You will observe from an examination of the plat and description, as set out in section 15 of said abstract, that the call above referred to would necessarily have to read "south 78 degrees" in order that the description might fully enclose any parcel of land. Therefore, I am quite sure that the description as copied on the title page of the abstract is in error in the fifth call. This is also true of the description in the deed, which must necessarily be corrected before the deed is finally accepted. The same error obtains in section 25 of the abstract and has been corrected by pencil notation.

According to the certificate of the abstracter, the premises under consideration are free and clear of any and all liens and encumbrances. The abstracter has also submitted with the abstract receipted tax bills to and including the taxes due and payable in June, 1924.

It is further suggested that a proper delivery of the deed submitted, after the corrections I have suggested have been made, and same has been properly executed, will be sufficient to convey the title of said premises to the State of Ohio.

Attention is also directed to the necessity of the proper certificate of the Director of Finance, to the effect that there are unencumbered balances legally appropriated, sufficient to cover the purchase price before the purchase can be consummated.

The abstract, deed and receipted tax bills submitted by you are herewith returned.

Respectfully,
C. C. CRABBE,
Attorney-General.

1465.

TITLE TO PUBLIC GROUNDS WITHIN MUNICIPALITY IS VESTED IN FEE IN MUNICIPALITY—WHETHER LANGUAGE USED IN DEDICATION OF A PARK TO VILLAGE OF WAUSEON PROHIBITS USE OF PREMISES FOR MEMORIAL BUILDING DISCUSSED.

COLUMBUS, OHIO, May 14, 1924.

SYLLABUS:

1. *Under Section* 3585, *General Code, the title to public grounds within a municipality is vested in fee in the municipality, for the public use.*

2. *A municipality cannot abandon the right to use a public park duly dedicated to the public, but may permit a use of the same, in a manner not inconsistent with the purpose of the dedication.*

3. *Whether or not the language used in the dedication of a park to the village of Wauseon prohibits the use of such premises for a Memorial Building discussed.*

HON. DAVIS B. JOHNSON, *Prosecuting Attorney, Wauseon, Ohio.*

Dear Sir:—
You have requested my opinion as follows:

"In June, 1865, John H. Sargent and E. L. Barber platted and sold out Lot "D" of the original plat to the village of Wauseon, Ohio. In this plat, a park was dedicated in the following language:

'This park is dedicated to the use and for the benefit of the public with the express understanding that if at any time hereafter, the proper county authorities of Fulton County, Ohio, shall wish to construct a County building on said park, or if the citizens of said County shall wish to erect a monument to the memory of the soldiers who have fallen in the present war, then the proprietors, the said John H. Sargent and E. L. Barber, reserve to themselves and their heirs the exclusive right to say whether said building or monument may be erected thereby or not as to them may seem best.

'If said park is used for or if any buildings shall be erected on the same except as above mentioned the proprietors shall have the right to claim and convert said park to their own proper use and benefit.'

"Last fall the electors of Clinton Township, Wauseon, Ohio, (being the township in which the village of Wauseon is located) voted under Section 3410-1 G. C. to build a Memorial Building.

"A few days ago the Trustees of Clinton Township by resolution decided to place said building in the above mentioned park.

"And the Village Council of Wauseon by ordinance abandoned the same. Deeds have been secured from the heirs of Sargent and Barber to the Township Trustees of Clinton Township.

"Questions:

"1. Who holds the fee in the park?

"2. Can the Township Trustees secure such a title as would safely permit them to build this building in the park?

"3. Would the building of this building in this park be inconsistent with the use for which it was dedicated?

"4. Can the Village Council by ordinance abandon the public rights in this park?

"5. What rights does this dedication give the County Commissioners in this park?

"6. Would the building of this building by the Trustees interfere with the rights of the County? If they have any rights there?

"A monument has been erected to the Civil War Soldiers in this park. This Memorial Building is to contain an Auditorium, State Room for use of Soldiers, Club Rooms, etc."

The same question has been submitted to this department by the Auditor of State, on behalf of the Trustees of Clinton Township, Fulton County. However, the facts seem to all appear in your statement and it is unnecessary to repeat any further statement of facts.

The first question to be considered is the location of the fee of the lands mentioned in your communication.

Section 3580, General Code, relates to the laying-out of a village, sub-division or addition to a municipal corporation and the requiring of a plat to be made, etc.

Section 3581 specifies what said plat shall contain.

Section 3582 relates to the establishment of a corner stone.

Section 3583 provides for the acknowledgment and recording of said plat.

Section 3584 relates to the sub-dividing of lots or grounds in a municipal corporation and requires a plat or map of such sub-division, showing with certainty "all grounds laid out or granted for streets, alleys, ways, commons or other public uses."

Section 3585 provides:

"The map or plat so recorded shall thereupon be a sufficient conveyance to vest in the municipal corporation the fee of the parcel or parcels of land designated or intended for streets, alleys, ways, commons, or other public uses, to be held in the corporate name in trust to and for the uses and purposes in the instrument set forth and expressed, designated, or intended."

A great deal of confusion has arisen in reference to the fee, in view of the provision of Section 3589, which provides:

"Such plat or maps shall be deemed in law a sufficient conveyance to vest fee simple of all such parcels of land as are therein expressed, named, or intended for public use, in the county in which the village is situated, for the uses and purposes therein named, expressed or intended, and for no other use or purpose whatever."

However, an investigation of the history of this legislation, which may properly be considered, it is believed will clear up the confusion that exists in respect to whether such premises are vested in the municipality or in the county.

Section 3585, General Code, was originally a part of Section 2601 of the Revised Statutes, and related to grounds located within an incorporated municipality.

Section 3589, General Code, which was originally Section 2604 of the Revised Statutes, in its original form expressly provided that plats or maps "other than those mentioned in Section 2601" should be sufficient to vest the fee in the county.

From an examination of both sections in their original form, it is clear that it was the intent of the legislature that the title to premises situated within a regular incorporated municipality was to be vested in fee, in the municipality in trust, to and for the uses and purposes in the instrument of dedication, and that all of such public properties situated in an unincorporated town or hamlet should be vested in fee in the county, for such uses and purposes.

In the case of *Louisville-Nashville R. R. Co.* vs. *City of Cincinnati,* 76 Ohio St. 481, it was held:

"In this state, the care, supervision and control of public highways, streets and *grounds* in cities is delegated to the council."

In the case of *Thompson* vs. *Columbus, 22* O. N. P. (n. s.) 33, in considering the status of the title to premises designated "park" upon a plat, the Court said:

"All statutory requirements, it appears, were conformed to in the matter of platting a sub-division or addition to a municipal corporation. And by force of the statute, G. C. 3589, such a plat or map vested fee simple of all such parcels of land as were therein expressed, named, or intended for public use in the county for the uses and purposes therein named, expressed or intended. This addition was subsequently annexed or incorporated or taken into the city, and there is no contention that any title or right acquired by the county did not inure to the city."

From the foregoing it would seem to be conclusively established that the title to the premises under consideration is vested in fee in the municipality, for the uses and purposes for which such premises were dedicated. It would therefore appear that a municipality, being the trustee for the public, can not legally abandon the trust.

"Neither the state nor the municipality within which the property is situated has any proprietary interest in it which either of them can sell or divert to any use inconsistent with the purpose of dedication or grant. The state holds such land merely in its sovereign capacity in trust for the public, for the purposes for which it was dedicated."

Board of Education of Van Wert vs. Inhabitants, etc., 18 Ohio St. 221.

This same principle was sustained in *Railroad Co.* vs. *City,* 76 Ohio St. 481.

In other words, when property has been dedicated to a public use, the state or a sub-division thereof cannot legally abandon such use unless it be in the exercise of the right of eminent domain, which latter use would seem to constitute an exception to the general rule, which, of course, does not appear in the present case. The municipality, being the trustee of such premises, of course may permit any use of such premises as is not inconsistent with the uses provided for in the dedication.

This will bring us to a careful consideration of the language heretofore set forth in your communication, used in the dedication of such premises; and the sole question would now seem to be whether or not the building, upon the premises in question, of a building such as you describe, constitutes a different use than that intended by the language employed in such dedication.

After careful consideration of the language used, and arguments with reference to same by interested parties, it is my conclusion that the effect of the language employed was to grant the premises in question to the municipality for park purposes, and the proprietors reserved to themselves the right to say what, if any, buildings should be erected upon such premises. In other words, if a monument or county building was to be erected, the proprietors reserved the right to say whether a contemplated building should be erected; if it were used for a building other than a monument or county building, the proprietors reserved the right to claim and convert said park to their own proper use.

All this language can mean is that the proprietors retained the right to claim such premises, upon the construction or erection of an unsatisfactory building.

It is probable that that retained right died with the proprietors. However, assuming that it did not so cease but that such rights passed to the heirs at law of the proprietors, this difficulty is completely eliminated by the statement of fact that such heirs at law have conveyed all their rights in this respect to the Trustees of Clinton Township.

It would seem, from the language used, that the proprietors contemplated that buildings probably would be erected, or attempted to be erected, upon the premises; and from this it seems clear that the only right they retained was to indicate the kind and character of buildings that should be erected. If it had been the intention of such parties that no buildings at all were to be erected thereon, it would have been easy to have used such language.

This brings us, then, to the question of whether or not the building which is contemplated by the Trustees is inconsistent with the use of such premises as a park.

It will be observed that it is quite customary for monuments and shelter houses to be erected in parks. A building dedicated to commemorate the sacrifices of the soldiers of all wars certainly partakes of the nature of a monument, which was clearly contemplated by the proprietors; and such a use is public in its nature. If the language of dedication had absolutely prohibited the erection of any monuments or buildings, then, of course, the use contemplated would be illegal. However, the dedication of a park without any specific restrictions except those which are waived by the parties reserving such right, would not, in my judgment, pro-

hibit the use of such land for the erection of a building dedicated to the memory of the soldiers and sailors of all wars.

The action taken by the municipality probably would be construed as a license granted to the Trustees for the purpose of erecting such building. While the municipality will still retain its trusteeship over the premises, the Trustees, in the event a building should be erected upon them, probably would have the control of the building.

A number of cases have been referred to as bearing upon the question of whether or not such a building is consistent with the public use referred to in the dedication. After an examination of the cases upon the subject, I am of the opinion that most, if not all, of such cases indicating that such a use is improper can be differentiated from the case under consideration. The construction I place upon the language of the dedication is that such premises were not dedicated for an *open* park. They were dedicated for a park, with the right reserved in the proprietors to say what kind and character of buildings, if any, should be erected thereon.

In view of this situation, it would be impossible to see how a building of the character mentioned could interfere with the general uses and purposes of the park. It is very probable that such a building would increase the value of such park and its usefulness in general.

Whether it is wisdom on the part of the Trustees to undertake such a construction is, of course, entirely a matter of discretion with them. This department could have no interest or give no advice in reference to such policy.

In the event that there should be those who disagree with the legal conclusions herein made, it will be a simple procedure to raise the question by an injunction proceeding questioning the right of the Trustees to proceed.

In view of the foregoing, it is believed that a specific answer to your inquiries will be unnecessary.

Respectfully,
C. C. CRABBE,
Attorney General.

1466.

APPROVAL, FOLLOWING LEASES: ONE IN PIQUA, OHIO, AND ONE IN DELPHOS, OHIO.

COLUMBUS, OHIO, May 15, 1924.

Department of Highways and Public Works, Division of Public Works, Columbus, Ohio.

Gentlemen:—

I have your letter of May 13, 1924, in which you enclose the following leases, in triplicate, for my approval:

	Valuation
Piqua Motor Sales Company, Land in Piqua, Ohio	$1,600.00
Stephen H. Wahmhoff, Land in Delphos, Ohio	200.00