

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

and others, the materials for which was originally bought from the personal funds of Mrs. Mittendorf, and added to as found necessary from the proceeds in said fund.

Mrs. Mittendorf, as custodian of the funds, and in order to make the greatest interest earnings, had invested same in Building and Loan stock, upon which she received six per cent interest, which said interest accrued to the fund.

Question: Should the moneys represented in said fund be placed in the State Treasury, or, are these funds such a trust fund as comes within the provisions of Section 1840 which requires such moneys to be placed in a trust company or savings bank?"

In the General Code of Ohio, Part 1, Title V, "State Institutions," Div. 1, Ch. 2, relating to the Board of Administration, the activities of which were later transferred to the Department of Public Welfare, there is contained Section 1840, which reads as follows:

"The board shall accept and hold on behalf of the state, if deemed for the public interest, any grant, gift, devise or bequest of money or property made to or for the use or benefit of said institutions or any of them, whether directly or in trust, or for any pupil or inmate thereof. The board shall cause each such gift, grant, devise or bequest to be kept as a distinct property or fund, and shall invest the same, if in money, in the manner provided by law; but the board may, in its discretion, deposit in a proper trust company or savings bank any fund so left in trust during a specified life or lives, and shall adopt rules and regulations governing the deposit, transfer or withdrawal of such funds and the income thereof. The board shall, upon the expiration of any trust according to its terms dispose of the funds or property held thereunder in the manner provided in the instrument creating the trust.

The board shall include in the annual report a statement of all such funds and property and the terms and conditions relating thereto; provided that moneys or property deposited with officers of institutions by relatives, guardians, conservators and friends for the special benefit of any pupil or inmate, shall remain in the hands of such officers for use accordingly; but each such officer shall keep an itemized book account of the receipt and disposition thereof, which book shall be open at all times to the inspection of any member of the board of administration or of the board of state charities."

The Reformatory for Women at Marysville is a state penal institution under the management and control of the Department of Public Welfare. Section 2148-1, et seq. General Code. Any gift or bequest of money or property made to or for the use or benefit of the Reformatory of any inmate therein should be kept as a separate fund and administered in accordance with the provisions of said Section 1840, supra.

From the terms of the statute it will be observed that there is contemplated the receipt of gifts, devises and bequests of property, either directly to or in trust for the institution itself as well as to or for individual inmates therein. Many times gifts are received from charitably inclined persons for the welfare of the inmates generally, and it has been considered in the public interest to permit these funds to be augmented from time to time by receipts from entertainments given by the inmates and the sale of small articles made by persons confined in the institution. This fund has come to be known as an "entertainment and amusement fund."

So far as I am advised, the term first came into use, so far as its receiving official recognition is concerned, when the Ohio Board of Administration, as shown by its minutes of September 12, 1913, directed the fiscal supervisor to authorize the Warden

of the Ohio Penitentiary to credit certain interest which had accrued on what was formerly known as a convict fund, parole and advance parole and probation account, to what was thereafter to be known as an "entertainment and amusement fund." Since that time similar funds in other institutions have been designated the "entertainment and amusement fund" and administered for the benefit of the inmates of the institution.

I learn upon inquiry from the Department of Public Welfare that accumulations to this fund by giving entertainments and by sales of property is left to the judgment of the supervising officer of the institution, as is also the manner of disbursement of the fund, no set rules having been promulgated by the Department of Public Welfare in this respect. General supervision is, however, exercised by the department over the administration of the fund, and no course of conduct is permitted with respect thereto which in the judgment of the department is not in the public interest and for the welfare of the inmates of the institution, in whose behalf the funds are administered. The official in charge of the institution is required to keep and report to the department a strict account of receipts, which are distributed to or to become a part of the fund and the disposition thereof. In short, the administration of this fund is required to be done in accordance with the terms of Section 1840, General Code, the same as is required in the administration of funds received by the State as gifts or otherwise, either directly to or for the use of an individual inmate of a state institution.

In a former opinion of this department, addressed to the Auditor of State under date of April 12, 1921, Opinions, Attorney General, 1921, page 301, there was considered the status of an entertainment and amusement fund in the hands of the Warden of Ohio Penitentiary. This fund had been accumulated in the first instance from transfers from a former convict fund and was augmented from time to time by small donations, proceeds of a minstrel show given by the prisoners and similar sources. It was then held:

"The entertainment and amusement fund, created by authority of the board of administration out of the interest accruing on other funds of the penitentiary and added to by funds obtained otherwise, but being the property of the institution, is a trust fund and must be strictly accounted for as such by the warden in his official capacity."

In the course of the opinion, after quoting the provisions of Section 1840, General Code, which were the same then as now, it was said:

"It will be seen that Section 1840, G. C., vests all money or property, real and personal, held for the benefit of the several institutions under control of the board of administration, in trust for their use. This entertainment and amusement fund of the Ohio penitentiary, created by order of the board out of funds belonging to this institution, and the stock of goods purchased by the fund are in the custody of the board of administration by authority of law, and such fund and stock are thus a part of the property held in trust for the state."

In the present instance the so-called entertainment and amusement fund in custody of the matron of the Marysville Reformatory, so far as appears from your inquiry, is made up from receipts from entertainments and sales of small articles made by the prisoners. You state:

"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 and others, the materials for which was originally

bought from the personal funds of Mrs. Mittendorf, and added to as found necessary from the proceeds of said fund."

Whether the advancement made by the matron herself to procure the materials to make the articles which were afterwards sold was in the nature of a loan and the matron afterwards reimbursed herself, or whether she donated funds to start a rotary fund for the making of articles to be thus sold, does not appear, and makes no difference, as a donation or gift from the matron would be no different so far as the nature of this fund is concerned than if the gift were made by someone else.

The fund in my opinion has the same status as the fund under consideration in the opinion of 1921, above referred to. That is to say, it is in the nature of a trust fund for the benefit of all the inmates of the institution and should be held and administered as provided by Section 1840, supra, for the administration of funds arising from grants, gifts, devises or bequests of money or property made to or for the use or benefit of the said institution or of any inmate thereof.

It should be observed that the statute provides that the board may "in its discretion deposit in a proper trust company or savings bank any fund so left in trust." Your inquiry raises the question of whether or not under the provisions of this section the money constituting this fund may legally be invested in the stock of a building and loan company instead of depositing it in a proper trust company or savings bank.

In this connection, I direct your attention to a former opinion of this department rendered under date of December 3, 1915, and addressed to the Ohio Board of Administration, Opinions, Attorney General, 1915, Vol. III, page 2319, wherein it was held:

"Trust funds held by the Ohio Board of Administration under Section 1840, General Code, cannot be deposited in a building and loan association."

Without discussing this question further, it is sufficient to say that I concur in the holding contained in the opinion of 1915 above referred to.

In specific answer to your question, therefore, it is my opinion that the moneys in the hands of the Matron of the Reformatory for Women at Marysville, which constitute the entertainment and amusement fund for the institution, should not be deposited in the state treasury, but that said fund is a trust fund and should be administered as such in accordance with the terms of Section 1840, General Code, and if deposited in a bank, such deposit should be made in a proper trust company or savings bank. There is no authority for the investment of these funds in the stock of a building and loan company or for the deposit of said funds with a building and loan company.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2440.

COUNCIL—CITY OF CLEVELAND—MAY DELEGATE AUTHORITY TO DIRECTOR OF LAW TO SETTLE CLAIMS FOR DAMAGES AGAINST CITY.

SYLLABUS:

1. *The Council of the City of Cleveland may legally delegate to the Director of Law authority to compromise and settle claims for damages against the city, and make a lump sum appropriation from which such claims may be paid*