

814.

MUNICIPALITY—BOND ISSUE FOR PURCHASING BUILDING AND
GROUND FOR SOLDIERS' AND SAILORS' MEMORIAL, LEGAL.

COLUMBUS, OHIO, August 30, 1929.

SYLLABUS:

A municipality may issue bonds for the purpose of acquiring by purchase, a building and ground for a soldiers' and sailors' memorial.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date is as follows:

“Item 13, of Sec. 3939, G. C., as amended, 112 O. L. page 379, reads:

‘To construct monuments or memorial buildings to commemorate the services of soldiers, sailors and marines of the state and nation.’

The pertinent part of Sec. 2293-2, G. C., 112 O. L., page 365, reads:

‘The taxing authority of any subdivision shall have power to issue the bonds of such subdivision for the purpose of acquiring or constructing, any permanent improvement which such subdivision is authorized to acquire or construct.’

Question: May a municipal corporation issue bonds for the purpose of acquiring by purchase, a building and ground for a soldiers' and sailors' memorial?”

There can be no question but that, under the provisions of Section 2293-2 which you quote, a municipality is authorized to issue bonds for the purpose of acquiring any permanent improvement which municipalities are authorized to acquire. Also, a municipality may issue bonds for the purpose of constructing any permanent improvement which such municipality is authorized to construct. If, however, a municipality is authorized to construct a certain permanent improvement and is not authorized to acquire such an improvement, I seriously doubt if Section 2293-2 would extend the authority to issue bonds for the purpose of acquiring such an improvement.

It is true that Item 13 of Section 3939, General Code, which you quote, makes no mention of the authority to acquire a memorial building. It may be further noted that under the twenty-two express powers listed therein, municipalities may acquire certain improvements, construct certain other improvements, and construct or acquire certain other improvements. However, the tabulation of certain express powers as therein set forth is not exclusive. It is provided at the outset that, “Each municipal corporation in addition to other powers conferred by law shall have power;” etc. The question becomes, has a municipality the power to purchase a memorial, or is a municipality authorized so to do? There is probably no doubt but that the purchase of such a memorial as in question, would be an expenditure for a municipal purpose. There is express authority to construct such an improvement.

I am inclined to the view that in the absence of any mention of a memorial building in Section 3939, a municipality would under the Constitution have authority to either acquire or construct such an improvement, and that this authority is not taken away by this section.

A consideration of Item 1 of Section 3939 strengthens these views. This item is as follows:

“(1) To acquire by purchase or condemnation real estate with or without buildings thereon, and easements or interests therein, for any lawful purpose;”

There is here express authority to purchase land with a building thereon for any lawful purpose. In the event a building suitable for such memorial were standing on land purchased, it could not be said that such purchase were for an unlawful purpose. It should also be noted that under Section 3615 G. C., defining general powers of a municipality, it is provided that each municipality may "acquire property by purchase * * * for any municipal purpose authorized by law."

Specifically answering your question I am of the opinion that a municipality may issue bonds for the purpose of acquiring by purchase, a building and ground for a soldiers' and sailors' memorial.

Respectfully,
GILBERT BETTMAN,
Attorney General.

815.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN
LORAIN COUNTY.

COLUMBUS, OHIO, August 31, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

816.

LICENSE—NOT REQUIRED OF PERSONS FISHING IN PRIVATE
ARTIFICIAL LAKE.

SYLLABUS:

Persons engaged in fishing by angling with reel and rod in a privately owned lake, pond or other body of water which has no communication with any other body of water through which fish are accustomed to pass, are not required to procure a license, as provided in Section 1430, General Code.

COLUMBUS, OHIO, September 3, 1929.

HON. FORREST E. ELY, *Prosecuting Attorney, Batavia, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date, which is as follows:

"Section 1430 of the General Code of Ohio relative to fishing license provides in part as follows:

'No person shall take or catch any fish by angling with reel and rod in any of the waters of the State of Ohio, or engage in fishing with reel and rod in such waters without first having procured a license so to do,' etc.

Is this law applicable to fishermen who have paid a fee to the owners of an artificial lake or pond for the privilege of fishing there?

The case in question arises from a gravel pit which now being in disuse