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1. RECREATION BOARD—COUNTY COMMISSIONERS MAY ESTABLISH BOARD AND GIVE AUTHORITY TO SUPERVISE AND MAINTAIN PLAYGROUNDS, PLAYFIELDS, GYMNASIUMS, PUBLIC BATHS, SWIMMING POOLS, OR INDOOR RECREATION CENTERS — ACQUIRED, CONSTRUCTED AND EQUIPPED BY COUNTY COMMISSIONERS—SECTION 755.13 RC.
2. RECREATION BOARD—MAY EXERCISE ITS DISCRETION AND INDEPENDENT JUDGMENT TO SUPERVISE OPERATION AND MAINTENANCE—COUNTY COMMISSIONERS —IN ALL OTHER MATTERS CONCERNING FACILITIES SHALL DIRECT AND CONTROL EMPLOYMENT OF SUPERVISORY PERSONNEL AND EXPENDITURE OF PUBLIC FUNDS.
3. COUNTY COMMISSIONERS—HAVE DISCRETION AS TO ORGANIZATION AND OPERATION OF RECREATION BOARD.

## SYLLABUS:

1. Under the provisions of Section 755.13, Revised Code, a board of county commissioners may establish a recreation board and may give such board "authority to supervise and maintain such playgrounds, playfields, gymnasiums, public baths, swimming pools, or indoor recreation centers" as have been acquired or constructed and equipped by such board of county commissioners.

2. Such recreation board may be given authority to exercise its discretion and independent judgment only in supervising the operation of such recreational facilities, and in their maintenance; and in all other matters concerning such facilities, including the employment of supervisory personnel and the expenditure of public funds, such board is wholly subject to the direction and control of the board of county commissioners.

3. The number of members of such recreation board, and incidental matters of organization and operation, may be determined by the board of county commissioners in their discretion.

Columbus, Ohio, April 6, 1954

Hon. Mathias H. Heck, Prosecuting Attorney  
Montgomery County, Dayton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Approximately ten days ago the Board of County Commissioners of Montgomery County requested an opinion of this office as to the scope of their authority under Sections 755.12 to and including 755.18 of the Ohio Revised Code. These sections of the Revised Code pertain to playground and recreational affairs.

"On February 25, 1954, this office did forward to the county commissioners an answer to said request, the gist of which was that the authority to supervise, maintain, equip, operate, employ play leaders, recreational leaders, supervisors, superintendents, or any other officers or employees, is vested in the county commissioners and may be vested in any existing body or board. Our conclusion excluded the creation of a recreation board as that term is used in Section 755.13, our reasoning being that a mere mention of such a board in the statute did not ipso facto create such board and that in order to create the same the Legislature, had it so intended, would have referred to the county, for example, when it considered the right of a municipal corporation to create a recreation board under Section 755.14.

"The county commissioners, not being satisfied with our opinion requested this office to ask an opinion from your office.

"Your opinion is therefore requested concerning the following questions:

"1. Can the Board of County Commissioners create a recreation board under Section 755.13, Revised Code?

"2. What authority would that board have?

"3. How many members would constitute such board?

"Because of the urgency of proper recreational facilities and because of the state-wide importance of this question, we respectfully request your prompt attention."

Statutory authority for the acquisition of playgrounds, etc., by local political subdivisions is found in Section 755.12, Revised Code, which reads as follows:

"The legislative authority of a municipal corporation or the board of county commissioners of any county may designate and set apart for use as playgrounds, playfields, gymnasiums, public baths, swimming pools, or indoor recreation centers, any lands or buildings owned by any such municipal corporation or county and not dedicated or devoted to other public use. Such municipal corporation or county may, in the manner provided by law for the acquisition of land or buildings for public purposes in such municipal corporations or county, acquire lands or buildings therein for such use."

In so far as this statute purports to confer such authority on a municipal corporation, it would appear to be another instance of legislation in which the General Assembly, seemingly unaware of pertinent constitutional provisions, has attempted to clothe municipal corporations with authority which they already possessed by virtue of their home rule powers under Article XVIII, Ohio Constitution.

In the matter of supervision and maintenance of such recreational facilities, I find the following provisions in Section 755.13, Revised Code:

"The authority to supervise and maintain playgrounds, playfields, gymnasiums, public baths, swimming pools, or indoor recreation centers, may be vested in any existing body or board, or in a recreation board, as the legislative authority of the municipal corporation or the board of county commissioners determine. The local authorities of any such municipal corporation or county may equip, operate and maintain such facilities as authorized by Sections 755.13 to 755.18, inclusive of the Revised Code. Such local authorities may, for the purpose of carrying out such sections, employ play leaders, recreation directors, supervisors, superintendents, or any other officers or employees."

The language of the first sentence in Section 755.13, *supra*, referring to "any *existing* body or board, *or* in a recreation board, as the legislative authority of the municipal corporation or *the board of county commissioners determine*," clearly suggests the legislative concept that a "recreation board" is not an "existing body or board." This language, however, clearly gives authority to the board of county commissioners to "determine" whether "the authority to supervise and maintain" is to be vested in "a recreation board." If the authority thus given to make such determination is to be given any meaning whatever, it would seem to include by implication the authority to create a recreation board.

Here it becomes necessary to give consideration to a somewhat detailed provision in Section 755.14, Revised Code, whereby municipal cor-

porations are given express authority to establish recreation boards, such detailed and express provisions making no mention of a similar grant of power to counties. This section provides:

"If the legislative authority of a municipal corporation determines that the power to equip, operate, and maintain playgrounds, playfields, gymnasiums, public baths, swimming pools, or recreation centers shall be exercised by a recreation board, it may establish such a board, which shall possess all the powers and be subject to all the responsibilities of the respective local authorities under Sections 755.12 to 755.18, inclusive, of the Revised Code. Such board shall consist of five persons, two of whom shall be members of the board of education of the city or village school district. The members of the board shall be appointed by the mayor of such municipal corporation, and shall serve for terms of five years, except that the members first appointed shall be appointed for such terms that the term of one member shall expire annually thereafter. Members of such board shall serve without pay. Vacancies in the board, occurring otherwise than by expiration of term, shall be for the unexpired term and shall be filled in the same manner as original appointments."

The legislation analogous to that here under consideration prior to the recodification of 1953, was set out in Section 4065-1 et seq., General Code, Section 4065-3, General Code, being analogous to Section 755.14, Revised Code. This section was the subject of consideration by one of my predecessors in Opinion No. 3859, Opinions of the Attorney General for 1922, p. 1082, the syllabus in which is as follows:

"1. The power to lease lands and acquire buildings for recreation purposes under Section 4065-1 et seq. of the General Code, is vested in the council of the city or village, or in the county commissioners.

"2. Under Section 4065-3 G.C., a board of recreation is unauthorized to levy taxes or appropriate money for the purposes of said act.

"3. Under the provisions of Sections 4065-1 et seq. of the General Code public or private school lands may not be equipped by the city for the recreation purposes defined by said section.

"4. The amount of money which can be raised by a tax levy, for the purpose mentioned in Section 4065-7, G.C., is subject to the general tax limitations prescribed by law."

In the course of this opinion (pp. 1083, 1084) the writer said:

"Section 4065-3 G.C., however, provides that if the city or village shall determine that the power to equip, operate, and

maintain playgrounds, etc., shall be exercised by a recreation board, they may establish in said city or village such recreation board, *'which shall possess all the powers and be subject to all the responsibilities of the local authorities under this act.'* While it is not altogether clear as to just what powers are vested in the said recreation board by the above phraseology, or as to the meaning of the term 'local authorities' as used therein; it is believed, however, that the intention of the statute is to transfer the powers and duties of the local authorities previously supervising such matters as playgrounds, etc., to the board of recreation provided by Section 4065-3 G.C. That is to say that relative to such matters, the board of recreation was to have the same supervisory control over said playgrounds, etc., as that exercised by the director of public service under Section 4325 G.C., and the board of park commissioners under Section 4057 G.C., and to possess the same powers and duties relative to the subject of playgrounds as these local authorities. Since, however, the powers and duties of said local authorities are merely supervisory in nature, such authority when transferred to the board of recreation as provided by Section 4065-3 G.C., could not vest in said board the power to directly purchase land and buildings since this power is not vested in such local authorities in the first instance. Thus it would seem that the said board of recreation under Section 4065-3 is clothed with no power in this respect. This view is thought to be strengthened by the legislative intention expressed in the specific provisions for the purpose (sic) of lands and buildings for such purposes provided by Sections 4065-1 and 4065-6 G. C. \* \* \*

Although this language does not too clearly so indicate, it is possible to suppose that the writer took the view that the Legislature had tacitly recognized the fact that when this legislation was originally enacted, municipalities already possessed legal authority to acquire and operate recreation facilities of the sort here involved, and that many of such municipal corporations were in fact operating such recreation facilities. One might further suppose that the writer of such opinion entertained the view that legislation providing for the creation of a recreation board, with certain specified duties, would constitute, in the case of municipalities, "general laws \* \* \* to provide for the incorporation and government of cities and villages" as this language is used in Section 2, Article XVIII, Ohio Constitution; and that it was necessary to provide for the creation of such board and to define its powers in order to avoid a conflict with the previously existing legislation on such subject.

If this view be correct, then it will be seen that a valid reason existed for the express and specific provision above noted in the case of a municipality, a reason which did not apply in the case of counties.

It should be noted also that there is evident in the provisions of Sections 755.13 and 755.14, supra, a legislative intent that municipal recreation boards are to exercise a much broader authority than that conferred on county recreation boards, for municipal boards may "equip, operate and maintain" as compared with the power of county recreation boards to "supervise and maintain" recreational facilities. Moreover, such municipal boards may be given the authority to employ supervisory personnel, for this is one of the powers enjoyed by "local authorities" under the provision found in the final sentence of Section 755.13, supra, a transfer of such power to the board being clearly contemplated by the provisions of Section 755.14, supra.

These differences in the powers of these two agencies thus suggest the reasons for the express and particular provisions made by the Legislature in Section 755.14, supra, for the establishment of a municipal recreation board. Such differences clearly indicate that such express and particular provision as to the municipal agency may not be deemed to imply a legislative intent to deny to the county commissioners the power to establish an agency possessing substantially more limited powers.

Coming now to a consideration of the further questions posed in your inquiry, I have already indicated that a recreation board established by the county commissioners could properly be given only "authority to supervise and maintain playgrounds," etc.

In this connection it should be noted that in the case of a county government the term "local authorities," as construed in the 1922 opinion, supra, would not have reference to any previously existing public offices comparable to the municipal offices mentioned in such opinion. Accordingly, the only meaning which could be given to such term, as applied to counties, would be such as to indicate reference to the board of county commissioners, which board for the first time was given authority in connection with county recreational facilities in the original enactment of Section 4065-1, et seq., General Code.

From this it follows that the authority and responsibility for acquisition of recreational facilities, including equipment, the actual em-

ployment of supervisory personnel, the appropriation and expenditure of funds, and like matters, still remain with the board of county commissioners as the "local authorities" empowered to act for counties as provided in Section 755.13, supra. It is thus to be seen that in every respect except in the supervision of the operation of recreational facilities, and in their maintenance, such county recreation board would be subordinate to the board of county commissioners, and in any other matters would act, if at all, as an agency of the commissioners without power to exercise any independent discretion or judgment.

As to the number of members which may be appointed, since the statute is silent on the point it must be concluded that this, and other incidental details of organization and operation, is left to the discretion of the commissioners.

Accordingly, in specific answer to your inquiry, it is my opinion that:

1. Under the provisions of Section 755.13, Revised Code, a board of county commissioners may establish a recreation board and may give such board "authority to supervise and maintain such playgrounds, playfields, gymnasiums, public baths, swimming pools, or indoor recreation centers" as have been acquired or constructed and equipped by such board of county commissioners.

2. Such recreation board may be given authority to exercise its discretion and independent judgment only in supervising the operation of such recreational facilities, and in their maintenance; and in all other matters concerning such facilities, including the employment of supervisory personnel and the expenditure of public funds, such board is wholly subject to the direction and control of the board of county commissioners.

3. The number of members of such recreation board, and incidental matters of organization and operation, may be determined by the board of county commissioners in their discretion.

Respectfully,  
C. WILLIAM O'NEILL  
Attorney General