

2404.

TOWNSHIP HALL—MAY BE REPAIRED WITHOUT VOTE OF ELECTORS—VOTE NECESSARY IF BUILT, REMOVED, IMPROVED OR ENLARGED AT COST TO TOWNSHIP GREATER THAN \$2,000.

SYLLABUS:

1. *A township hall cannot be built, removed, improved or enlarged at a cost to the township greater than two thousand dollars without submitting the question to the electors of the township, even though there are sufficient unencumbered funds in the general fund of the township to pay such entire cost.*

2. *A township hall may be repaired by township trustees without a vote of the electors thereon where there are sufficient unencumbered funds in the general fund of the township to pay the cost thereof, even though such cost may exceed two thousand dollars.*

COLUMBUS, OHIO, March 24, 1934.

HON. COL. G. L. YEARICK, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication, which reads as follows:

“One of the townships in Licking County has a township hall, a portion of which is now leased for theatre purposes. The heating system is antiquated and the prospects of a renewal of the lease are thereby lessened. The trustees wish to make repairs including the installation of a new heating system, the cost of which has been estimated to be ten thousand dollars. Of this amount, approximately five thousand dollars will be expended from the township treasury and the balance furnished through the Federal Civil Works Administration. To take advantage of this offer, the trustees must act quickly and there is not sufficient time to hold a special election. The township is in excellent condition financially, having a balance unencumbered in the general fund of more than forty thousand dollars. To finance this improvement, it will not be necessary to levy a tax or to issue bonds.

In connection with this question, we have examined Sections 3260 and 3395 of the General Code, as well as 1929 O. A. G., 517, to determine whether or not a special election is necessary to authorize the trustees to proceed with the improvement.

The benefit of your opinion upon this state of facts is hereby requested and an early reply will be appreciated.”

Section 3295, General Code, reads as follows:

“The trustees of any township in addition to other powers conferred by law shall have power to purchase, appropriate, construct, enlarge, improve, rebuild, repair, furnish and equip a township hall, a township park, bridges and viaducts over streets, streams, railroads or other places where an overhead roadway or footway is necessary, and sites for any of the same.”

Section 3260, General Code, reads in part as follows:

"The trustees shall fix the place of holding elections within their township, or of any election precinct thereof. For such purpose they may purchase or lease a house and suitable grounds, or by permanent lease or otherwise acquire a site, and erect thereon a house. If a majority of the electors of the township or a precinct thereof, voting at any general election, vote in favor thereof, the trustees may purchase a site and erect thereon a town hall for such township or precinct and levy a tax on the taxable property within such township or precinct to pay the cost thereof, which shall not exceed two thousand dollars. * * *

Under this section this office has held that township trustees may construct a township hall not exceeding two thousand dollars in cost without a vote of the electors thereon, if there are sufficient funds in the treasury therefor.

The following was held in the Annual Report of the Attorney General for 1911-1912, page 276:

"If the township has sufficient unappropriated funds in the treasury the trustees, upon the clerk's certification of such fact, may purchase a site and erect a township house at a cost not to exceed two thousand dollars."

And in the opinion to which you refer, it was held that "for the purpose of constructing a township hall, township trustees are authorized to expend a sum not exceeding two thousand dollars from the general township fund without a vote of the electors." If the cost exceeds two thousand dollars, then sections 3395, et seq., General Code, apply. Section 3395, General Code, reads as follows:

"If in a township, it is desired to build, remove, improve or enlarge a town hall, at a greater cost than is otherwise authorized by law, the trustees may submit the question to the electors of the township, and shall cause the clerk to give notice thereof and of the estimated cost, by written notices, posted in not less than three public places within the township, at least ten days before election."

Section 3396, General Code, reads in part as follows:

"At such election the electors in favor of such hall, removal, improvement or enlargement shall place on their ballots 'Town Hall—Yes,' and those opposed 'Town Hall—No.'"

The question submitted to the electors under these sections is purely a question of policy of making the improvement, and, in my opinion, must be submitted where the cost to the township of the improvement exceeds two thousand dollars, even though there is sufficient money in the treasury to pay the entire cost. In the 1929 opinion referred to by you, the following is said with reference to section 3395:

"The reference herein to cost greater than otherwise authorized by law is to section 3260, General Code, which authorizes the trustees of a township, on the approval of the electors thereof, to levy a tax on all of the taxable property of the township in an amount not to exceed two

thousand dollars for the purpose of purchasing a site for the erection of a township hall. Under the provisions of Sections 3395, et seq., if it is desired to build a township hall at a greater expense than authorized by Section 3260, proceedings shall be had as therein provided."

In my Opinion No. 1829, dated November 14, 1933, with reference to the construction of a building jointly by a village and a township, under sections 3399, et seq., General Code, I held that such a building could not be erected without a vote of the electors thereon, even though the cost could have been paid out of the general funds of the village and township.

However, you speak of part of the project in question as a repair. Whether a project is a repair or an improvement is, of course, a question of fact and undoubtedly the installation of a new heating plant would constitute an improvement. In the case of *Baldwin vs. Springfield*, 10 N. P. (N. S.) 65, the court considered the question as to whether the macadamizing of a street was an improvement or repair. The court distinguished a repair from an improvement as follows:

"To repair is to restore to a sound or good state after decay, injury or partial destruction. To repair, as is ordinarily understood, means to amend, not to make a new thing, but to refit, to make good, or to restore an existing thing. 24 Am. and Eng. Enc. Law, 470.

The grading and graveling of 1901 was a complete improvement. The second improvement in 1908 consisted of macadamizing and curbing and guttering, according to the grade formerly established. It was an entirely new improvement, not a repair of a former improvement. See *O'Meara vs. Green*, 25 Mo. App., 198, *Bush vs. Peoria*, 215 Ill., 515."

Section 3395 only refers to the building, removing, improving and enlarging of a township hall. Section 3295 gives the trustees full power to repair a township hall, and I find no requirement that the making of repairs to such a building must be submitted to the electors of the township where it is unnecessary to incur an indebtedness therefor. Consequently, I am of the view that if any of the work contemplated in the township in question constitutes the making of repairs to the township hall, it would not be necessary to submit the question of making those repairs to a vote of the electors but that the question of installing a new heating plant at a cost to the township of more than \$2,000 would have to be submitted.

I am therefore of the opinion that:

1. A township hall cannot be built, removed, improved or enlarged at a cost to the township greater than two thousand dollars without submitting the question to the electors of the township, even though there are sufficient unencumbered funds in the general fund of the township to pay such entire cost.
2. A township hall may be repaired by township trustees without a vote of the electors thereon where there are sufficient unencumbered funds in the general fund of the township to pay the cost thereof, even though such cost may exceed two thousand dollars.

Respectfully,

JOHN W. BRICKER,
Attorney General.