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ILLUMINATION—BOARD OF TOWNSHIP TRUSTEES—NO
AUTHORITY TO CHARGE SCHOOL BOARD FOR STREET
AND SCHOOL YARD ILLUMINATING SERVICE AS PRO-
VIDED FOR IN SECTION 3428 ET SEQ., G. C.

SYLLABUS:

A board of township trustees is without authority to charge a school board for street and school yard illuminating service, except as provided for in Section 3428 et seq., of the General Code of Ohio.

Columbus, Ohio, May 17, 1949

Hon. Clyde E. Lewis, Prosecuting Attorney
Delaware County, Delaware, Ohio

Dear Sir:

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

“May a board of township trustees charge a school board for street and school yard illuminating service, and may the school board pay said township for such service when the charge for such service is based upon and the same as charges made in a contract between a township and a public service corporation.”

For the purpose of answering the above question, I am assuming that the question relates to an unincorporated district within the township.

A board of township trustees is a creature of statute and has only those powers specifically granted to it by law and such as may necessarily be implied therefrom. Section 3428 et seq. of the General Code of Ohio authorize the lighting of unincorporated districts of a township by the township trustees.

Section 3428 of the General Code provides as follows:

“When the owners of more than one-half of the feet front of the lots and lands abutting on the streets and public ways of any unincorporated district in a township, sign a petition for artificial lighting of the streets and public ways in such district, during the night time or any part thereof, and file it with the clerk of the township, he shall thereupon give notice to the township trustees of the filing of such petition together with a copy thereof.”

Section 3429 of the General Code provides for the contents and effect of the petition; Section 3430 for notice and hearing; Sections 3431 to 3439, inclusive, provide generally for the procedure to be followed upon petition of the land or lot owners of more than one-half of the feet front of the lots and lands abutting on the streets and public ways of the unincorporated district. Section 3436 of the General Code provides in part:

“On accepting such bid and bond, the trustees shall enter into a contract with the successful bidder for the furnishing of such lights according to specifications. * * * The cost and expenses of furnishing and maintaining such lights and of the proceedings in relation thereto, shall be paid from a fund raised by special assessments against the lots and lands in the district which are benefited by such lighting, and such assessments against any lot or parcel of land shall not be in excess of the special benefits resulting thereto from such lighting and such assessments shall be paid and collected in equal semi-annual installments equal in number to twice the number of years for which the contract is made, and shall be paid and collected in the same manner and times as taxes are paid and collected; * * *”

Section 3437 of the General Code provides for an additional number of lights to be maintained under the contract; Section 3439 provides for additional assessments to be made as may be necessary to pay the costs of furnishing and maintaining said additional number of lights.

I am unable to find any statute by which the board of township trustees is authorized to enter into a contract with a local school board for lighting purposes.

In view of the foregoing, it is therefore my opinion that a board of township trustees is without authority to charge a school board for street and school yard illuminating service, except as provided for in Section 3428 et seq. of the General Code of Ohio.

Respectfully,

HERBERT S. DUFFY,
Attorney General.