possible?”