

they would have no information upon which to determine whether they deem it necessary to authorize the treasurer to employ such collectors; neither could they determine whether the whole list should be collected by collectors, or only a part thereof, and the remainder by the treasurer, as by other statutes provided; nor could they determine without hearing the list read, what compensation should reasonably be paid for the collections to be made. So that until the delinquent list is caused to be read, the commissioners can take no step toward authorizing the appointment of a collector, and any step taken by them before the reading of such list is absolutely void. The causing of the list to be publicly read is a condition precedent to authorizing the treasurer to employ such collector. It is the manner provided by statute for bringing the question of appointing collectors before them for consideration and determination. Statutes enacted for the protection of the public revenues, are usually not merely directory, but mandatory.

When the delinquent list has been so publicly read, the commissioners may at any time when they deem it necessary, authorize the treasurer to employ collectors to collect the same, or any part thereof; that is, to collect that list which has been so read, but such employment would hold good for that list only and would not extend to the next delinquent list. Each delinquent list must be read and an employment made to collect the same, but there can be no employment of collectors to collect future lists. The employment of such collectors cannot be turned into an office to be held to the end of the treasurer's term, or for any definite period. His employment is to collect the delinquent list which has been read, or some part thereof, and when that is done, his employment ends.

This section of the statute provides that the commissioners shall prescribe the compensation of the collectors; and the provision is not complied with when the commissioners prescribe that it shall not exceed a certain sum, or certain per centum. They are required to fix definitely and exactly what compensation the collector shall receive. It is their judgment that is to be exercised, and not the judgment of the treasurer, though limited by fixed bounds."

It is therefore my opinion that the county treasurer may legally contract with some person or persons to collect delinquent personal taxes on a percentage basis, provided the contract is approved by the county commissioners and a definite per cent compensation fixed.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1817.

TOWNSHIP TRUSTEES—AUTHORITY TO ENTER INTO A CONTRACT
TO LIGHT TOWNSHIP HALL.

SYLLABUS:

Township trustees may, for the purpose of providing proper lighting for the township hall, enter into a contract with a power company for the lighting and installation of a lighting system for such building, and pay therefor the sum of \$250.00, subject

to rebate of a portion thereof in the event that other applications for service from said line are subsequently received.

COLUMBUS, OHIO, March 7, 1928.

HON. JOHN F. ROGERS, *Prosecuting Attorney, Hamilton, Ohio.*

DEAR SIR:—This will acknowledge your recent communication, as follows:

"The board of trustees of Reily Township, Butler County, Ohio, have asked me for an opinion as to their right to enter into an agreement with The Union Gas & Electric Company for the furnishing of electricity for the Township Hall at Reily.

Section 3440-1 of the General Code of Ohio provides for the township trustees to contract with a power company for the lighting and installation of a lighting system for a building of this kind, inasmuch as this building in this particular case is used as a public gathering place for the residents of this township. However, the contemplated agreement is as follows:

That the power company will build a line from Oxford, Ohio, to Reily, Ohio, at a cost of approximately \$8,000, and in order to build this line it is necessary that the applicants for service along this line pay half of the cost of the construction work as provided by the rules of the Utilities Commission. The share of the township trustees of Reily Township would be the sum of \$250.00, and the share of the board of education of Reily Township would be the sum of \$500.00. A proviso in this agreement is to the effect that at any future time after the line is built and in operation, if there are other applicants desiring service they may apply to the power company and pay therefor a sum equal to their proportionate share they would have had to pay had they been original applicants. This would then give to the original applicants a certain rebate, and as I find no authority in law for a political subdivision receiving a rebate from a power company, I am taking the liberty of asking your advice in this matter.

The original amount paid by the board of trustees and the board of education would be in effect an advancement of funds subject to a rebate as the number of applicants became greater.

The ownership of this line contemplated to be constructed, according to the contract, remains in the power company.

Another provision of the section above referred to is that the contract for lighting entered into by the board of trustees of any township cannot exceed a period of ten years.

Inasmuch as this question will be continually coming before me, as the power company is extending its lines throughout the county, I wish that I might have your opinion as to the legality of a political subdivision entering into an agreement of this kind. May I say that an agreement of this kind, comparatively speaking, would be the most inexpensive way for the trustees to obtain lighting service, and that the residents, not only this township but other townships, are fully in accord with this proposal."

I observe that you refer to the participation in the contract by the board of education of Reily Township. In view of the fact that your inquiries are not directed toward the power of the board of education in this respect, I will give no consideration to this matter but will confine my discussion to the authority of the township trustees.

Your letter indicates that you believe the authority for the contract in question exists by reason of the provisions of Section 3440-1 of the General Code, which is 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."

You state that the township hall constitutes a place of public gathering and therefore comes within the terms of the section. I am very doubtful as to the application of the section to the facts as you present them. You will observe that reference is made to the provision of artificial light for any "territory within such township." It is true that the qualification is made that the territory must constitute a place of public gathering and the township trustees must find that the public safety or welfare requires that such place be lighted. Taking all of the language of the section in its ordinary meaning, I feel that its provisions are limited to the authorizing of outdoor lighting as distinguished from lights for buildings. The word "territory" certainly carries an inference that localities out of doors are meant. Especially is this true in view of the fact that this section is a part of Chapter 5 under the heading of "Lighting," and all of the other sections therein contained clearly have reference solely to the lighting of streets and other public places.

It does not, however, follow from what I have said that township trustees are without power to enter into the contract in question. Under Sections 3395 to 3402 of the General Code authority is conferred for the erection of a town hall. Section 3395 provides for notice of the election to authorize such a structure and the succeeding section provides for the form of ballot. Section 3397 is in the following language:

"After such affirmative vote, the trustees may make all needful contracts for the purchase of a site, and the erection, or the improvement or enlargement of a town hall. They shall have control of any town hall belonging to the township, and from time to time, may lease so much thereof as may not be needed for township purposes, by the year or for shorter periods, to private persons, or for lectures or exhibitions, in all cases having the rent paid in advance or fully secured. The rents received may be used for the repair or improvement of the hall so far as needed, and the balance for general township purposes."

You will observe that the township trustees are given control of the town hall belonging to the township and are authorized further to lease so much of it as is not needed for township purposes to private persons for lectures or exhibitions, etc. The last sentence provides that the rents may be used for the repair or improvement of the hall so far as needed. I have no hesitancy in saying that the authority to

provide a town hall, coupled with its control thereafter and authority to lease and apply the rentals for repair and improvement, necessarily gives to the township trustees the authority to provide for the proper lighting of such building. It is of course settled that neither a township nor its trustees are invested with the general powers of a corporation and the trustees may accordingly only exercise 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. It must be conceded that it is the duty of the township trustees to place the township hall in a suitable condition for use and occupancy and I have no difficulty in concluding that, as a necessary implication, they have the right and authority to provide adequate lighting.

You state in your letter that the proposed contract is probably the most inexpensive way for the trustees to obtain lighting services and, from such reference as you have made to the terms of the contract, I have reached the conclusion that it is similar to the form of contracts in general use with lighting companies in localities where, from lack of density of population, the expenditure for lines would not be justified. You have not supplied me with a copy of the contract, but if it is in the usual form it does not constitute a definite obligation upon the township other than that use will be made of the current as needed for the lighting of the hall in question. If this be true, I feel that there is no objection to the form of the contract and the expenditure would be authorized, provided, of course, that sufficient funds available for the purpose are in the treasury of the township.

You suggest as a possible objection to the contract the provision for a rebate to the township in the event that additional customers desiring service from the line are obtained. In effect this merely lessens the amount of the expenditure of the township for lighting services. While there is no specific statutory authority for the receipt of such a rebate, I have no hesitancy in saying that such specific authority is unnecessary. If, in order to obtain lighting service for the town hall an expenditure of \$250.00 could be made in the first instance, that authority would certainly not be affected by reason of the possibility of securing some reimbursement by the terms of the contract.

You are accordingly advised that the township trustees may, for the purpose of providing proper lighting for the township hall, enter into a contract with a power company for the lighting and installation of a lighting system for such building, and pay therefor the sum of \$250.00, subject to rebate of a portion thereof in the event that other applications for service from said line are subsequently received.

Respectfully,

EDWARD C. TURNER,

Attorney General.

NOTE:—In the third paragraph of your letter reference is made to the payment of half of the cost of the construction work "as provided by the rules of the Utilities Commission." The Utilities Commission has no rule on this subject. These matters are controlled entirely by the schedules filed by the power companies with the Utilities Commission.

In this particular case the proposed agreement is not in accordance with the schedule filed by the Union Gas and Electric Company. The schedule covering the territory in question is known as P. U. C. O. No. 3, effective July 1, 1927. In substance this schedule provides that a prospective customer or group of prospective customers, through a committee representing them, shall deposit with the company in advance an amount of money equal to the total estimated cost of the proposed line extension, less an allowance of \$50.00 for each bona fide application. The title to the line is vested in the company. The schedule further provides that should any

person desire service during the first five years following the date the extension is put into service, he is required to pay an amount pro rata to that paid by the original subscribers. This payment by new subscribers is not made to the company but is made to and refunded to the original subscribers by the committee representing them.

1818.

MEMORIAL BUILDING—AUTHORITY OF BOARD OF PERMANENT TRUSTEES—EFFECT OF RULES AND REGULATIONS—SECTION 3068, GENERAL CODE, CONSTRUED.

SYLLABUS:

1. *Section 3068, General Code, does not require a board of permanent trustees of a memorial building to adopt rules and regulations as a condition precedent before such board may assume sole control, management and supervision of such memorial building and grounds.*
2. *A board of permanent trustees, appointed by virtue of Section 3068, General Code, has authority to lease or rent a memorial building under such terms and conditions as it deems proper for any lawful, private purpose, when the same does not interfere with the public use of such building.*
3. *Upon the appointment by the Court of Common Pleas of a board of permanent trustees of a memorial building, as provided by Section 3068, General Code, such board has the sole control, management and supervision of such memorial buildings and grounds.*
4. *Such moneys as a board of permanent trustees of a memorial building receives, under the provisions of Section 3068-1, General Code, shall be deposited by it in the county treasury to the credit of "the memorial building maintenance fund."*

COLUMBUS, OHIO, March 7, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge your letter dated February 2, 1928, which reads:

"We respectfully request your written opinion on the following questions submitted to us by one of our state examiners:

Under Section 3059, G. C., as it was originally enacted in 95 Ohio Laws, page 41, the Governor appointed a board to erect a memorial building; this board after being duly organized and the submission of the question to a vote, proceeded and erected said building; after the completion of the same, the law was amended, which gave the Common Pleas Court authority to appoint a permanent board of trustees under the provisions of Section 3068, General Code. This board assumed control of said building, but the court did not approve any rules or regulations concerning the same; and in fact no rules or regulations were made by the board.

Question 1. Has the board authority to manage the same, unless they adopted rules and regulations approved by the court?