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TOWNSHIP TRUSTEES—LIGHTING OF TERRITORY OUTSIDE MUNICIPAL CORPORATION—515.01 R.C.—MAY NOT BE FINANCED BY SPECIAL ASSESSMENTS — 515.08 R.C.—OWNERS ON PRIVATE WAYS INELIGIBLE UNDER 515.02 R.C. TO SIGN PETITION FOR SUCH LIGHTING — 515.03 R.C.—515.06 R.C.

SYLLABUS:

Although a board of township trustees is authorized under Section 515.01 Revised Code, to provide lighting at the expense of the township, to any territory within the township and outside the boundaries of any municipal corporation, the authority of such board does not extend to the provision of such lighting to be financed by special assessments, as provided in Section 515.08 Revised Code, in a case where owners of property abutting only on undedicated private streets or ways have petitioned for such lighting of their private ways, and for the assessment of the cost thereof on their properties; nor are such owners of property abutting on such private ways eligible under the provisions of Section 515.02 Revised Code, to sign the petition for the installation of such lighting.

Columbus, Ohio, January 3, 1957

Hon. Mary F. Abel, Prosecuting Attorney
Logan County, Bellefontaine, Ohio

Dear Madam:

I have before me your request for my opinion, reading as follows:

“I would appreciate an opinion on the following matter:

“Stokes Township, Logan County, Ohio, includes what is known as Avondale Resort. A portion of the streets in this allotment are dedicated to public use, and a portion dedicated to private use. Most of the homes are residences and not rental

properties, and a majority have signified their desire to have the township trustees contract for street lighting. The question is, 'If a petition addressed to the township trustees requests the street lighting and authorizes the board to contract for lighting the undedicated streets and make assessments for the same, may the trustees legally contract for such lighting on the undedicated portion?' "

The question presented by your letter is governed by Section 515.02 et seq., of the Revised Code. Section 515.02 reads as follows:

"When the owners of more than one half of the feet front, of the lots and lands abutting on the streets and public ways of any unincorporated district in a township, sign a petition for artificial lighting of the streets and public ways in such district, and file it with the township clerk, such clerk shall thereupon give notice to the board of township trustees of the filing of such petition, together with a copy thereof."

I cannot believe that the legislature, in using the words "streets and public ways" meant to include private ways established for the private convenience of the owner of a tract of ground or for the private use of lot owners in a subdivision. Such interpretation of the word "streets" would be contrary to the obvious sense in which the word is generally used in the statutes, particularly in reference to improvements the cost of which is to be assessed on abutting or benefited property. In Volume 40 "Words and Phrases", page 272, a long list of cases is presented, which practically without exception hold that the word when used in a statute, means a public and not a private way. The words "and public ways", following "streets" were in my opinion intended merely to amplify the first word, and to gather up all public ways, such as alleys or other spaces dedicated and devoted to the public use, and under public control. This interpretation will, I believe, be supported by the language of the subsequent provisions of the statute to which I shall refer.

Accordingly, the above quoted statute would, in my opinion, limit the right to petition for lighting service to the owners of property abutting on public streets and ways, and would exclude as such petitioners the owners of property abutting on private or undedicated streets or ways.

Section 515.03, Revised Code, provides as follows:

"A petition for the lighting of streets and public ways under section 515.02 of the Revised Code shall specify the metes and bounds of the district in which such lights are to be erected, but

shall include no lands more than six hundred sixty feet from, *nor any lands not abutting on the streets and public ways* in such district. The signing of such petition by a property owner shall be a waiver by him of all claims for compensation and damages for lands necessarily appropriated for the purpose of supporting and maintaining such lights." (Emphasis added.)

Section 515.06, Revised Code, authorizes the township trustees, if they decide to provide the lighting facilities petitioned for, to determine "the number of lights it deems necessary for properly lighting *the streets and public ways in the district, * * **".

Section 515.08, Revised Code, provides that after due advertising for bids, the board of township trustees shall enter into a contract with the successful bidder for the furnishing of such lights "according to specifications." It is further provided that "the contract shall not be for a longer term than ten years." This section also contains the following provision :

"* * * The cost and expenses of furnishing and maintaining such lights, and of the proceedings in relation thereto, shall be paid from a fund raised by special assessments against the lots and lands in the district which are benefited by such lighting."

"* * *."

Such "lots and lands," in my opinion means the lots and lands whose owners were entitled to join in the petition, and which are to be included in the lighting district.

I am strengthened in my conclusion, above expressed, by consideration of the alternative provision made in Section 515.01, Revised Code, which reads in part as follows :

"The board of township trustees may provide artificial lights for any road, highway, public place, or building under its supervision or control, *or for any territory within the township and outside the boundaries of any municipal corporation*, when the board determines that the public safety or welfare requires that such road, highway, public place, building, or *territory* shall be lighted. Such lighting may be procured either by the township installing a lighting system or by contracting with any person or corporation to furnish lights.

"* * *

"The cost of installing and operating any such lighting system, or of any such light furnished under contract, shall be paid from the general fund of the township treasury."

(Emphasis added.)

It will thus be seen that the township trustees have an option either to act under Section 515.02 et seq., supra, and assess the cost of lighting the streets in the established district, or to light the unincorporated area of the township as a general township expense.

In specific answer to the question which you have submitted, it is my opinion that although a board of township trustees is authorized under Section 515.01 Revised Code, to provide lighting at the expense of the township to any territory within the township and outside the boundaries of any municipal corporation, the authority of such board does not extend to the provision of such lighting to be financed by special assessments, as provided in Section 515.08 Revised Code, in a case where owners of property abutting only on undedicated private streets or ways have petitioned for such lighting of their private ways, and for the assessment of the cost thereof on their properties; nor are such owners of property abutting on such private ways eligible under the provisions of Section 515.02 Revised Code, to sign the petition for the installation of such lighting.

Respectfully,

C. WILLIAM O'NEILL
Attorney General