

5656, but inasmuch as a considerable part was for unauthorized purposes, the whole issue is tainted by the illegality of the unauthorized portion.

I am therefore of the opinion that the bonds under consideration are not valid and binding obligations of Salem City School District and advise the commission not to purchase the same.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

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2646.

APPROVAL, BONDS OF VILLAGE OF HUBBARD, OHIO, IN AMOUNT OF \$3,834 FOR STREET IMPROVEMENTS.

COLUMBUS, OHIO, December 1, 1921.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

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2647.

LIGHTING—TOWNSHIP TRUSTEES UNAUTHORIZED TO PROVIDE FOR LIGHTING OF UNINCORPORATED AREAS OF TOWNSHIP—EXCEPTIONS—SEE SECTIONS 3428 AND 3440-1 G. C.

*Except as provided by sections 3428 et seq. and 3440-1 of the General Code, township trustees are unauthorized to provide for the lighting of unincorporated areas of the township, and the expenditure of township funds for such purposes, otherwise than provided by such sections is illegal.*

COLUMBUS, OHIO, December 2, 1921.

HON. ALLAN G. AIGLER, *Prosecuting Attorney, Norwalk, Ohio.*

DEAR SIR:—Receipt is acknowledged of your letter of recent date reading as follows:

“The trustees of Wakeman township, Huron county, Ohio, desire to enter into a contract for the lighting of the streets of Wakeman, an unincorporated village in said township, and propose to pay for such lighting out of the general fund of the township. I have advised the trustees that they can exercise only those powers conferred by statute, or such others as are necessarily to be implied from those granted in order to enable them to perform the duties imposed upon them, and as decided in the case of Trustees, etc. vs. Minor, et al., 26 O. S. 452, 456. The statutes seem to give the trustees of a township the power to provide for lighting streets only where a petition has been filed for the creation of a lighting district. Sections 3228 to 3239 inclusive.

I would appreciate your giving an opinion on the right of township trustees to expend the money of the township for lighting streets of an unincorporated village within the township, and without the crea-

tion of a lighting district as provided by the statutes above referred to."

Attention is directed to the latter portion of the first paragraph of your statement, concluding as follows:

"The statutes seem to give the trustees of a township the power to provide for lighting streets only when a petition has been filed for the creation of a lighting district, sections 3228 to 3239 inclusive."

An examination, however, of these sections reveals the fact that the same pertain to school and ministerial lands, and, obviously, have no bearing upon the question under consideration.

It is believed that sections 3428 et seq. G. C. were in mind when such sections were cited, since lighting for unincorporated districts of the township are provided for by these sections.

Section 3428 G. C. 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 G. C. 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.

It would seem evident that under the provisions of these sections, township trustees are expressly authorized to proceed to such an improvement as your communication indicates, while the cost and expense of the same is specially provided for by the provisions of sections 3436 and 3439 G. C.

The powers and duties of township trustees are limited and defined by statute. Sections 3268 to 3298-59, inclusive, of the General Code generally define their powers and duties relative to the local and official matters pertaining to the township. Various sections of the code confer singular and special powers upon such officers in the matter of proceeding to the internal improvement of township property under their jurisdiction. They are authorized by law to issue bonds of the township, to repair and improve the roads of the township, to preserve the health, etc., by providing rules regulating the spread of disease, to repair viaducts, widen streams, construct ditches, preserve order at elections, purchase certain supplies, etc., necessary in road construction, and generally expend the funds of the township in a manner specifically provided for by statute. These and many other powers are delegated to township trustees by the provisions of the General Code. It is noted, however, that all delegations of power are specific, and it is plainly indicated in such matters, that the legislature did not intend to confer generally, implied powers upon such trustees, except in such cases as were necessary to execute the performance of the specific power delegated.

A search of the various sections of the General Code fails to establish any power or authority delegated to township trustees to provide light or a

lighting system over the streets of an unincorporated village. It is true that by the provisions of the various road sections of the Code, sections 3370 and 3298-1 et seq. township trustees have authority and control over the roads of the township, and that ample power is vested in them to *construct, reconstruct, resurface, or improve*, any public township road or roads under their jurisdiction, and in the instance under consideration it may be conceded that such jurisdiction would extend over the streets or public ways of the village of Wakeman, since it is stated as a matter of fact that such village is unincorporated.

Keeping in mind, however, the principal question under consideration, and construing the several sections of the road statutes relative to the same, it does not clearly or definitely appear that the powers granted under these sections to township trustees may be so extended as to include the power or authority to provide lights or a lighting system over the roads or public ways under their control; unless, indeed, such authority may be inferred or implied from an extended or liberal meaning given the words "improve" and "improvement" as they occur in these sections.

A general rule of statutory construction provides, however, that powers delegated to such public officials must be strictly construed, and such a principle is also especially observed in interpreting statutes authorizing the expenditure of public funds. Under such limitations, therefore, and without attempting a more technical discussion of the meaning of the words "improve" and "improvement" occurring in the sections considered, it is thought to be more in conformity with legislative intent to consider or construe the same in reference to those things pertaining to the actual surface of the road bed itself, such as labor, materials, grading, surfacing, resurfacing, etc., ordinarily requisite in road repair and construction, rather than extend the meaning of such terms as to include other subjects, capable, perhaps, of being termed "improvement" in a general sense, yet which in fact may be matters disassociated with the road itself, and which really may be considered as no necessary part of its construction or repair.

It would seem, therefore, that but little aid may be derived from these sections in establishing power or authority for township trustees to enter into the lighting contract under consideration, and it is further thought that it could not have been the legislative intent in passing the various sections of the road laws, to confer upon township trustees, in local matters, such as street lighting, the powers and functions generally of a village or city council, since such subjects are thought to be peculiarly within the scope of municipal administration.

In discussing the question submitted, it may also be noted that section 3440 G. C. as supplemented by the enactment of section 3440-1, 109 O. L., has not been overlooked. This section provides that the township trustees of any township shall 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. Since the conditional requirements of this section are not measured up with by the statement of facts contained in your inquiry, it is believed that the provisions thereof are not applicable to the question as stated, and may not be construed, as authorizing generally, the lighting of the street of an unincorporated village.

It may be definitely noted, however, that this opinion is based upon the assumption that the purpose of the contemplated lighting system is such as is

stated in the inquiry, to-wit, that of *general street lighting* unsupported by any reason for its necessity, and not such as is provided for by section 3440-1 G. C. On the other hand, should the facts behind the question establish the fact that the real purpose of the proposed lighting system was to provide light for public gatherings, or should the township trustees, in this instance, find that the general welfare and safety of the village requires such light, it obviously would become apparent that in such an event the township trustees would be authorized under the provisions of section 3440-1 G. C. to provide such a lighting system as your communication indicates.

It is thought to be apparent, therefore, that such sections as have been considered would not authorize the township trustees to contract for the lighting of the streets of the village of Wakeman, neither is it thought possible to indicate other sections of the General Code authorizing such an improvement, excepting sections 3428 G. C. et seq. previously considered, and which expressly authorize and provide for the lighting of unincorporated areas of the township, by the procedure based upon the filing of the land or lot owners petition.

Article X, Section 5, Ohio Constitution, provides :

“No money shall be drawn from any county or township treasury except by authority of law.”

This principle of the constitution has been thoroughly incorporated into the statutory laws of Ohio, which generally provide that payments from any public treasury may only be made upon lawful authority.

Upon such considerations, therefore, it is thought to be logically concluded that the township trustees, in the instance indicated by your inquiry, are unauthorized to enter into the contract suggested, or to expend the general funds of the township for such purposes, in any manner otherwise than is provided by sections 3428, et seq. of the General Code.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*

2648.

CORONER—AUTOPSY—FEE—WHERE PHYSICIAN ACTS AT INSTANCE  
OF CORONER IN CASES OF AUTOPSY—FEE.

1. *Under the provisions of section 2856-3 G. C., as enacted in 109 O. L., page 544, where the coroner holds an autopsy in any county in the state he “shall receive a fee of \$20.00 and for decomposed or infected bodies \$40.00 to be paid from the county treasury in the same manner as other fees of the office.”*

2. *In cases where an autopsy is held by a physician acting at the instance of the coroner, such physician is entitled to such fees as the county commissioners may allow him under the provisions of section 2495 G. C.*

COLUMBUS, OHIO, December 2, 1921.

HON. GEORGE W. SHEPPARD, *Prosecuting Attorney, Portsmouth, Ohio.*

DEAR SIR:—In your recent communication you request the opinion of this department upon the following questions :