

"Inasmuch as, according to your letter, the expenditure contemplated by the township trustees for the purchase of a tractor involves more than five hundred dollars, it will be necessary to advertise for bids and let the contract for such purchase to the lowest responsible bidder as provided in Section 3373 of the General Code."

Under the provisions of Section 7201, General Code, township trustees may purchase trucks and other equipment for use in constructing, maintaining and repairing roads, and the terms upon which said purchase may be made and the manner of payment are prescribed; but no provision is made in said section for the advertisement for bids.

It is evident that in enacting Section 3373, General Code, the intent of the Legislature was to prescribe for township trustees methods of procedure which would secure to the township in the purchase of trucks and other road machinery the lowest price obtainable.

It therefore enacted that all purchases of machinery by township trustees for use in constructing, maintaining and repairing roads must, where the purchase price exceeds five hundred dollars be made from the lowest responsible bidder after advertisement as prescribed in said section.

Generally, trucks have a fixed list price, but the list price is not always the purchase price, and it is mandatory upon the township trustees to purchase the truck from the lowest responsible bidder after advertisement for bids in the manner prescribed by law.

Moreover, there may be two or more dealers selling the same truck and one dealer may submit a bid much lower than the other.

In consideration of the provisions of Section 3373 and the former holdings of this department, it is my opinion that all purchases of trucks or other machinery by township trustees for use in constructing, maintaining and repairing roads must, where the amount involved exceeds five hundred dollars, be made from the lowest responsible bidder after advertisement, as prescribed in Section 3373, General Code.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1883.

#### FINDINGS MADE BY BUREAU OF INSPECTION AGAINST POLITICAL SUBDIVISIONS—HOW COMPROMISED.

##### SYLLABUS:

*Findings for the recovery of monies due to local political subdivisions or taxing districts of the state, made by the Bureau of Inspection and Supervision of Public Offices, may be compromised or abated, either before or after civil action has been instituted thereon, by proper action of the proper authorities of the local subdivision or taxing district, with the approval of the Auditor of State and the Attorney General.*

COLUMBUS, OHIO, March 21, 1928.

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

GENTLEMEN :—This will acknowledge receipt of your communication which reads as follows :

"Findings for recovery amounting to \$5,019.42 were made by the Bureau against members of the board of public affairs of the village of Arcadia, Hancock County, Ohio, in the report of an examination of the affairs of that village filed on December 24, 1927; the pertinent part of this report reads:

*'BOARD OF PUBLIC AFFAIRS LIGHT COLLECTIONS \$5,019.42*

At the close of business of November 2, 1927, the board of public affairs had a credit of \$5,019.42 on the books of the Arcadia Bank and Savings Co., and as stated in the foregoing finding, the bank was closed on November 3, 1927, by the State Banking Department on account of defalcations by the cashier of the bank. The Board of Public Affairs did not deposit their collections in the village treasury as required by law but simply carried all collections in an account at the Arcadia Bank to the credit of the Board of Public Affairs and paid all their bills by check from this account. The reports of previous examinations have criticized this method of handling the affairs of the board and recommended that all collections be deposited in the village treasury to the credit of a "light" fund and that all bills be paid by voucher of the board on the village clerk who will issue the regular village warrant on the treasurer for such amount as certified by the board. Since the amount of \$5,019.42 had not been turned into the village treasury but was still held by the board as light collections, they (the board) are jointly liable for this sum to the village treasury, which we are holding as a finding for recovery, jointly, against \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ as members of the board of public affairs subject of course to credit of such dividends as the bank liquidation may produce.'

Section 4361, G. C., outlines the general powers and duties of the board of public affairs and by direct reference to Section 3960, G. C., provides that all collections must be deposited in the village treasury weekly.

The Bureau is in receipt of a petition signed by 205 residents of the village, which had a total population of 376 at the time of the last federal census, requesting the release from liability of two members of the board to-wit: \_\_\_\_\_ and \_\_\_\_\_. These members state that the third, \_\_\_\_\_, is judgment-proof; that they were ignorant of the law governing weekly deposits in the village treasury and that the village would have lost the amount of the finding if it had been deposited in the treasury. This last statement is undoubtedly true as the Arcadia Bank and Savings Co., was used as the village depository without bond and finding was made against the village treasurer for the balance of the treasury account but he has been relieved of liability by council acting under authority of Sections 2303, G. C., et seq.

Since it is the desire of the village council and a majority of the residents to relieve members of the board of public affairs from liability the Bureau recommends the cancellation of the finding if in your opinion such action is legal and proper."

Accompanying your communication is a copy of a resolution regularly passed by the unanimous vote of the members of council of the village of Arcadia, the pertinent part of which resolution is as follows:

"BE IT RESOLVED, by the Council of the Village of Arcadia, Ohio, that we believe it would be to the best interests of the community, and that it would be just and right, for \_\_\_\_\_ and \_\_\_\_\_, of the

Board of Public Affairs, to be released from the claims of the village, as found by the Bureau of Inspection and Supervision of Public Offices on December 19, 1927."

You also transmit a petition addressed to the Attorney General of the State of Ohio, the Mayor of the Village of Arcadia, and the Council of the Village of Arcadia, praying in effect that the said-----and-----, the two solvent members of the Board of Public Affairs of Arcadia, be relieved of all liability on account of the loss of the electric light funds of the village, growing out of the unlawful deposit of said funds in the Arcadia Saving Bank and the failure of the bank. This petition is signed by two hundred and five persons, who describe themselves in the heading of said petition as electors of the Village of Arcadia, Ohio. There is also submitted a statement signed by the two solvent members of the board, which reads as follows:

"TO WHOM IT MAY CONCERN:

We, the undersigned members of the Board of Trustees of Public Affairs, desire to make these statements:

1.

That the reports of State Inspectors of The Board of Trustees of Public Affairs, were not called to our attention, and that we never saw one of these reports until after the Arcadia Bank failure; and did not know that this money was being held unlawfully. However, had this money been turned over to the Village Treasurer, the loss would have been the same.

2.

That ----- was treasurer of this board, did all the collecting and handled all money received, and that said ----- is judgment proof.

3.

3. That according to Village Ordinance the salary of each member of the Board of Trustees of Public Affairs was one dollar (\$1.00) per year, and that the undersigned never received one penny for salary or otherwise.

Signed:

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Arcadia, being a village, is governed in the management of its municipal light plant by Section 4361, General Code, which reads in part as follows:

"The board of trustees of public affairs shall manage, conduct and control the water works, electric light plants, artificial or natural gas plants, or other similar public utilities, furnish supplies of water, electricity or gas, collect all water, electrical and gas rents, and appoint necessary officers, employees and agents. \* \* \* The board of trustees of public affairs shall have the same powers and perform the same duties as are possessed by, and are incumbent upon, the Director of Public Service as provided in Sections 3955, 3959, 3960, \* \* \* of the General Code, and all powers and duties relating to water works in any of these sections shall extend to and include electric light, power and gas plants and such other similar public utilities, and such boards shall have such other duties as may be prescribed by law or ordinance not inconsistent herewith."

Section 3960, General Code, referred to in the above section reads as follows:

"Money collected for water works purposes shall be deposited weekly with the treasurer of the corporation. Money so deposited shall be kept as a separate and distinct fund. When appropriated by council, it shall be subject to the order of the director of public service. Such director shall sign all orders drawn on the treasurer of the corporation against such funds."

It appears that the Board of Trustees of Public Affairs of the village of Arcadia did not deposit the receipts received by it for the sale of electric current in the village treasury weekly, in accordance with Section 3960, supra, but designated one member of the board as treasurer. This member deposited these receipts with the Arcadia Bank and Savings Company, without security, to the credit of the board, with the result that when the bank failed on November 2, 1927, the funds then in the bank to the credit of the board, amounting to \$5,019.42, were practically all lost.

This irregular and unlawful manner of handling the "light" funds was called to the attention of the village authorities by the Bureau of Inspection and Supervision of Public Offices on several occasions, but the members of the Board of Trustees of Public Affairs, or at least two of them, now state that the criticism of the Bureau was never brought to their individual attention and that they never knew but what the manner in which these funds were handled was legal and proper.

It appears that the Arcadia Bank and Savings Company was also the depository of the city funds and that because of the failure of the village authorities to require security from its depository as required by law, these funds were also lost when the bank failed, thereby making the village treasurer and his bondsmen liable for the full amount of the loss. By virtue of Section 2303, General Code, however, the village Council of Arcadia duly released the Treasurer and his bondsmen from all liability on account of the loss of the city funds which he had deposited in the bank. The power of a village to relieve against loss of this kind by virtue of Section 2303, General Code, extends only to the Treasurer and his bondsmen. Council has no authority to release other officials and employes of the village, who by reason of their failure to comply with the law incur liability to the village.

It is pointed out that inasmuch as all the funds in the village treasury were lost when the bank failed, these "light" funds would have been lost anyway even if the Board of Trustees of Public Affairs had deposited them in the village treasury as required by law. Upon a special examination made by the Bureau of Inspection and Supervision of Public Offices under date of December 19, 1927, the facts with reference to the handling of the "light" funds of the village and their subsequent loss were brought to light and set forth by the Bureau in its report, together with a finding for recovery against the members of the Board of Trustees of Public Affairs of said village, the pertinent and essential part of which report is set out in your communication.

It is not claimed that any of the members of the Board of Trustees of Public Affairs profited personally, through or on account of the irregular method of handling the "light" funds and in fact, so far as appears, the two members of the board, who did not actually handle the money, seem to have acted in complete ignorance of the law and the criticisms and recommendations of the Bureau made in the report of previous examinations. Nor does it appear whether or not the member of the board who acted as treasurer had ever read these previous reports or whether they had ever been brought to his attention. Nevertheless, the criticisms of the Bureau, and its finding for recovery were justified.

The collection of findings for recovery such as this one is governed by Section 286, General Code, which reads in part, as follows:

"The report of the examination shall set forth, in such detail as may be deemed proper by the bureau, the result of the examination with respect to each and every matter and thing inquired into and shall be made and signed by the state examiner in charge of the examination or by a deputy inspector, and shall be filed in the office of the bureau of inspection and supervision of public offices and certified copies thereof filed as follows: one in the office of the auditing department of the taxing district reported upon, and one in the office of the attorney general, prosecuting attorney, city solicitor, or mayor of a village, as hereinafter provided. \* \* \* if the report relates to the expenditure of public money belonging to the treasury of a village or the disposition of public property belonging to such village, the certified copy thereof shall be filed with the mayor of such village. \* \* \*

If the report sets forth that any public money has been illegally expended, or that any public money collected has not been accounted for, or that any public money due has not been collected, or that any public property has been converted or misappropriated, the officer receiving such certified copy of such report, other than the auditing department of the taxing district, may, within ninety days after the receipt of such certified copy of such report, institute or cause to be instituted, and each of said officers is hereby authorized and required so to do, civil actions in the proper court in the name of the political subdivision or taxing district to which such public money is due or such public property belongs, for the recovery of the same and shall prosecute, or cause to be prosecuted the same to final determination. Any mayor of a village is hereby authorized and required to employ legal counsel for such purpose, who shall be paid out of the treasury of the village on voucher approved by the mayor and on warrant of the village clerk, and the amount of such compensation shall constitute a charge against said village notwithstanding the failure of the council thereof to appropriate money or levy funds therefor. Each prosecuting attorney, city solicitor, or legal counsel employed by a mayor of a village shall forthwith notify the attorney general of the filing of such actions and keep him fully advised of the progress thereof; and the attorney general or his assistant may appear in any such action on behalf of the particular political subdivision or taxing district and may, either in conjunction with or independent of such prosecuting attorney, city solicitor or legal counsel employed by a mayor, prosecute the same to final determination; and the attorney general may, when in his judgment it is proper or there is good reason for so doing, if requested so to do by the auditor of state, bring the action in all cases where the prosecuting attorney, city solicitor, or mayor fails or neglects to do so within ninety days after a report of an examination has been so filed. \* \* \*

No claim for money or property found in any such report to be due to any public treasury or custodian thereof in any such report shall be abated or compromised either before or after the filing of civil actions, by any board or officer or by order of any court unless the attorney general shall first give his written approval thereof. \* \* \*

It will be observed upon consideration of the provisions of the foregoing statute that it became primarily the duty of the Mayor of the Village of Arcadia, to employ counsel, and, within ninety days from the filing of the report of the Bureau of Inspection and Supervision of Public Offices, to cause suit to be instituted, in the proper court, in the name of the village, for the recovery of the findings for recovery set forth in the said report.

No obligation rests on the Attorney General in the first instance to bring suit on findings of this nature. He may when in his judgment it is proper or there is good reason for doing so, if requested by the Auditor of State, bring the action in cases where the Mayor refuses or neglects to do so within ninety days after the report of the examiner has been filed. The duty of the Attorney General in matters of this kind is stated by the Supreme Court to be advisory. In the case of *Lynch vs. Board of Education*, 116 O. S. 361, it is stated in paragraphs one and two of the syllabus, as follows:

"1. Section 286, General Code, imposes an advisory duty upon the Attorney General in regard to the recovery of public money illegally expended by any political subdivision of the state, and where such expenditures are not made from the state treasury.

2. Where such expenditures are made by a board of education of a city, the primary official duty and responsibility rests upon the city solicitor or director of law, and a failure to discharge that duty and a failure by him to co-operate with the Attorney General, resulting in an adverse judgment, does not destroy the jurisdiction of the court, or render the judgment void."

In the Lynch case, supra, the court had under consideration the latter part of Section 286, General Code, which reads as follows:

"No judgment or final order shall be entered in any civil action commenced under the authority or direction of this section until such entry shall have been submitted to the Attorney General, and the Attorney General is hereby constituted an attorney of record in each such action."

The court held in effect that the above provision with reference to the submitting of journal entries to the Attorney General before the entering of judgment or final orders in cases of this kind was not mandatory; at least not so far as the validity of a judgment or final order in such cases was concerned.

There is no specific authority for any one to compromise or abate a claim of this kind when once reduced to a finding by the Bureau, such as there is with reference to claims due the State of Ohio. See Section 268, General Code. It would seem, however, that the Legislature contemplated the abatement or compromise of these claims, under certain circumstances, by providing that such abatement or compromise should not be done except with the written approval of the Attorney General.

In the light of the Supreme Court's decision in the Lynch case to the effect that the provision with respect to the written approval of the Attorney General is advisory and the provision of the statute that the Attorney General has no authority to bring the action unless requested to do so by the Auditor of State, it is my opinion that with the approval of the Auditor of State and Attorney General, the Mayor and Village Council may abate or compromise claims such as this one if such authorities see fit to do so.

Inasmuch as your bureau represents the Auditor of State, and you state in your communication that you recommend the cancellation of this finding, in view of the action of the Mayor and the Village Council and of the facts and circumstances surrounding the finding under consideration, upon receipt of a recommendation to that effect from the Auditor of State, I will formally approve, in writing, the abatement of the finding.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*