example as proceeds from the sale of county buildings by the county commissioners and may use funds transferred by the commissioners from other public funds, yet the members of the commission appointed by the Common Pleas Court may not lawfully be paid compensation computed on sums expended, which were not derived from sources of taxation, or from the sale of bonds for the purpose of constructing the building.

Specifically answering your question it is my opinion that where a new county children's home is being erected and it is intended by the proper county authorities to use all or a part of the funds derived from the sale of the old children's home, the board of county commissioners should make the necessary appropriation from the funds to be so used in such amount as it deems proper, and the building commission, appointed by the judge of the Court of Common Pleas under Section 2333, General Code, should, after adopting plans, specifications and estimates, proceed to invite bids and award contracts for furnishing the home as prescribed by Section 2338 and related sections of the General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

863.

DANCE—PUBLIC AND PRIVATE—LICENSE.

SYLLABUS:

1. *Whether or not dances given within or without municipalities are public dances is a mixed question of law and fact, and in the decision of such question, the fact of financial profit to an individual or group would be determinative in most cases. Upon prosecution for giving public dances without first securing a permit therefor (Sections 13393 and 13393-2, General Code), the question of whether or not the dance is a public one is one for the determination of the jury under proper instructions of the court. Whether or not prosecutions should be instituted for failure to secure permits before giving public dances is for the determination of the local authorities charged with the duty of enforcing the law and interested citizens, whose right and duty with respect to the institution of prosecutions for failure to secure permits before giving public dances, are the same as that with respect to prosecutions for other offenses.*

2. *In determining whether or not a dance is a public dance or a dance given under the auspices of a bona fide social club as a private dancing party consideration should be given to the organization of the club, the bona fide limitation on its membership, the attendants of the dance, who, if anyone, stands to profit or lose thereby, and in short, the good or bad faith of the promoters of the party in complying with or attempting to evade the law.*

COLUMBUS, OHIO, August 15, 1927.

HON. FRANK WIEDEMANN, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication as follows:

"The Crystal Lake Park Amusement Company owns among other amusement devices a dance pavilion. The dance pavilion is leased to a club

called the Crystal Lake Dancing Club. The club operates like any other private club. Members are voted on before being admitted and are of course charged a membership fee. The club advertises for new members and runs advertisements advising members of the hiring of special orchestras, etc. No one is admitted to the dances who is not a member, this rule being rigidly enforced. The club has no permit from the probate judge to hold a dance having returned the permit issued to the Crystal Lake Park Amusement Co., when the company was holding dances which were open to all the public. The club operates on Sundays as well as other days of the week.

Is the holding of dances by the dancing club a violation of the statute which requires one giving a public dance to first obtain a permit from the probate judge if without a corporation or from the mayor if within a corporation?"

Sections 13393 and 13393-2, General Code, as amended in 1925 read as follows:

Sec. 13393. "No person shall give a public dance, roller skating or like entertainment in a city, village or township without having previously obtained a permit from the mayor of such city or village if such public dance, roller skating or like entertainment is given within the limits of a municipal corporation, or from the probate judge if such public dance, roller skating or like entertainment is given outside a city or village, or permit another so to do. All permits issued under the authority of this section shall be subject to revocation at all times. The provisions of this section shall not apply to charter cities where the licensing authority is vested in some other officer than the mayor."

Sec. 13393-2. "Any person violating any of the provisions of the two preceding sections shall be fined not less than twenty-five dollars nor more than five hundred dollars or imprisoned not more than six months, or both."

Prior to the 1925 amendment, Section 13393, supra, contained substantially the same provisions as does the present statute, with reference to the securing of permits by owners or lessees of property on which public dances were given, but applied only to dances held within muncipalities.

In the case of *Rowlands* vs. *State,* 104 O. S. 366, decided in 1922, Judge Wanamaker in considering the question of the constitutionality of the statute, said on page 369:

"It is not sought to restrain the use of property as to all dancing but only as to public dances, where all classes of people regardless of morals, health, peace or safety are permitted to assemble hodge podge and associate together."

The question raised by your inquiry is whether or not the dances given by the Crystal Lake Dancing Club are public dances. If so, they cannot be given legally, without first securing a permit. If not public dances, no permit is needed.

The statement of Judge Wanamaker in the Rowlands case quoted above, is the nearest to the definition of a public dance that I have been able to find in any law-book, but to my mind the statement as a definition or as a classification of dances is too broad so far as public dances are concerned. That is to say, a dance may be a public dance, and yet be limited in attendance to some extent as regards

morals, health, peace or safety. For instance, an assemblage might be public even though limited to the extent of barring murderers or known burglars or both, or consumptives, or other unfit persons, and still be public as to all other persons.

On this question, in an opinion of this department rendered under date of April 8, 1927, (Opinion No. 302) it was said as follows:

> "What is a public dance? Webster defines public as pertaining to or belonging to the people; relative to a nation, state, or community;—opposed to *private* * * * the people, indefinitely. In Volume 6 of Words and Phrases at page 5772, we find the following:
>
> ' "Public", is a convertible term, and, when used in an act of assembly, may refer to the whole body politic—that is, all the inhabitants of the state—or to the inhabitants of a particular place only. It may be properly applied to the affairs of a state, or of a county, or of a community. In its most comprehensive sense, it is the opposite of "private".
>
> The term "public" is opposed to the term "private" and according to the best lexicographers means pertaining to or belonging to the people, relating to a nation, state, or community; but to make a matter a public matter it need not pertain to the whole nation or state. It is sufficient if it pertains to any separate or distinct portion thereof, or community.' "

The syllabus of this opinion reads:

> "In a given case where a public notice is given through the press or otherwise that a dance will be given at a particular time and place, and that everybody is invited, and where upon the assemblage of the parties interested in the dance and who propose to attend the same, printed invitations are handed out to the prospective dancers before appearing upon the dance floor, the proposed dance in question is a public dance and will require a permit under the provisions of Section 13393, General Code of Ohio."

The great object in the construction of statutes is to arrive at the legislative intention, and to give that intention effect. In construing statutes courts have regard to the object or objects to be attained and the mischiefs to be guarded against. While the statute requiring the securing of a license for the holding of a public dance is penal and should therefore receive that strict construction that is always applied to statutes of that nature, the rule of statutory construction should not be lost sight of to the effect that in construing these and similar statutes enacted in the interest of the public welfare, they are not to be construed so as to encourage, but to prevent the evil aimed at.

As above suggested, it seems clear that the proper construction of the statute here under consideration is that the word "public" as used in the statute is used in contradistinction to the word "private". It can not be denied that dances held as mere incidents to the activities of bona fide social clubs and fraternal organizations and confined in their attendance to the membership of such clubs and bona fide guests of the members are private dances and as such do not require the securing of a permit for the holding of them. But where to draw the line between such dances and public dances, as well as how to determine when a club is a bona fide club or a mere camouflage to accomplish something otherwise prohibited is fraught with considerable difficulty and to my mind is practically impossible, without resort to the rule of construction that permits the going behind

the plain wording of the statute and looking to the purpose of the passage of the law and the remedying of the evils which the law sought to reach.

I do not question the right of individuals to organize themselves into clubs or societies which by proper discrimination limit their membership to a class or classes of persons, and thus acquire such an element of privacy that their meetings or parties or dances would be of a private character. Dances held under the auspices of such a club, whether incidental to the main purpose of the club or held in furtherance of the end for which the club was organized may be classed as private dances. But the discrimination exercised in the selection of the membership and the limitations imposed on the attendance of parties given by such clubs must be so defined as not captiously to permit the attendance of so much of the general public as to bring about the existence of the very evil the legislature aimed to prevent, else they lose their private character and become public dances.

To paraphrase the language of Judge Wanamaker, the purpose of the regulation of dances by requiring the sanction of some public authority is in the interest of the public morals, health, peace and safety, and the law can not be circumvented by the organization of clubs and the holding of dances under the guise of privacy of the club when in fact the dance is public.

Keeping in mind therefore, these considerations, it is pertinent to inquire in each case whether the organization of the club and the conduct of the dances are in good faith private, or whether the club is a mere "blind", organized for the purpose of evading the law.

A club with a bona fide limitation on its membership, which conducts dancing parties under such rules as to conserve the morals, health, peace and saftey of its members and the community in which the parties are held and in the social interest of all its members as distinguished from the financial benefit of its manager or officers or leaders would constitute a bona fide private club. To require such a club under the present law, to secure a permit for the holding of dances would be an invasion of its private rights. On the other hand, a public dance does not become a private dance because labeled private, or because given under the fiction that it is being held by a private club. To determine in each instance the bona fide character of a club giving dances, requires a knowledge of the organization of the club and the manner of its conducting its parties.

You have stated in your inquiry that the Crystal Lake Dancing Club "operates like any other private club; members are voted on before being admitted, and are of course charged a membership fee; * * * no one is admitted to the dances who is not a member, this rule being rigidly enforced."

So far as you have stated, the Crystal Lake Dancing Club may be a bona fide club and its parties private, but to determine whether or not this club *is in good faith* a private club, and whether its dances are public or private, requires consideration of something more than you have stated. The determining factors of most importance to my mind are the limitations on the membership and the good faith shown in determining the qualifications of its members, *together with its system of handling its finances.* If it is a bona fide club, a real discrimination will be made in its membership and its financial system will be such that all its receipts by way of dues, or otherwise, will inure to the benefit of all the members of the club and be disbursed in the interests of the club as a whole. If, however, some one person or a group of persons, would individually profit financially from the giving of several dances, this would amount to almost conclusive proof that such dances were public and not private.

A club, which is so organized that it in good faith desires to have its parties classed as private parties, will have no hesitancy in laying before the proper authorities such facts with respect to its organization and the conduct of its parties as may be required so that it may be determined whether or not the club is a bona fide private club or whether it has been organized as a mere subterfuge for evading the provisions of law with reference to the securing of permits for its dances.

In view of what has been said, I am of the opinion that:

1. Whether or not dances given within or without municipalities are public dances is a mixed question of law and fact, and in the decision of such question, the fact of financial profit to an individual or group would be determinative in most cases. Upon prosecution for giving public dances without first securing a permit therefor (Sections 13393 and 13393-2, General Code), the question as to whether or not the dance is a public one is one for the determination of the jury under proper instructions of the court. Whether or not prosecutions should be instituted for failure to secure permits before giving public dances is for the determination of the local authorities charged with the duty of enforcing the law and interested citizens, whose right and duty, with respect to the institution of prosecutions for failure to secure permits before giving public dances, are the same as that with respect to prosecutions for other crimes and offenses.

2. In determining whether or not a dance is a public dance or a dance given under the auspices of a bona fide social club as a private dancing party, consideration should be given to the organization of the club, the bona fide limitation on its membership, and the attendants of the dance, who, if anyone, stands to profit or lose thereby,—in short, the good or bad faith of the promoters of the party in complying with or attempting to evade the law.

Respectfully,
EDWARD C. TURNER,
Attorney General.

864.

APPROVAL, ARTICLES OF INCORPORATION OF THE INLAND CASUALTY COMPANY.

COLUMBUS, OHIO, August 15, 1927.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am returning to you herewith the amendment to the Articles of Incorporation of the Inland Casualty Company with my approval endorsed thereon.

Respectfully,
EDWARD C. TURNER,
Attorney General.