

1366.

MUNICIPALITY—CONTRACT FOR STREET LIGHTING AUTHORIZED BY ORDINANCE—THIRTY DAY REFERENDUM PERIOD UNDER PROVISION OF CONSTITUTION.

SYLLABUS:

A municipality has authority to contract with others for street lighting under Section 4, Article XVIII of the Ohio Constitution; and such contract should be authorized by ordinance, which ordinance is subject to referendum as provided in Section 5, Article XVIII of the Constitution.

COLUMBUS, OHIO, January 6, 1930.

HON. L. E. HARVEY, *Prosecuting Attorney, Troy, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“The council of the village of C passed a resolution directing the village clerk to advertise for bids for street lighting under Section 3994 of the General Code.

I would like to have your opinion as to whether such resolution is subject to a referendum under Section 4227-2 of the General Code.”

Section 3994, General Code, to which you refer, is as follows:

“A municipal corporation may contract with any company for supplying, with electric light, natural or artificial gas, for the purpose of lighting or heating the streets, squares and other public places and buildings in the corporation limits.”

The resolution to which you refer was apparently passed with a view to complying with the provisions of Section 4221, General Code, which section requires that when any expenditure of a municipality, other than the compensation of persons employed therein, exceeds five hundred dollars, the contract shall be awarded after advertising for bids. In this connection, your attention is directed to the case of *Mutual Electric Co. vs. Pomeroy*, 99 O. S. 75, the second branch of the syllabus being as follows:

“Section 4221, General Code, has no application whatever to a contract between a municipality and a public utility, where the council of a municipality has the power to fix and regulate the price to be charged by such public utility. This section applies only to contracts in relation to service, material, or supplies, where the bidders have the right to name the price for which they are willing to perform or to furnish the same.”

In view of the holding of this case, it is apparent that there is no necessity for a resolution directing a village clerk to advertise for bids for street lighting prior to the award of a contract as authorized by Section 3994, *supra*, for the reason that municipalities are authorized by Section 3982, General Code, to regulate the price which may be charged for electric light or gas for the purpose of lighting or heating the streets, squares and other public places and buildings in the corporation limits.

Section 4, Article XVIII of the Ohio Constitution provides that a municipality may contract with others for any public utility product or service. Section 5, Article XVIII of the Constitution is as follows:

"Any municipality proceeding to acquire, construct, own, lease or operate a public utility, or to contract with any person or company therefor, shall act by ordinance and no such ordinance shall take effect until after thirty days from its passage. If within said thirty days a petition signed by ten per centum of the electors of the municipality shall be filed with the executive authority thereof demanding a referendum on such ordinance it shall not take effect until submitted to the electors and approved by a majority of those voting thereon. The submission of any such question shall be governed by all the provisions of section 8 of this article as to the submission of the question of choosing a charter commission."

These sections are dispositive of your inquiry. It should be noted that the submission of such ordinance shall be in accordance with Section 8 of Article XVIII of the Constitution, and not in accordance with Section 4227-2 of the General Code. See also the case of *Power Co. vs. Steubenville*, 99 O. S. 421, the first and fourth branches of the syllabus being:

"The council of a municipality has authority to fix the price that an electric light company may charge the city or its inhabitant for electric current for light and power purposes.

* * * * *

A contract entered into between a public utility and a municipality of this state, whereby the public utility agrees to supply its product or service to the municipality or its inhabitants for a period of ten years, at a rate, price, charge, toll or rental specified in such contract, is expressly authorized by Section 4, Article XVIII of the Constitution of Ohio, and is valid and binding upon the parties thereto, unless disapproved by a majority of the electors voting thereon, at a referendum election held under the provisions of Section 5, Article XVIII of the Constitution of this state."

In view of the foregoing, it is my opinion that a municipality has authority to contract with others for street lighting under Section 4, Article XVIII of the Ohio Constitution; and such contract should be authorized by ordinance, which ordinance is subject to referendum as provided in Section 5, Article XVIII of the Constitution.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1367.

APPROVAL, ABSTRACT OF TITLE TO LAND OF LESTER P. BLOSSER
IN RARDEN AND BRUSH CREEK TOWNSHIPS, SCIOTO COUNTY.

COLUMBUS, OHIO, January 6, 1930.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination an abstract of title, warranty deed and encumbrance estimate relating to the proposed purchase of five certain tracts of land situated in Brush Creek and Rarden Townships, Scioto County, Ohio, and more particularly described as follows: