

1748.

APPROVAL, NOTE OF WREN SCHOOL DISTRICT, VAN WERT COUNTY,
OHIO—\$95,000.00.

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COLUMBUS, OHIO, February 23, 1928.

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

1749.

APPROVAL, CERTIFICATES OF AMENDMENT TO THE ARTICLES OF
INCORPORATION OF THE INLAND CASUALTY COMPANY.

COLUMBUS, OHIO, February 24, 1928.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of the 16th instant inclosing two certificates of amendment to the articles of incorporation of The Inland Casualty Company, which you have transmitted for my approval.

I am returning the same to you herewith, with my approval of each indorsed thereon.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1750.

TRAFFIC LIGHTS IN VILLAGE— AUTHORITY OF DIRECTOR OF HIGH-
WAYS WHEN LIGHTS ARE ON EXTENSION OF HIGHWAYS.

SYLLABUS:

1. *Under the provisions of Section 1 of Article XVIII of the Constitution of Ohio, and Section 3497 of the General Code, all municipal corporations having a population of less than five thousand are villages.*

2. *Where the term "village" is used in a statute, resort should be had to the last federal census, as provided in Section 3497 of the General Code, for the purpose of determining whether a municipality is a city or village.* •

3. *A village may not continue to keep traffic lights upon an extension of the state highway system within such village without the approval of the Director of Highways.*

4. *The authority of the Director of Highways under Section 1190, G. C., extends not only to the approval or disapproval of the use of traffic signals, but also to the*

kind of signals which may be used, the method of their installation, the method of their operation, the period of their operation, et cetera.

5. *Constitutionality of Section 1190, G. C., not passed upon.*

COLUMBUS, OHIO, February 24, 1928.

HON. GEORGE F. SCHLESINGER, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date requesting my opinion as follows:

“Section 1190 of the General Code which is part of House Bill No. 67 enacted by the last General Assembly reads as follows:

Section 1190—‘It shall be unlawful for a village to erect or maintain traffic lights upon an extension of the state highway system within such village except that the erection and maintenance of such lights be first approved by the director. The director is hereby authorized to purchase, erect and maintain automatic traffic signals at such highway intersections on the state highway system as he may deem necessary.’

I wish to amplify my inquiry with reference to this section in my letter to you of December 28, 1927. Upon examination of the section there are a number of questions suggested upon which I desire to obtain your opinion and advice.

I. What is the definition of the term “village”, i. e. what is the dividing line between cities and villages in terms of population?

a What evidence in regard to population is required to establish the status of a municipality as a village?

II. What constitutes ‘maintenance of traffic lights’ within the meaning of this section?

a Does the term ‘maintain’ refer merely to the operation of traffic lights installed after approval by the director, or

b Does the term ‘maintain’ in the phrase ‘It shall be unlawful to erect or maintain * * * * ’ mean that a village may not continue to operate, without the approval of the director, signals installed on extensions of state highways prior to the passage of this section?

III. What is the extent of the authority of the director with respect to approval of the erection and maintenance of traffic lights?

a Does the authority of the director extend merely to the approval or disapproval of the use of traffic signals, or

b May the director stipulate the type (not make) of signal, method of installation, period of operation, etc.?”

Section 1190, General Code, as enacted by the 87th General Assembly, (112 v. 473) provides:

“It shall be unlawful for a village to erect or maintain traffic lights upon an extension of the state highway system within such village, except that the erection and maintenance of such lights be first approved by the director. The director is hereby authorized to purchase, erect and maintain automatic traffic signals at such highway intersections on the state highway system as he may deem necessary.”

The answer to your first question may be found in the provisions of Section I of Article XVIII of the Constitution of Ohio, which reads, in part, as follows:

"Municipal corporations are hereby classified into cities and villages. All such corporations having a population of five thousand or over shall be cities; all others shall be villages. * * * "

Section 3497 of the General Code provides:

"Municipal corporations, which, at the last federal census, had a population of five thousand or more, shall be cities. All other municipal corporations shall be villages. Cities which, at any future federal census, have a population of less than five thousand shall become villages. Villages which, at any future federal census, have a population of five thousand or more, shall become cities."

In exercising the authority vested in you by the provisions of Section 1190, supra, you may therefore look to the last federal census for the purpose of determining whether the municipality in which you propose to act under the provisions of said section is a village or city.

In answer to your second question:

"What constitutes 'maintenance of traffic lights' within the meaning of this section?"

I am of the opinion that the word "maintenance" as used in Section 1190 means "to keep up," and not as in usual road work "upkeep." In other words, it means that the village may not continue to operate traffic lights upon an extension of the state highway system within such village unless the erection and operation of such traffic lights are approved by the Director of Highways.

In answer to your third question as to what is the extent of your authority with respect to the approval of the erection and maintenance of such traffic lights, I advise you that your authority extends not only to the approval or disapproval of the use of traffic signals but also the kind of signals which may be used, the method of their installation, the method of their operation, the period of their operation, et cetera. In other words, the Legislature has placed this whole matter in the discretion of the Director of Highways. So long as the Director of Highways does not abuse this discretion or does not act in a fraudulent manner, his discretion is not reviewable or subject to control by the courts.

In thus advising you I have assumed the constitutionality of Section 1190, G. C., concerning which doubt may be said to exist in view of the home rule provisions of the Constitution. Whether the courts will say that Section 1190, G. C., is a police regulation and therefore the proper subject of legislative control, quare.

Respectfully,
EDWARD C. TURNER,
Attorney General.