

FINAL REPORT OF COMMISSIONERS
FOR THE
ERECTION OF BUILDINGS
FOR THE
INSTITUTION
OF THE
DEAF AND DUMB

MADE TO THE
GOVERNOR OF THE STATE OF IOWA,

JANUARY 1, 1876.

TO WHICH IS APPENDED THE AWARD OF THE REFEREES IN THE MATTER
OF THE CLAIM OF W. R. CRAIG, CONTRACTOR.

DES MOINES:
R. P. CLARKSON, STATE PRINTER.
1876.

REPORT OF BUILDING COMMISSIONERS.

HON. C. C. CARPENTER, GOVERNOR OF IOWA.

The undersigned, Commissioners for the erection of buildings for the Deaf and Dumb Asylum at Council Bluffs, beg leave to submit to you a report of their proceedings for the years 1874 and 1875. The litigation referred to in our reports of 1872 and 1874, was finally terminated in the District Court of Pottawattamie County at the December Term, 1875, by a judgment on the award of referees hereinafter set out, relieving the Commissioners from further personal liability in the premises.

By reference to these reports it will appear that W. R. Craig, who was the contractor for the erection of the Deaf and Dumb Asylum Buildings, brought suit against the Commissioners in their individual capacity, seeking to recover of them, as well as the superintendent and the Governor of the state, the sum of sixty thousand dollars as compensation for extra work, which he alleges he was required by them to do.

The commissioners thought proper to appear and defend the proceeding, not only for their own protection but for the interest of the state. This litigation has extended over a period of nearly five years, in the State and Federal courts, the commissioners being required to be personally present, with their counsel and witnesses, at every term for that length of time.

This suit was, at the last June term of the District Court of Pottawattamie county, referred to three disinterested builders, namely, Peter A. Dey, R. S. Finkbine, and S. A. Robertson, as referees.

These referees, after having heard all the evidence produced by both parties, and having fully examined the plans, specifications, contracts and buildings erected, submitted to the court their award, (a copy of which is annexed and made part hereof,) and upon this award, the court rendered a final judgment as above stated. Upon this finding, the superintendent reported to us an estimate in favor of Mr. Craig, for the

sum of \$6,210.55, and upon this estimate, we directed the Auditor to issue to Mr. Craig a warrant for said sum, and we herewith present his receipt therefor, it being the balance of the appropriation of 1870 in our hands.

Messrs. Clinton & Rising, of Council Bluffs, appeared and defended the causes as counsel in both the state and federal courts, during all this litigation, and Messrs. Gatch & Wright, of Des Moines, have appeared as attorneys for the defendants in the federal courts at Des Moines. For the valuable services of these gentlemen we ask you to recommend a fair and reasonable compensation, taking into consideration the nature and importance of the litigation.

Statement of account of C. Baldwin, as president of the Commissioners for Deaf and Dumb Asylum Buildings, since the last report of January, 1874:

1874.

January 5.	To cash (warrant).....	\$ 713.31
June 30.	To cash (warrant).....	300.00
August 12.	To cash (warrant).....	6,210.55
		<hr/>
		\$7,223.86

1871.

By cash paid to George Bond: voucher number 100.....	\$ 713.31
By voucher number 101, (to Clinton & Rising).....	300.00
By voucher number 102, (to W. R. Craig).....	6,210.55
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	\$7,223.86

C. BALDWIN,
G. M. DODGE,
THOS. OFFICER.

AWARD OF REFEREES.

DISTRICT COURT, POTTAWATTAMIE COUNTY, IOWA.

WILLIAM R. CRAIG, Plaintiff,	}
vs.	
THOMAS OFFICER and others, Defendants.	}

Now come R. S. Finkbine, Peter A. Dey, and S. A. Robertson, referees, to whom, by order of court, was submitted the above entitled cause, and submit the following:

We met and qualified, and entered upon the examination of the case, at Des Moines, on the 25th day of May, 1875, and the parties submitted in evidence the original plans, drawings, and specifications, with the several reports of the commissioners for the erection of said buildings, and papers accompanying the same, and the acts of the legislature making the appropriations, and then, with the consent of parties, adjourned to Council Bluffs, to measure the building as erected, and hear the evidence offered by the parties.

We did measure the building, and examined the same, and heard and considered the evidence offered by both parties, and calculated the cost of said building, from our measurements and the evidence, and also estimated from said evidence and our own measurements from the plans and specifications the cost of the building contracted to be erected (as will more fully appear by reference to exhibits "A" and "B," hereunto attached). All the parol evidence was taken down and written out by the reporter of this court. All the evidence submitted (save the statutes) is herewith returned.

As the result of our examination, we find and report the following facts:

1st. That by the act of 1868 \$125,000 was appropriated for the erection of the buildings, and that Thomas Officer and others were appointed commissioners, and required to let the contract for the erection of the main building and lateral wing, according to the plans and specifications prepared by Swartz and Dilger, architects, of Springfield, Illinois, which were by said act approved and adopted. And that said commissioners did let said contract, and awarded the same to William R. Craig, he being the lowest bidder, at the contract price of \$121,500, and that the said contractor commenced the erection of said building as soon as the commissioners could get the ground ready therefor.

2d. That the commissioners, at the commencement of said work,

appointed Wm. Ward superintendent of the erection of said building; and, finding the plan adopted in many respects defective, said Ward, with the approval of said commissioners, made an entirely new plan, based on the original, but so altered and modified that we were compelled to treat them as two distinct buildings, and measure and calculate each separately, to determine their cost and values.

3d. That said contractor notified the commissioners that by said changes they were increasing the cost of said building materially above the contract price, but deeming the same necessary they required him to make the modifications, and construct the building as directed by Mr. Ward, and assured him that if thereby the cost of the construction of the building was increased he would be paid accordingly; and that he did proceed with the work, and completed said building under and according to the directions of said superintendent.

4th. That the commissioners, in their report of 1870, asked for an additional appropriation, in the following language, addressed to Hon. Samuel Merrill, Governor:

"We therefore ask you to recommend an appropriation of this sum (\$15,000) to be placed at the disposal of the commissioners, to be used by them in case such amount is justly due Mr. Craig by reason of any extra work done by him, and if he should fail to carry out his contract, that the commissioners might have this sum available to secure the completion of the building before another appropriation could be made."

And that the legislature did, by act approved March 22d, 1870, appropriate the additional sum of \$35,000, and placed the sum under the control of the commissioners; making in all appropriated for the buildings, necessary shops, and out-buildings, the sum of \$160,000.

5th. We find that said defendants did not, nor did either of them, at anytime agree, or promise personally to pay said contractor for the increased cost of said building caused by said changes, nor to become individually liable therefor, and in saying to him that he would be paid for the extra cost of building, they acted as commissioners for the state, relying upon the state to make necessary provision therefor.

6th. We find that all the changes made from the original plans, by said commissioners, both as to the style of the building and the manner of its construction, were necessary and proper, as the building if erected in accordance with the original plans would not have been safe for the following reasons:

In the first and second stories, there were no cross brick walls; in the third and fourth stories, there were no brick partitions either lengthwise, or across the building; almost the entire interior construction being of wood.

The brick walls were too thin for so high a building, there being some exterior walls running through two stories in height only nine inches in thickness with no cross walls connecting with them—and in the upper story the lateral wing walls one hundred and two feet long, nine inches thick, with no cross walls connecting them.

In the changes made, while the size of the building on the ground was decreased slightly, the material and work in the walls was largely increased.

We further find from the evidence that the interior wood finish was

made of good, well seasoned lumber, and that the contractor was required to put the same on green walls, which swelled the seasoned lumber, and that when, immediately after, it was subjected to the steam heat it shrank, and in some instances cracked.

7th. We find the building as contracted to be built by Mr. Craig, according to the plans and specifications of Swartz & Dilger, and at the prices of labor, and material as shown in evidence would have cost him \$107,380.68, (see exhibit A hereto attached,) including the heating apparatus, leaving a margin of \$14,119.32 as profits to the contractor.

8th. We find that the actual cost of the building as constructed according to the plans of Mr. Ward, superintendent, and at the prices of labor and material, as shown in evidence, was \$121,106.60, (see exhibit B herunto attached,) including the heating apparatus, and allowing the same per cent. profit as estimated for the building contracted to be built, the contractor was entitled to receive for the building as erected the sum of \$137,444.23, being \$15,944.23 in excess of the contract price.

9th. We find the state took possession of said building during the month of November, 1870, and has been in possession of and using the same ever since, and that the contractor completed his work on said building about the first of December, 1870.

10th. We find that there has been paid the plaintiff by the Commissioners, including the amount of \$12,864.00 paid for the heating apparatus and charged to him, the sum of \$115,797.23.

11th. We find that there is now justly due the plaintiff as follows, to-wit:

Provided he was required by his contract to furnish and put in the heating apparatus, then there is due him the sum at December 1st, 1870.....	\$21,647.00
Interest from December 1st, 1870, to July 1, 1875, at 6 per cent.....	5,952.92
Total due July 1st, 1875.....	\$27,599.92
If he was not required by said contract to put in and furnish said heating apparatus, then there was justly due him December 1st, 1870.....	\$37,938.74
Interest from December 1st, 1870, to July 1st, 1875, at 6 per cent.....	10,433.15

\$48,371.89

12th. We find that there is unexpended of the appropriations, and subject to the control of the court, the sum of of \$6,210.55.
The above report is respectfully submitted.

R. S. FINKBINE,
PETER A. DEY,
S. A. ROBERTSON,
Referees.

DES MOINES, June 24th, 1875.