1986.

APPROVAL, LEASE FOR RIGHT TO TAKE FROM LEVEL OF ABANDONED OHIO CANAL ABOVE LOCK NO. 5, A LIMITED AMOUNT OF WATER—OHIO PUBLIC SERVICE COMPANY, MASSILLON, OHIO.

COLUMBUS, OHIO, June 13, 1930.

HON. A. T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You will find enclosed herewith a certain water lease in triplicate which has been submitted to me for approval. This lease is one executed by you, as Superintendent of Public Works, on behalf of the State of Ohio, by the terms of which there is granted to the Ohio Public Service Company of Massillon, Ohio, the right to take not to exceed 500,000,000 gallons of water annually, from the level of the abandoned Ohio Canal above Lock No. 5 of said canal, for a term of five years. For the right and privilege of taking such water, which is to be used by said lessee for steam and condensing purposes, said lessee agrees to pay to the State of Ohio a minimum annual rental of $1200.00.

In this connection, I am advised by your department that the Ohio Public Service Company in the usual course of its business obtains the electric power needed by it from other sources and that ordinarily, it is only in cases of emergency that any water will be taken from the Ohio Canal for steam and condensing purposes in the operation of the lessee's own generating plant. In this situation it seems that the minimum annual rental provided for in said lease is practically a ready to serve charge.

Upon examining the provisions of said lease, I find that same are in conformity with the provisions of Section 14009 and with those of other related sections of the General Code, with respect to leases of this kind. Said lease is accordingly approved by me as to its legality and form. This is the only question that I am passing on with respect to this lease.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1987.

PUBLIC DANCE—INVITATIONS TOGETHER WITH SMALL GIFT SOLD TO VENDEES AND NUMBER OF SALES LIMITED ONLY BY CAPACITY OF HALL.

SYLLABUS:

A dance given by an individual, where invitations are sold for fifty cents and some small gift is given as an inducement to aid in the sale of tickets, and the number of patrons to whom such tickets are sold is limited by the capacity of the hall, constitutes a "public dance" within the meaning of Section 13393 *of the General Code.*

COLUMBUS, OHIO, June 13, 1930.

HON. FREDERICK C. MYERS, *Prosecuting Attorney, Marietta, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date which is as follows:

"The trustees of Salem Township, Washington County, Ohio, desire to

rent a public hall under their control and custody in the village of Lower Salem, said hall to be used for the purpose of holding dances therein. The mayor of the village objects to the use of the hall for that purpose without a permit being first issued under Section 13393, General Code.

The person desiring to rent this hall proposes to print invitation cards and sell these invitation cards to certain individuals for 50c each, beginning several days before the dance. A stick of candy or chewing gum is handed out with each card or ticket. He states that no public advertisement of the dance will be given, it being evidently his intention to sell sufficient cards to fill the hall. He proposes to have these dances on Saturday night of every other week.

The question which I would have you answer is: Would such be a public dance within the meaning of Section 13393, General Code, requiring a permit from the mayor?"

Sections 13393 and 13393-2 of the General Code, read as follows:

Sec. 13393. "No person shall give a public dance, roller skating or like entertainment in a city, village or township without having previously obtained a permit from the mayor of such city or village if such public dance, roller skating or like entertainment is given within the limits of a municipal corporation, or from the probate judge if such public dance, roller skating or like entertainment is given outside a city or village, or permit another so to do. All permits issued under the authority of this section shall be subject to revocation at all times. The provisions of this section shall not apply to charter cities where the licensing authority is vested in some other officer than the mayor."

Sec. 13393-2. "Any person violating any of the provisions of the two preceding sections shall be fined not less than twenty-five dollars nor more than five hundred dollars or imprisoned not more than six months, or both."

The term "public dance" as used in Section 13393, General Code, not being defined by the Legislature, should therefore be construed according to its ordinary usage. So construed, it means a dance which is open generally to the community where the rules of admission are not based upon personal selection or invitation. Difficulty is not occasioned in defining "public dance" but a great deal of difficulty arises in determining whether or not the facts in a particular case come within this definition, for public dances are often held under the guise of private dances for the purpose of circumventing the terms of the statute. Whether or not a dance is a public dance as herein defined, is of course a question of fact to be determined from all the facts and circumstances in each particular case.

On at least two occasions a similar question to the one you present was submitted to former Attorneys General. However, in these cases the facts were somewhat different, but the conclusions reached are helpful in a determination of your inquiry.

In an opinion rendered under date of April 8, 1927, No. 302, found in the Opinions of the Attorney General for 1927, Volume I, page 521, the syllabus reads as follows:

"In a given case where a public notice is given through the press or otherwise that a dance will be given at a particular time and place, and that everybody is invited, and where upon the assemblage of the parties interested in the dance and who propose to attend the same, printed invitations are handed out to the prospective dancers before appearing upon the dance floor,

the proposed dance in question is a public dance and will require a permit under the provisions of Section 13393, General Code of Ohio."

In an opinion rendered on August 15, 1927, Volume II, page 1536, the second branch of the syllabus reads as follows:

"In determining whether or not a dance is a public dance or a dance given under the auspices of a bona fide social club as a private dancing party consideration should be given to the organization of the club, the bona fide limitation on its membership, the attendants of the dance, who, if anyone, stands to profit or lose thereby, and in short, the good or bad faith of the promoters of the party in complying with or attempting to evade the law."

You will observe from a reading of these opinions, that an important test in determining whether or not a dance is private or public is to inquire whether or not the discrimination exercised in the selection of patrons is bona fide. In the course of the latter opinion cited herein, the then Attorney General says:

"I do not question the right of individuals to organize themselves into clubs or societies which by proper discrimination limit their membership to a class or classes of persons, and thus acquire such an element of privacy that their meetings or parties or dances would be of a private character. Dances held under the auspices of such a club, whether incidental to the main purpose of the club or held in furtherance of the end for which the club was organized may be classed as private dances. But the discrimination exercised in the selection of the membership and the limitations imposed on the attendance of parties given by such clubs must be so defined as not captiously to permit the attendance of so much of the general public as to bring about the existence of the very evil the Legislature aimed to prevent, else they lose their private character and become public dances."

The evil aimed at by this legislation is the indiscriminate gathering of persons at dances.

Now then, considering the facts submitted by you, do they meet the test of a bona fide selection of patrons so as to prevent the indiscriminate gathering of persons at such dances? You state in your letter that the person proposes to print invitation cards and sell them to certain individuals for fifty cents each, it being his evident intention to sell sufficient cards to fill the hall.

Analyzing these facts, together with the fact as stated by you that some inducement is offered in order to aid in the sale of the tickets, it appears to me that the selection of patrons for such dance is not very limited, and that so much of the public is invited as will purchase the tickets, which attendance is limited to some extent by the capacity of the hall. These facts lead me to the conclusion that this constitutes a public dance, wihtin the meaning of Section 13393 of the General Code.

I am therefore of the opinion that a dance given by an individual, where invitations are sold for fifty cents and some small gift is given as an inducement to aid in the sale of tickets, and the number of patrons to whom such tickets are sold is limited by the capacity of the hall, constitutes a "public dance" within the meaning of Section 13393 of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.