

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."

Said section was the subject of comment in a recent opinion of this department (No. 2647) rendered to Hon. Allan G. Aigler, prosecuting attorney, Norwalk, Ohio, under date December 2, 1921, copy of which is enclosed for your information. That opinion, however, may be said to have no direct bearing upon your inquiry, except to the extent of the view expressed therein that section 3440-1 G. C. was not intended to provide for general street lighting within townships.

The facts which you submit show that the place proposed to be furnished with artificial lights is an ordinary street or road. As such, it cannot be said to be territory constituting "a place of public gathering." While the phraseology of section 3440-1 G. C. is indefinite, the fact must not be lost sight of that the words "a place of public gathering" connote the idea of assemblage for a common purpose rather than the idea of a public way for travel.

For the reasons thus briefly suggested, it is the conclusion of this department that under the facts stated by you, the trustees are without authority under section 3440-1 G. C. to furnish artificial lighting for the section of street or road in question.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

2750.

ROADS AND HIGHWAYS—STATE HIGHWAY IMPROVEMENT FUND
 LEVIED UNDER SECTION 1230 G. C. EXPENDED ONLY UNDER
 DIRECTION OF DEPARTMENT OF HIGHWAYS AND PUBLIC
 WORKS—NO PART OF SAME TO BE TURNED OVER TO COUNTY
 FOR EXPENDITURE.

The state highway improvement fund accruing from levy under section 1230 G. C. and apportioned as directed by section 1221 G. C. is to be expended only under the direction of the department of highways and public works and no part thereof is to be turned over to a county for expenditure.

COLUMBUS, OHIO, December 30, 1921.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

GENTLEMEN:—Your communication of recent date is received, requesting an opinion

"as to whether or not the division of highways has authority to turn over to the county its inter-county highway money for the maintenance of roads constructed by co-operation between the county and state, which construction, however, has the distinct understanding that the state will not assume maintenance."

Section 1230 G. C. reads as follows:

"There shall be levied annually a tax of five-tenths of one mill on all the taxable property within the state to be collected as are other taxes due the state, and the proceeds of which shall constitute the state highway improvement fund."

Section 1221 G. C., which is too lengthy to quote here, provides in substance that the state highway improvement fund mentioned in said section 1230 G. C.

"shall be applied to the construction, improvement, maintenance and repair of the inter-county and main market road systems"

by, first, the provision of a rotary fund by the general assembly for certain limited purposes; second, seventy-five per cent of the remainder, after deduction for the maintenance of the state highway department, to be apportioned equally among all the counties of the state; and, third, twenty-five per cent of the remainder to be used on the main market roads of the state.

Your inquiry refers to the credit which is passed to each county out of the seventy-five per cent, which credit is commonly known as inter-county highway money as distinguished from main market road money.

Your attention is called to section 1231-1 G. C., which reads as follows :

"The auditor of state shall apportion said highway improvement fund as herein provided, and shall keep an account thereof, and the same shall only be disbursed by the treasurer of state, upon the warrant of the auditor of state issued upon requisition of the state highway commissioner from funds available to carry out the provisions of this chapter."

The plain intent of this statute is that the credit which passes to each county out of the seventy-five per cent shall be disbursed only out of the state treasury and not bodily turned over to the county to be disbursed out of the county treasury.

Moreover, it may be pointed out that the seventy-five per cent fund in question constitutes the basic fund for state aid when application is made therefor as provided in sections 1191 and 1192 G. C., and that it is provided in said section 1191 :

"* * * If the county commissioners or township trustees do not make application for the apportionment to such county on or before the first day of May then the highway commissioner shall enter upon and construct, improve, maintain or repair any of the inter-county highways or parts thereof in said county * * * paying the full cost and expense thereof, except that portion to be assessed against abutting property, from the apportionment of the appropriation due said county and unused or unapplied for by the said county or any board of trustees thereof, as hereinafter provided. * * *"

The whole structure of section 1191 and succeeding sections is along the line that the local authority, that is, the county commissioners or township trustees make application, not for money to be turned over to them, but for improvement or maintenance work under the direction of the department of highways and public works; and as appears from the quotation last made from section 1191, if such application to do work is not made by a given time, then

the department of highways and public works is charged with the duty of itself expending the county's apportionment of the seventy-five per cent.

Again, section 1212 G. C. is in substance that the state's proportion of cost shall be paid by the treasurer of state upon the warrant of the auditor of state issued upon the requisition of the director of highways and public works; and that the county's share is to be paid out of county funds upon requisition by the director of highways and public works.

The foregoing brief considerations are sufficient to show that a negative answer must be given to your question.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2751.

COUNTY HOSPITAL—TRUSTEES HAVE AUTHORITY TO EXPEND MONEY RAISED BY SECTION 3133 G. C. WITHOUT ANY ACTION BEING TAKEN BY COUNTY COMMISSIONERS.

Hospital trustees have authority to expend money raised under section 3133 G. C. without any action being taken by the county commissioners.

COLUMBUS, OHIO, December 31, 1921.

HON. V. W. FILIATRAULT, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR:—YOUR letter received in which you request the opinion of this department on the following matter:

"I would like your ruling as to whether or not the hospital trustees would have the authority to spend money levied for extensions of the county hospital to be used in building additions, without any action of the county commissioners, or does section 3137, quoted above, restrict the expenditures to be made by the county hospital trustees to items for maintenance and operation only to the exclusion of extensions."

The General Code sections to be considered herein are as follows:

"Sec. 3133. Upon the certificate of such trustees, stating the amount necessary, the county commissioners shall issue and sell the bonds of the county in the amount so certified but not in excess of the amount named in said petitions. Said bonds shall be sold in anticipation of taxes to be levied as hereinafter provided; they shall bear interest at a rate not exceeding six per cent per annum, payable semi-annually, and the proceeds thereof shall be used for the purpose of purchasing a site and erecting hospital buildings, or of purchasing a site with buildings already erected thereon and for equipping and maintaining the same.

Annually thereafter the commissioners shall levy, in addition to all other levies authorized by law, an amount sufficient to properly maintain and conduct said hospital and furnish such extensions and further equipment thereof as may be necessary; and also to provide a sufficient