

1247.

TOWNSHIP TRUSTEES—WHEN ARTIFICIAL LIGHTING FOR HIGHWAYS OUTSIDE MUNICIPALITIES AUTHORIZED.

SYLLABUS:

Under the provisions of Section 3440-1, General Code, as amended by the 88th General Assembly, township trustees of any township have power to provide artificial lights for any part of a county highway within such township and outside the boundaries of any municipal corporation, when such township trustees determine that the public safety and welfare requires that such highway be lighted.

COLUMBUS, OHIO, December 3, 1929.

HON. ALFRED DONITHEN, *Prosecuting Attorney, Marion, Ohio.*

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

“The past legislature amended Section 3440-1 of the General Code, authorizing township trustees to provide artificial lights outside of municipalities by contract. This statute now reads in part as follows:

“The township trustees of any township shall also have power to provide artificial lights for any road, highway, public place or building under their supervision or control, or territory within such township and outside the boundaries of any municipal corporation, when such township trustees determine that the public safety or welfare require that such road, highway, public place or building or territory be lighted. * * *.”

The Village of M. located in T. Township is an unincorporated village with a population of approximately two hundred people. The main street through said village is in reality County Highway No. 171 and maintained and repaired by the county commissioners of this county, though only as to the surface of the roadway proper, the township trustees maintaining the berme, keeping clear the drainage, the removal of snow from the highway, and the cutting of weeds along the sides of the road. There are five side streets leading to the county road, all of which are under the supervision and control and are repaired and maintained by the township trustees of T. Township. The inhabitants of the village of M. are desirous of having all of their streets and roadways lighted artificially.

Question: Is the lighting of the main road through the village, which road is a part of the county highway system, within the purview of Section 3440-1 as being a road, highway, public place or territory under the supervision and control of the township trustees? The trustees have already passed the necessary resolution determining that the public safety and welfare require that all of said streets be lighted. The county commissioners have given their consent to any action to be taken by the trustees to light the road now under the supervision and control of the said county commissioners.

The question herein asked may in all probability be answered by an extension of the Attorney General's opinion in 1928 O. A. G. No. 2438. Kindly advise.”

The opinion of my predecessor to which you refer holds as set forth in the syllabus:

“1. In order that the trustees of a township may provide artificial lights for any territory within such township and outside of the boundaries

of any municipal corporation therein, the resolution of the township trustees to this end should, under the provisions of Section 3440-1, General Code, specifically find that such territory constitutes a place of public gathering for the inhabitants of such township, or that the same constitutes a place of public gathering for a large part of the inhabitants of the township; and that the public safety or public welfare requires that such place be lighted.

2. The trustees of a township are authorized to light streets and highways of the township, as such, only in the manner provided for by Sections 3428, et seq., General Code, and the provisions of Sections 3440-1, General Code, have no application in such case."

Section 3428, General Code, provides for the lighting of streets and public ways of any unincorporated district in a township upon petition being filed as therein provided. This section has not been amended since the rendition of the above opinion. Section 3440-1, General Code, however, was amended by the 88th General Assembly, March 21, 1929. Prior thereto, this last named section provided in part:

"The township trustees of any township shall also have power to provide artificial lights for any territory within such township and outside the boundaries of any municipal corporation, when such territory constitutes a place of public gathering for the inhabitants of such township or of a large part thereof and such township trustees find that the public safety or welfare requires that such place be lighted. * * *"

I concur in the views of my predecessor as set forth in Opinion No. 2438, but in view of the fact that the legislature in the amendment of Section 3440-1, the pertinent part of which you quote in your letter, manifested an intention to greatly broaden the powers of township trustees in providing artificial lights outside of municipal corporations, I do not believe that this opinion or the reasoning thereof is applicable to the question which you present.

You do not inquire as to the authority vested in the township trustees to provide artificial lights for the five side streets leading to the county road in the unincorporated village under consideration, as Section 3440-1 manifestly authorizes the trustees so to do. As to the authority vested in the trustees to provide artificial lights for the main street of the village which street constitutes a part of the county highway system, a question arises as to whether or not the qualification "under their supervision or control" refers only to public places or buildings, or to roads and highways. A careful consideration of the punctuation of the section would indicate that the legislature has made no qualification as to roads and highways having to be under the supervision and control of the trustees, but that this qualification only modifies public places or buildings. Assuming, however, that it is necessary to determine whether the highway in question is under the supervision or control of the trustees within the meaning of this section, the question is not entirely free from doubt. The public highways of the state are, of course, divided into three classes, namely: state roads, county roads and township roads; and under the provisions of Section 7467, General Code, the state, county and township shall each maintain their respective roads, except that the township may by agreement contribute to the repair and maintenance of county roads. Township trustees are also authorized, under Section 3298-1, General Code, to construct, reconstruct, resurface or improve any county road, subject to the approval of the county commissioners. Section 3370, General Code, provides that "the township trustees shall have control of the township roads of their township and shall keep the same in good repair. The township trustees may, with the approval of the county commissioners * * * maintain or repair

a county road * * * within the limits of their township." While it may be said that insofar as construction, maintenance and repair is concerned, the township trustees do not have supervision or control of county highways within the limits of their township, it must be borne in mind that the supervision or control over such highways is not in all instances exclusively vested in the county commissioners. Even if the county commissioners had exclusive supervision or control of county highways as to construction, reconstruction, maintenance or repair, I do not believe it necessarily follows that the county must accordingly be said to have exclusive supervision or control of such roads or highways for purposes of lighting. There are no provisions in the General Code whereby the county is authorized to provide for artificial lighting of highways on the county system outside the limits of municipal corporations. In view of the manifest intention of the legislature to authorize the township trustees to provide artificial lights for roads and highways within their townships outside the boundaries of any municipal corporation when such trustees determine that the public safety or welfare requires that such road or highway be lighted, I should have considerable hesitancy in saying that a portion of a county highway within a township is not under the supervision or control of the trustees within the meaning of Section 3440-1, General Code. In any event, it is provided in this section that the trustees shall have power to provide artificial lights for any "territory within such township outside the boundaries of any municipal corporation" when such trustees determine that the public safety or welfare requires that such territory be lighted. Surely it cannot be said that a portion of a county highway within a township and outside the boundaries of any municipal corporation is not territory within such township.

In view of the foregoing and in specific answer to your question, I am of the opinion that under the provisions of Section 3440-1, General Code, as amended by the 88th General Assembly, township trustees of any township have power to provide artificial lights for any part of a county highway within such township and outside the boundaries of any municipal corporation, when such township trustees determine that the public safety and welfare requires that such highway be lighted.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1248.

APPROVAL, BONDS OF PUTNAM COUNTY—\$2,663.21.

COLUMBUS, OHIO, December 3, 1929.

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

1249.

APPROVAL, BONDS OF MEDINA COUNTY—\$101,650.00.

COLUMBUS, OHIO, December 3, 1929.

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