194.

APPROVAL, NOTES OF GRANGER TOWNSHIP RURAL SCHOOL DISTRICT, MEDINA COUNTY—$80,000.00.

COLUMBUS, OHIO, March 14, 1929.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

195.

ORGANIZATION—SERVING MEALS OCCASIONALLY TO PUBLIC—NOT A RESTAURANT.

SYLLABUS:

While it is a question of fact to be determined from all the circumstances in each instance, generally speaking, a social, religious or fraternal organization occasionally serving meals for compensation, to which the public is generally invited, is not engaged in the operation of a restaurant under the provisions of Sections 843 *to* 843-18 *of the General Code.*

COLUMBUS, OHIO, March 15, 1929.

HON. RAY R. GILL, *State Fire Marshal, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication, which reads:

> "The operator of a restaurant in a small town in the northwestern part of the state, who has been duly licensed by us under the restaurant law, files a complaint in connection with an organization which has not applied for or secured a license but which, he alleges, serves meals or lunches (at a low price) whenever there is any special event in the town. We are attaching a clipping, submitted by the complainant, which sets out that food will be served at a certain place for a definite period of time.
>
> Do the club rooms of this organization when used in this way fall under the definition of a 'restaurant?' If not, would any room other than the club room, under the same conditions, come under the definition of 'restaurant?'
>
> I find that the office has had many complaints relative to organizations—church, fraternal, women's and whatnot—which serve meals within an incorporation during periods of special activity, sometimes for a week and often on one or more days of the week. In some cases the complainants have stated that the organization advertised in the papers or by large signs and, in other cases, that the general public has been admitted although no advertisement was displayed. In your judgment, should we require a license in such cases?"

The newspaper clipping which you enclose contains a news item apparently to the effect that certain club women designated therein would serve oysters, vegetable soup, hot meat sandwiches, etc., at their club rooms during the week of the Farmers' In-

stitute. Said item further stated that the room would be warm, excellent service would be rendered and a fine quality of food would be served.

The so-called hotel and restaurant law (Sections 843 to 843-18, inclusive, of the General Code) is a part of Chapter 8 of the General Code, which relates to the State Fire Marshal. Section 843-1 defines what shall constitute a hotel for the purpose of the act. Section 843-2 defines the term restaurant in the following language:

> "Every building or other structure kept, used, maintained, advertised or held out to the public to be a place where meals or lunches are served for consideration, without sleeping accommodations, shall, for the purpose of this act, be defined to be a restaurant."

Section 843-3 provides in part:

> " * * * No hotel or restaurant shall be maintained and conducted in any city or village in this state after the taking effect of this act without a license therefor. * * * "

It is obvious from an examination of the provisions of the act that the purpose of such regulation is to protect the public principally against unsanitary conditions in connection with the operation of hotels and restaurants. From your communication it appears that the party complaining objects on the ground of the low price at which the food is furnished by what he apparently considers his competitor. While the language of the statute above quoted, defining what shall constitute a restaurant, technically construed would include all places where food is served to the public for a consideration, it is not believed to be the intent of the Legislature to include within the meaning of such term a place such as you mention, wherein occasionally meals are served to the public. The character of such services as rendered by religious, fraternal and social organizations is well known. Usually such undertaking is made at a time when there will be an unusual number of persons within a municipality for a given occasion. The ordinary eating houses are sometimes unable sufficiently to accommodate such a crowd. Such organizations undertake to accommodate the visitors by providing at a reasonable cost food for the occasion. In many instances the food itself is donated by the members of the organization, and the services in the way of its preparation and serving are likewise donated by the members of such organization. It is obvious that the profit to the organization, if any, arises solely from the contributions of the members in the way of food and services, and such profit is usually for a public or charitable purpose. The fact that a reasonable charge is made for the meal which is served does not make such a procedure, strictly speaking, a commercialized proposition. It is the intent of the law to cover those who undertake to engage in serving meals and are holding out generally to the public a building or place for such purpose as distinguished from the serving of meals occasionally under the circumstances set forth in your communication. While it will be conceded to be a difficult question, I am inclined to the view that a construction, which would hold that every organization such as you mention must qualify to operate a restaurant before it may serve meals under such circumstances temporarily, is too broad. In other words, it is my opinion that it was the legislative intent to include within such definition only places which are held out and maintained with some degree of continuity as places where food is served to the public for a consideration in the ordinary commercial way.

In specific answer to your inquiry, you are advised that while it is a question of fact to be determined from all the circumstances in each instance, generally speaking, a social, religious or fraternal organization occasionally serving meals for compensa-

tion, to which the public is generally invited, is not engaged in the operation of a restaurant under the provisions of Sections 843 to 843-18 of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

196.

ATTORNEY'S FEES—PREPARING TRANSCRIPT OF PROCEEDINGS WITH REFERENCE TO ISSUANCE OF TOWNSHIP BONDS FOR IMPROVEMENT—HOW PAID.

SYLLABUS:

Attorneys' fees covering the cost of preparing a transcript of proceedings with reference to the issuance of township bonds, may not be included in the cost of such improvement for which bonds are issued, and such fees may be paid only from the township fund as provided in Section 2917, General Code.

COLUMBUS, OHIO, March 16, 1929.

HON. H. ALFRED DONITHEN, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your letter of recent date which is as follows:

> "Under Section 3298-13, provision is made for the payment of a township road improvement which reads in part as follows:
>
> 'The compensation, damages, costs and expense of the improvement shall be apportioned and paid in any one of the following methods.'
>
> I should like to know, as prosecuting attorney of Marion County, Ohio, whether or not attorneys' fees for preparing a transcript, which is necessary for the purpose of selling the bonds to pay for said improvement, is such an expense or cost as may be included in the cost of said improvement to be assessed against the land owner under the provisions of this section. Marion county at the present time is constructing a great many township roads and this question has come up several times. Heretofore, township trustees have paid these attorneys fees out of the general funds but owing to the growth of this method of construction this matter of caring for attorneys fees has become a burden upon several of the boards.
>
> If it is possible to include attorneys fees as cost of said road under this section, kindly advise."

A board of township trustees may employ counsel other than the prosecuting attorney under the provisions of Section 2917, General Code. This section is as follows:

> "The prosecuting attorney shall be the legal adviser of the county commissioners and all other county officers and county boards and any of them may require of him written opinions or instructions in matters connected with their official duties. He shall prosecute and defend all suits and actions which any such officer or board may direct or to which it is a party, and no county officer may employ other counsel or attorney at the expense of the county