

which is only applicable to subdivisions which at the effective date of the Uniform Bond Act had indebtedness in excess of the limitations set forth in the Act.

In specific answer to your question, therefore, I am of the opinion that under the provisions of Section 2293-15, General Code, bonds may be authorized by a school district without a vote of the people, providing such indebtedness thereby incurred will not cause the net indebtedness as therein defined to exceed one-tenth of one per cent of the total value of all property in such school district as listed and assessed for taxation, irrespective of the year in which bonds may be so authorized or of the year in which any previous unvoted bonds may have been authorized.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

360.

TOWNSHIP TRUSTEES—POWER TO CONTRACT FOR LIGHTING UNINCORPORATED DISTRICT FOR TEN YEARS—NEW CONTRACT—PUBLIC UTILITY NEED NOT CONTINUE SERVICE AFTER TERMINATION OF CONTRACT.

*SYLLABUS:*

1. *Under the provisions of Section 3436, General Code, and its related sections, township trustees have no power to enter into a contract for the lighting of unincorporated districts for any period beyond ten years.*
2. *In the event it is desired to maintain such lighting district after the expiration of an existing contract, it is necessary to follow the procedure provided for in Section 3428, et seq., for the creation of a new lighting district in order to make a new contract.*
3. *When such a contract terminates under such circumstances as are above described, there is no duty upon a public utility to continue service beyond the time required in such contract.*

COLUMBUS, OHIO, April 27, 1929.

HON. LEROY W. HUNT, *Prosecuting Attorney, Toledo, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication requesting my opinion as follows:

“We have the following question now before our office, upon which we have been unable to find any direct authority, and we therefore respectfully request an opinion from you answering the question set forth herein:

The trustees of Adams Township have a contract with The Toledo Edison Company for the lighting of an unincorporated district known as ‘Lighting District No. 5.’ This contract was entered into August 4, 1919, and expires August 4, 1929.

The lighting district was created pursuant to G. C., Section 3428, et seq., and the contract entered into by the Trustees pursuant to the authority conferred in G. C., Section 3438, which provides that the contract shall not be for a longer period than ten years.

The Trustees desire to renew the contract or to let a new one upon the expiration of the present contract, and the following questions have arisen:

1. Whether, under G. C., Section 3436, the Township Trustees have the power to enter into a contract for the lighting of the district for any period beyond the ten years covered by the original contract.

2. If the Trustees do not have the power to make a new contract after the expiration of ten years, whether it is necessary to go through the procedure provided by G. C., 3428, et seq., for the incorporation of a new lighting district in order to empower the Township Trustees to make a new contract.

3. If the contract is not renewed or a new contract made by the trustees, either with or without the formation of a new district, can the public utility serving the territory terminate the service at the expiration of the contract without the consent of the Public Utilities Commission or any other public authority?"

Sections 3428 to 3440, inclusive, of the General Code, provide for the establishment of lighting districts in unincorporated portions of a township. Section 3428 provides that when the owners of more than one-half of the foot frontage of the lands abutting on the public way of an unincorporated district in a township, sign a petition for artificial lighting of said way and file it with the clerk of the township, notice shall be given to the trustees of the filing of such petition. Section 3429 provides that the petition shall specify the metes and bounds of the district but shall include no more than 660 feet from, nor any lands not abutting on the public ways in the district. Said section further provides that the signing of such a petition by the owner constitutes a waiver by him of all claims for compensation and damages for lands necessarily used for the purposes of supporting and maintaining such lights. The next section requires that the clerk shall fix a day for the hearing of the petition, giving notice in writing to the lot and land owners and to the corporations, either public or private, affected by the improvement, etc. Section 3431 relates to the service and return of such notice. Section 3433 provides for the hearing by the trustees, and requires such trustees to view the public ways and the premises along and adjacent thereto to be lighted and benefited and determine the necessity thereof. Section 3434 provides:

"If the trustees decide for such improvement, they shall specify the number of lights they deem necessary for properly lighting the streets and public ways in the district, determine the candle power thereof and locate the points where the lights shall be located and the kind of supports for them."

Section 3435 provides:

"Thereupon the trustees shall post in three of the most conspicuous public places in the district a notice specifying the number, candle power, and location of such lights, the kind of supports therefor, the time, which shall not be less than thirty days from the posting of the notices, and the place the trustees will receive bids to furnish such lights. The trustees shall accept the lowest and best bid, if the successful bidder furnishes a bond in an amount with sureties approved by them, for the faithful furnishing such lights according to specifications. The trustees may reject all bids."

Section 3436 provides:

"On accepting such bid and bond, the trustees shall enter into a contract with the successful bidder for the furnishing of such lights according to specifications. The contract shall not be for a longer term than ten years.

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, and such assessments against any lot or parcel of land shall not be in excess of the special benefits resulting thereto from such lighting and such assessments shall be paid and collected in equal semi-annual installments equal in number to twice the number of years for which the contract is made, and shall be paid and collected in the same manner and times as taxes are paid and collected; and such assessments may be made and levied by any one of the following methods:

First: By a percentage of the tax value of the property assessed.

Second: In proportion to the benefits which may result from the lighting.

Third: By the foot frontage of the property bounding and abutting upon the street or streets, or public way or ways so lighted."

Section 3437, in substance, provides that at any time during the term of the contract but not oftener than once each year, unless mutually satisfactory to both parties, the trustees may increase the number of lights to be maintained under the contract, at not more than the same price per light.

Section 3439 provides:

"The township trustees shall certify to the county auditor the boundaries of such district, and when requested by the trustees so to do the auditor shall apportion the valuation for taxation of any lot or parcel of land lying partly within and partly without the district.

The township trustees shall by resolution assess against the benefited lots and parcels of land in such district, in accordance with Section 3436 of the General Code, and by one of the methods therein provided, the entire costs and expenses of furnishing and maintaining such lights for the entire period of the contract therefor and the proceedings in relation thereto, and shall certify same to the county auditor, who shall annually place upon the tax duplicate for collection in semi-annual installments as provided in Section 3436 of the General Code, the two installments of the assessment for that year, the same to be paid and collected as provided in Section 3436 of the General Code.

If the number of lights to be furnished and maintained in any such district under any such contract should be increased pursuant to the provisions of Section 3437 of the General Code the trustees shall make such additional assessments as may be necessary to pay the cost of furnishing and maintaining such additional number of lights, such additional assessments to be made, certified and collected the same as an original assessment hereunder, but to be only for the unexpired part of the term of the contract.

Said assessments when collected shall go into the township treasury and shall be used by the trustees only for the purpose for which they were levied and collected."

Section 3440-1 authorizes the township trustees to provide artificial lights for any territory within such township and outside the boundaries of any municipal corporation, when such territory constitutes a place of public gathering for the inhabitants of such township, etc. The costs of such lighting system, under such circumstances, are to be paid out of the general revenue fund of the township.

It is obvious that this provision is to be distinguished from a district established in pursuance of the other sections of the General Code hereinbefore referred to. The power of the township trustees in connection with the lighting of unincor-

porated districts of a township was under consideration in an opinion of my predecessor, Opinion No. 2438, issued under date of August 15, 1928, to Hon. Charles B. Cook, Prosecuting Attorney, Jefferson County. Said opinion clearly points out that before township trustees may provide artificial lights under the provisions of Section 3440-1, supra, they must "specifically find that such territory constitutes a place of public gathering for the inhabitants of such township, or that the same constitutes a place of public gathering for a large part of the inhabitants of the township; and that the public safety or public welfare requires that such place be lighted."

It will be noted that in the establishment of a lighting district such as you describe there is no provision for making payment for such purpose out of the general fund. Under the provisions of Section 3436, supra, the cost and expense of furnishing and maintaining such lights and the proceedings in relation thereto shall be paid from the fund raised by special assessment against the lots and lands in such district which are benefited by such lights. Said section and its related sections provide for the levying and collection of the assessments to cover the period of the contract which is entered into by the trustees.

Said section further expressly provides that such contract shall not be for a longer term than ten years.

A careful analysis of the sections hereinabove referred to clearly discloses that there is no provision for the renewal of any contract. Especially is this true of a contract which was made, as in your case, for the maximum period of ten years.

In order to levy assessments and make payments for a contract, it is obvious that the statute authorizing such a procedure would have to be strictly complied with. It is a general proposition of law that township trustees have only such powers as are expressly granted and such implied powers as are necessary to carry into effect such expressed powers.

In connection with the power to establish a lighting district, the Legislature has clearly outlined the procedure and it is believed that by no process of reasoning can the conclusion be reached that there is any authority to enter into a contract except such as is expressly mentioned in said section.

It therefore must be concluded that, in the case you mention, the contract under consideration terminates at the end of the ten year period, and if the lighting district is to be continued, it will be necessary to go through the same formalities that were originally taken in connection with the creation of the district which is the basis of the present contract.

Your inquiry further raises the question as to whether, in the event that no new contract is entered into, the public utility may cease to furnish service at the termination of its contract without the consent of the Public Utilities Commission or other public authority.

Undoubtedly, this inquiry is suggested by reason of the so-called Miller Act, Sections 504-2 and 504-3, General Code of Ohio (107 O. L. 525), which, inter alia, provides that a public utility furnishing service shall not abandon the same without the consent of the Ohio Public Utilities Commission after notice and hearing as provided in said act. Without entering into an extended discussion, it is believed that, in view of the peculiar nature of the contract under consideration, the so-called Miller Act has no application. It is obvious that unless the landowners interested take the initiative and institute new proceedings to authorize a new contract, the trustees will never be empowered to make a new contract. If another contract is made, it must be let in pursuance of competitive bidding. When the present contract expires, there will be no funds available for such service and as above stated, there will never be such under existing law unless and until authority is given to said trustees to make a new assessment after the institution of a new proceeding in pursuance of Sections 3428, et seq., of the General Code.

In the case presented by your inquiry, there is no question as to the term of the contract. Both by its express terms and by operation of law, such contract terminates at the end of ten years and under such circumstances, it is believed there is no obligation upon the public utility to continue service.

Specifically answering your questions, it is my opinion that:

1. Under the provisions of Section 3436, General Code, and its related sections, township trustees have no power to enter into a contract for the lighting of unincorporated districts for any period beyond ten years.

2. In the event it is desired to maintain such lighting district after the expiration of an existing contract, it is necessary to follow the procedure provided for in Sections 3428, et seq., General Code, for the creation of a new lighting district in order to make a new contract.

3. When such a contract is terminated, under such circumstances as are above described, there is no duty upon a public utility to continue service beyond the time required in the contract.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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361.

APPROVAL, NOTES OF MADISON TOWNSHIP RURAL SCHOOL DISTRICT, BUTLER COUNTY, OHIO—\$25,000.00.

COLUMBUS, OHIO, April 27, 1929.

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

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362.

APPROVAL, LEASE OF LAND IN MADISON COUNTY FOR USE OF THE LONDON PRISON FARM, LONDON, OHIO.

COLUMBUS, OHIO, April 29, 1929.

HON. H. H. GRISWOLD, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of recent date submitting for my examination and approval a certain lease in triplicate executed by one R. W. Boyd, leasing and demising to you as Director of the Department of Public Welfare, a certain tract of one hundred acres of pasture land to be used in connection with the London Prison Farm, near London, Ohio. The term of said lease is from March 1, 1929, to January 1, 1930, and the rental to be paid is the sum of \$500.00.

Under the provisions of Section 1848, General Code, you, as successor in powers of the board of administration, are authorized to lease lands for purposes of this