

1371.

VILLAGE COUNCIL—RIGHT TO LEASE MUNICIPAL AUDITORIUM TO INDIVIDUALS.

SYLLABUS:

The council of an incorporated village may lease in the manner provided by law, a municipal auditorium, not needed for municipal purposes, to private individuals for an extended period of time, to be used for the giving of motion picture shows, providing council reserves the right in said lease to use the said auditorium whenever public occasion requires.

COLUMBUS, OHIO, January 7, 1930.

HON. CHARLES D. DILATUSH, *Prosecuting Attorney, Lebanon, Ohio.*

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

"I would very much appreciate the opinion of your department upon the following question which has been presented:

May the council of an incorporated village legally lease a municipal auditorium to private individuals for an extended period of time as, for example, five years, providing council reserves the right in said lease to the use of said auditorium whenever public occasion requires?

I might further add that the lessees would use this auditorium for the purpose of giving motion picture shows therein."

At the outset, I am assuming that the incorporated village referred to is not a charter village, and this opinion is based on that assumption.

It is a well established principle of law that municipalities have those powers which are expressly granted to them by statute and such others as are necessary to carry out powers expressly granted, together with such home rule powers as are given to them by the Constitution. *Ravenna vs. Pennsylvania Co.*, 45 O. S. 118; *Perrysburg vs. Ridgway*, 108 O. S. 245.

The general powers of municipalities are set forth in Part I, Title XII, Division II, Chapter I of the General Code. Section 3616 therein provides that:

"All municipal corporations shall have the general powers mentioned in this chapter, and council may provide by ordinance or resolution for the exercise and enforcement of them."

Section 3631 (which is part of the same chapter) is more immediately applicable to your inquiry and reads as follows:

"To hold and improve public grounds, parks, park entrances, free recreation centers and boulevards, and to protect and preserve them. To acquire by purchase, lease, or lease with privilege of purchase, gift, devise, condemnation or otherwise *and to hold real estate* or any interest therein and other property *for the use of the corporation and to sell or lease it*, or to donate the same by deed in fee simple to the State of Ohio as a site for the erection of an armory." (Italics the writer's.)

It is apparent that the Legislature has, in unambiguous language, granted the broad power to a municipality to lease its realty by the above section.

However, Section 3698, General Code, appearing in Chapter 2 of Division III of the same Part and Title as the sections above quoted, must be considered as *in pari materia*. In the case of *Kerlin Bros. vs. Toledo*, 20 C. C. 603, it was said that R. S. 1692, Subdivision 34 (now Section 3631, *supra*), gives municipalities the right to sell

or lease real estate; but though the power is given in general terms there, its exercise would be limited by the special provisions of Sections 2673 and 2673a, Revised Statutes (now Sections 3698 and 3699, General Code), and subsequent sections.

Said Section 3698 provides:

“Municipal corporations shall have special power to sell or lease real estate or to sell personal property *belonging to the corporation, when such real estate or personal property is not needed for any municipal purpose.* Such power shall be exercised in the manner provided in this chapter.” (Italics the writer’s.)

From a reading of this section, it would seem that the power to lease is conditioned upon whether the property is needed for municipal purposes. As I understand the situation presented in your communication, the auditorium is not being used or needed for any municipal purpose at the present time. Such being the case, I see nothing to prevent its being leased for a lawful purpose such as the giving of motion picture shows, provided, as you say, that a reservation is incorporated in the lease to give the village a lawful right to again make use of it, should need for its use for any municipal purposes arise.

In *State vs. Mills*, 20 N. P. (N. S.) 427, a somewhat analogous situation to that which you present was before the court and it was held, as set forth in the first paragraph of the headnotes:

“There is vested in county commissioners clear statutory power to permit the auditorium of a memorial building to be occupied for any private purpose which does not interfere with the public use of the building, and this power includes the right to lease such a hall to persons desiring to give entertainments therein.”

Section 3713, General Code, within the same chapter as the section last quoted, reads as follows:

“The councils of municipal corporations may permit the use of public buildings under their control, upon such terms and conditions as they by ordinance provide.”

Thus, power is given for council to arrange terms and conditions for the use of buildings, and it is believed that a lease for five years would not be an abuse of discretion.

The procedure for leasing corporate property which must be followed is set forth in Sections 3699, 4221, 4224 and 4227-2, General Code. Sections 3699 and 4221 require, first, an ordinance of council, two-thirds concurring, authorizing the lease, second, approval of this ordinance by the proper board, or officer having supervision or management of the real estate, third, advertisement once a week for five consecutive weeks in a newspaper of general circulation within the corporation, inviting bids for the lease of the property, and, fourth, award to the highest bidder and the signing of the lease in the name of the village by the mayor and clerk.

Section 4224 provides, *inter alia*, that no ordinance for the lease of property shall be passed, unless it has been fully and distinctly read on three different days, and with respect to any such ordinance there shall be no authority to dispense with this rule, except by a three-fourths vote of all members elected thereto, taken by yeas and nays and entered on the journal. Section 4227-2 provides that an ordinance when passed shall be subject to referendum and shall not go into effect until thirty days after it shall have been passed by the council of a village. In connection with the

requirement of Section 3699, heretofore stated, that a lease must have the approval of the board or officer having supervision or management of the realty to be leased, it is to be noted that Section 4240 provides, with reference to villages, that the council shall have the management and control of the property of the corporation.

In view of the foregoing, and in specific answer to your inquiry, I am of the opinion that the council of an incorporated village may lease in the manner provided by law, a municipal auditorium, not needed for municipal purposes, to private individuals for an extended period of time, to be used for the giving of motion picture shows, providing council reserves the right in said lease to use the said auditorium whenever public occasion requires.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

1372.

APPROVAL, NOTES OF SYCAMORE RURAL SCHOOL DISTRICT,
 WYANDOT COUNTY—\$4,500.00.

COLUMBUS, OHIO, January 7, 1930.

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

1373.

DISAPPROVAL, EIGHTEEN RESERVOIR LAND LEASES.

COLUMBUS, OHIO, January 7, 1930.

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

DEAR SIR:—Recently your predecessor, Hon. R. T. Wisda, submitted for my examination and approval certain reservoir land leases, eighteen in number. Said leases designated with respect to the names of the respective lessees, the location of the property leased and the valuation of the respective parcels of land so leased are as follows:

<i>Name</i>	<i>Location</i>	<i>Valuation</i>
Mildred L. Smith,	Lake St. Marys.....	\$200 00
Leslie R. Frizzel,	Buckeye Lake.....	833 34
C. W. Buchanan,	Indian Lake	100 00
P. W. Mayo,	Indian Lake.....	100 00
Carl F. Miller,	Indian Lake	100 00
The S. L. Wilgus Company,	Indian Lake	200 00
Walter J. Smith,	Lake St. Marys	250 00
B. F. Achauer,	Buckeye Lake	200 00
Harry Height,	Lake St. Marys	200 00
W. J. McMurray,	Indian Lake	650 00