The grants of easement here in question, designated with respect to the number of the instrument and the name of the grantor, are as follows:

Number	*Name*
2327	Ethel Rife List
2328	Chas. Noggle
2329	J. L. Frazier
2330	C. M. Scothorn
2331	W. S. and W. E. Brinker
2332	Marie Litten
2333	Jesse Bastian
2334	Blanche R. Crowley
2335	Russel Perrill
2336	Bernice & Jessie Perrill
2337	Ennis Filippi
2338	Edwin Walters & Homer Walters
2339	Wayne & Lillie Mae Waidelich
2340	Clara Plum
2341	Stella Garret

By the above grants there are conveyed to the State of Ohio, certain lands described therein, for the sole purpose of using said lands for public fishing grounds, and to that end to improve the waters or water courses passing through and over said lands.

Upon examination of the above instruments, I find that the same have been executed and acknowledged by the respective grantors in the manner provided by law and am accordingly approving the same as to legality and form, as is evidenced by my approval endorsed thereon, all of which are herewith returned.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

571.

CONTRACT—BOARD OF EDUCATION—MAY LAWFULLY EXPEND FUNDS FOR "MEMBERSHIP FEE" IN ELECTRIC COMPANY—RIGHT TO ELECTRIC SERVICE—WHERE NO OTHER MEANS AVAILABLE—PROVISO—"CONNECTION FEE" RATHER THAN "MEMBERSHIP FEE"—COOPERATIVE.

SYLLABUS:

A board of education may lawfully expend funds for a so-called "membership fee" in an electric company, for the purpose of acquiring the

right to electric service from said company where no other means of acquiring electric service exists, providing under the terms and conditions of the payment of such a so-called "membership fee" no liability is incurred other than the payment for electric service furnished, and the real effect of the payment of such fee is that it is a connection fee rather than a "membership fee".

Specific contract considered.

COLUMBUS, OHIO, May 10, 1939.

HON. MELTON BOYD, *Prosecuting Attorney, Cambridge, Ohio.*

DEAR SIR: I am in receipt of your request for my opinion, which is as follows:

> "I enclose herewith a form of 'Application for Membership and for Electric Service' supplied by the Guernsey Muskingum Electric Cooperative, Inc., a rural electrification company to which the Federal Government has given financial assistance through the Rural Electrification Administration.
>
> Various local boards of education inquire whether they may pay the $5.00 fee required under this application. By paragraph 1, it appears to be a membership fee; by paragraph 2, it may be considered an installation fee.
>
> The Cooperative advise that they charge no installation fee, other than require the payment of this $5.00 fee, and further advise that no service can be delivered to a subscriber unless he has paid this fee.
>
> Will you advise whether the expenditure of $5.00 under this application by a Rural School Board in procuring electrical service is a lawful expenditure?"

By authority of an opinion of a former Attorney General reported in the published Opinions of the Attorney General for 1921, page 535, this office has consistently upheld the right of a board of education to pay what was there called a "connection fee" for the purpose of acquiring "electric service" or any such other similar commodity as might be necessary for the proper and efficient conduct and maintenance of the schools under its jurisdiction. The syllabus of that opinion holds:

> "The lighting of a school building is a part of its necessary furnishing or equipment, and the board of education of a rural school district may contract for current for light, paying a connection fee for the line furnishing such current, if in the judgment of the board of education such method is most advantageous for its schools."

See also, a similar holding covering water connections, in Opinions of the Attorney General for 1920, page 1237.

The 1921 opinion noted above, dealt with a situation where it appeared that the only means whereby the school building in question could be served with electricity was by cooperating with other persons desiring the same service, in the construction of an electric line for a distance of about five miles, entailing an outlay on the part of the school board of approximately $500.00. It was held that the expenditure under the circumstances was lawful and proper if, in the discretion of the school board, the need for electric service was imperative. With respect to this, the then Attorney General, in the course of his opinion said:

> "Proper lighting of school rooms is a necessary provision for schools, expressly so in these days of changing social conditions and increasing school problems, when there has come into the law provisions for such broad and divers activities as those provided for in section 7622-3 G. C., supra, and others not here quoted. All these are gathered to the school houses for the board of education to foster, house, and otherwise care for. The physical well being of the pupils, the entertainment and encouragement of community affairs, part time schools, etc., all demand that proper light shall be had. Electricity is, perhaps, the best medium used among modern lighting devices. Lighting is a part of the equipment or furnishing of a school building, and there can be no doubt that the board of education is by law afforded authority to light its buildings properly, either in first construction or in repair.
>
> In the present matter the board of education has probably discussed various means of lighting and has reached the conclusion that the way you outline is best, most convenient and economical for it to use. With its discretion in all lawful matters not arbitrary, and free from capriciousness, fraud or collusion, courts have consistently refused to interfere. See Brannon vs. Board of Education, 99 O. S., 369.
>
> Section 4749 G. C. provides that boards of education may contract and be contracted with. This contract is intended to be one for furnishing current for lighting a building, to which a line must be constructed. A connection fee is charged for such construction. This line, being about five miles in length, affords opportunity for the lighting company to sell the current to other users. If along the line other connections may be made and these users express a willingness to contract to pay a proportional part of the whole cost to secure light, thereby reducing the amount of the connection fee the board would be required to pay, if connection were made for it alone, such circumstances operate to mini-

mize the required initial expense and are commendable. Each user, of course, contracts separately with the lighting company as does the board of education."

The form of application to be made by the school board in the instant case, a copy of which is enclosed with your inquiry, purports on its face to be an application for membership in the Guernsey Muskingum Electric Cooperative, Inc., and a contract to purchase electric energy from the said "Cooperative". Clause 1 of this application states:

"The Applicant will pay to the Cooperative the sum of $5.00 which, if this application is accepted by the Cooperative, will constitute the Applicant's membership fee."

By the terms of Clauses 2, 3 and 4, of the said application, the applicant proposes to agree to have his premises wired in accordance with wiring specifications approved by the "Cooperative" when and if electric service becomes available, and to pay therefor monthly, at rates to be determined from time to time in accordance with the by-laws of the "Cooperative" and to otherwise be bound by the provisions of the certificate of incorporation and by-laws of the "Cooperative" and such rules and regulations as may from time to time be adopted by the "Cooperative". A minimum monthly charge is to be fixed. Clause 5 of the application, reads as follows:

"The Applicant, by paying a membership fee and becoming a member, assumes no personal liability or responsibility for any debts or liabilities of the Cooperative, and it is expressly understood that under the law his private property cannot be attached for any such debts or liabilities."

The application further states:

"Notwithstanding anything herein contained, the Applicant expressly agrees that the Cooperative may, prior to the acceptance of this application, use the $5.00 for the development of a rural electrification project. If the Cooperative is unable to obtain a loan from the Rural Electrification Administration to finance the construction of such a project, the Applicant agrees that only so much of the $5.00 as had not been expended for development expenses will be returned to him. If the Cooperative succeeds in establishing a rural electrification project but is unable to furnish service to the Applicant, the sum of $5.00 will be returned to the Applicant."

It appears that although the company or association proposing to furnish electric service in pursuance of the application herein considered is styled a cooperative concern, the membership acquired by the making of the application and the payment of the proposed so-called membership fee does not entitle the so-called "Member" to share in any profits of the concern, nor does the "Membership" entail any responsibility for the losses or debts or liabilities of the concern. In effect, the so-called "Membership" is nothing more than becoming a customer for electric service, and the fee paid is nothing more or less in effect, than a "connection fee".

Looking beyond the form to the substance of the proposed transaction, I am of the opinion, in specific answer to your question that, a board of education may lawfully make the necessary expenditure from public funds under its control for the purpose of covering the so-called "membership fee" in the Guernsey Muskingum Electric Cooperative, Inc., in pursuance of an application in the form such as you enclosed with your inquiry.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

572.

RESTRICTIONS—BUILDING—LOTS IN ALLOTMENT OR DISTRICT—ENFORCIBLE BY PARTY WHO ORIGINALLY RESTRICTED USE OF PROPERTY, OR BY SUCH PARTY'S ASSIGNS, OR BY OWNERS OF OTHER PROPERTY IN ALLOTMENT OR DISTRICT—RIGHTS NOT LOST BY TAX LIEN FORECLOSURE AND SALE OF PROPERTY.

SYLLABUS:

Where building restrictions are placed on the lots in an allotment or district and are enforcible by the person originally restricting the use of such property or by the assigns of such person, or by th eowners of other properties of the allotment or district, such rights of enforcement are not lost nor abated by a tax lien foreclosure and sale of such lot.

COLUMBUS, OHIO, May 10, 1939.

HON. RALPH J. BARTLETT, *Prosecuting Attorney, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of a request from your office for my opinion, which reads as follows:

> "I have been faced many times with a difficult question on which I can find no statutes or decision pointing toward the solution of this problem. The problem is this: