

2438.

TOWNSHIP TRUSTEES—AUTHORITY TO PROVIDE ARTIFICIAL LIGHT
OUTSIDE OF MUNICIPALITIES—SECTION 3428, ET SEQ., GENERAL
CODE, APPLICABLE.

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 Section 3440-1, General Code, have no application in such case.*

COLUMBUS, OHIO, August 15, 1928.

HON. CHARLES B. COOK, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent letter enclosing a communication directed to you by H. F. Streiber, Township Clerk of Ashtabula Township, Ashtabula County, Ohio, which reads as follows:

“At the direction of the Trustees of Ashtabula Township, I am directed to inform you that the trustees desire to provide lighting at certain dangerous points on the main roads mentioned in the accompanying form of resolution. In their judgment they constitute places of public gathering which the public safety and welfare require to be lighted and they are submitting the enclosed form of resolution with the request that you forward the same together with this letter to the Attorney General of Ohio for his approval of the form of resolution and the procedure provided therein.”

The proposed resolution of the Trustees of Ashtabula Township, a copy of which is likewise enclosed in your communication to me, provides for the artificial lighting of certain streets and public roads in said township outside of the limits of incorporated towns therein. This resolution in section 1 thereof finds “that the public safety and welfare require that the following places of public gathering be artificially lighted for a period of five years”: State Road from Maple Avenue to North Ridge Road with five 600 candlepower electric lights; State Road from the Nickel Plate Railway to South Ridge Road with two 250 candlepower electric lights; Main Street at foot of Tanney Hill with one 100 candlepower electric light; Columbus Street from Main Street to North Ridge Road with three 600 candlepower electric lights; North Ridge Road from Columbus Street to property of H. M. Kunkle with twelve 600 candlepower electric lights; Jefferson Road from City of Ashtabula limits to the bridge over Ashtabula Gulf, so-called, with seven 600 candlepower electric lights; Runkle Street from City of Ashtabula limits to the bridge over Ashtabula Gulf, so-called, with four 600 candlepower electric lights. Section 2 of said resolution provides that bids for said lighting for a period of five years be called for in accordance with certain specifications made and provided.

Section 3428 et seq., General Code, authorizes the trustees of a township to provide for the artificial lighting of streets and public ways in any unincorporated dis-

trict in the township on petition therefor by the owners of a majority of the foot frontage of the lots and lands abutting on such streets and public ways, after notice and hearing in the manner therein provided. The cost and expense of furnishing and maintaining such lights is to be paid from the fund raised by special assessments against the lots and lands benefited by such lighting; the method of assessment to be by a percentage of the tax value of the property assessed or in proportion to the benefits which may result from the lighting or by the foot frontage of the property bounding and abutting upon the streets and public highways so lighted. There is nothing in the statutory provisions relating to the lighting of such streets or public ways which authorizes the payment of any part of the cost and expense of such lighting out of the general funds of the township.

However, it is quite obvious from the resolution above referred to that the proposed action of the trustees of Ashtabula Township in the matter here under consideration is under the assumed authority of Section 3440-1, General Code. This section provides as follows:

“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. Such provision may be made either by installing a lighting system or by contracting with any person or corporation to furnish lights. In case such light be furnished under contract such contract may also provide that the equipment employed in supplying same may be owned either by the township or by the person or corporation supplying same. No such contract shall be made to cover a period of more than ten years. The cost of installing and operating any such lighting system, or of any such light furnished under contract, shall be paid from the general (revenue) fund of the township treasury.”

In an opinion of this department under date of December 2, 1921, Opinions of the Attorney General, Vol. 2, p. 1075, where the trustees of Wakeman Township, Huron County, Ohio, desired to provide for the lighting of the streets of Wakeman, an unincorporated village or hamlet in said township, and to pay the cost of such lighting out of the general funds of the township, it was held that the township trustees were not authorized to provide for the lighting of unincorporated areas of the township otherwise than as provided by Section 3428 et seq. and 3440-1, General Code, and that the proposed action of the township trustees there in question was illegal. This department, in said opinion above referred to, among other things, said:

“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.”

The observation may likewise be made with respect to the matter here under consideration that there is nothing in either the communication of the township clerk or in the resolution itself which presents a state of facts which would authorize the township trustees to resort to the provisions of Section 3440-1, General Code, as authority for providing for the lighting here in question. In fact the proposed action of the trustees of Ashtabula Township, as indicated by this resolution, has the appearance of an attempt by the township trustees to provide for the lighting of certain streets and highways, as such, out of township funds under the guise of a procedure that has no proper relation to the ends sought. However this may be, Section 3440-1, General Code, authorizes the trustees of the township to provide for the lighting of any particular territory or area within such township only when the same constitutes a place of public gathering "for the inhabitants of such township or for a large part thereof." It is quite clear to my mind that the reference in said resolution to the streets and public ways therein designated as "places of public gathering" does not meet the requirements of Section 3440-1, General Code, or constitute such a finding as would authorize the township trustees to proceed under the authority of this section.

By way of specific answer to the question presented in the communication of the township clerk, I am of the opinion that the proposed action of the trustees of Ashtabula Township, as indicated by the form of resolution enclosed with said communication, is illegal.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2439.

ENTERTAINMENT FUND—PUBLIC INSTITUTION—TRUST FUND—
WHERE DEPOSITED.

SYLLABUS:

Moneys in the custody of the Matron of the Reformatory for Women at Marysville, constituting the entertainment and amusement fund for the institution, should not be deposited in the State Treasury. Said fund is a trust fund and should be held and administered as such in accordance with the terms of Section 1840, General Code.

Moneys constituting the entertainment and amusement fund for a state institution should be invested according to law, or deposited in a proper trust company or savings bank. There is no authority for the investment of such funds in the stock of a building and loan company or for the deposit of said funds with a building and loan company.

COLUMBUS, OHIO, August 15, 1928.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your inquiry as follows:

"In the audit of the financial accounts of the Reformatory for Women at Marysville, Ohio, it was discovered that Mrs. Louise Mittendorf, Matron of said institution was handling an amusement, or entertainment, fund for the benefit of the inmates of said institution. No part of said fund was the result of any expenditure from state funds, same being created from the proceeds of entertainments and the sale of small articles sold to visitors