

5821.

APPROVAL—PAPERS IN CONNECTION WITH THE CONVERSION OF THE OROL SAVINGS & LOAN COMPANY OF LAKEWOOD, OHIO, INTO OROL FEDERAL SAVINGS AND LOAN ASSOCIATION OF LAKEWOOD.

COLUMBUS, OHIO, July 8, 1936.

HON. WILLIAM H. KROEGER, *Superintendent of Building and Loan Associations of Ohio, Columbus, Ohio.*

DEAR SIR: I have examined the various papers submitted by you in connection with the conversion of The Orol Savings & Loan Company of Lakewood, Ohio, into Orol Federal Savings and Loan Association of Lakewood, and find the papers submitted and the proceedings of said The Orol Savings & Loan Company, as disclosed thereby, to be regular and in conformity with the provisions of section 9660-2 of the General Code of Ohio.

All papers, including two copies of the charter issued to the said Orol Federal Savings and Loan Association, are returned herewith to be filed by you as a part of the permanent records of your department, except one copy of the charter which the law provides shall be filed by you with the Secretary of State. The law further provides that such filing with the Secretary of State shall be within ten days after the requirements of said section 9660-2 have been complied with by The Orol Savings & Loan Company, and that your approval shall be endorsed on the copy so filed. You will find on the copies of the charter, form of approval for your signature.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

5822.

PARK DISTRICT—COUNTY AUDITOR AND TREASURER NOT EX-OFFICIO MEMBERS OF PARK BOARD—TWO OF THREE MEMBERS MAY LEGALLY TRANSACT BUSINESS OF BOARD.

*SYLLABUS:*

1. *The county auditor and county treasurer of a county in which a park district is created pursuant to sections 2976-1 et seq., General Code*

are not *ex-officio* members of the board of park commissioners of such district.

2. The votes of but two of the three members of a board of park commissioners of a district created pursuant to sections 2976-1 *et seq.*, General Code, are required for the approval of bills, and the transaction of business generally, and to constitute a quorum for holding meetings of such board.

COLUMBUS, OHIO, July 9, 1936.

HON. KARL H. WEANER, JR., *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR: Your recent request for my opinion reads as follows:

"The Defiance County Metropolitan Park Board presented a bill for payment, to the County Auditor, which had been approved by two of the members of the Board who were appointed by the Probate Judge. The County Auditor claims that H. C. Belt a State Examiner has advised him that at least a majority of the members of the Board must approve payments. The County Auditor is therefore of the opinion that since the County Treasurer and County Auditor are *ex-officio* members of the Board the bill must be approved by at least three members.

QUESTION 1. Since the statutes provide that the County Auditor and County Treasurer are *ex-officio* members of the Park Board, is it necessary to constitute a majority that all business transacted and bills allowed be done by at least three members?

QUESTION 2. If your answer to question number one is in the affirmative would the County Auditor, County Treasurer and one of the members appointed by the Probate Judge constitute a quorum to transact business or hold a meeting?"

Sections 2976-1, *et seq.*, General Code, provide for the creation of park districts. Section 2976-1, General Code, specifically provides that "such park districts may include all or a part only of the territory within a county."

I assume that the "Defiance County Metropolitan Park Board", designated by you in your communication, was created pursuant to authorization of the foregoing sections of the General Code.

Section 2976-5, General Code, section 5 of the act as originally enacted in 1917 (107 O. L. 65), provides in part:

"Upon the creation of such district the probate judge shall appoint *three commissioners* \* \* \*."

Section 2976-6, General Code, section 6 of the same act enacted in 1917, states, so far as pertinent:

“*Such commissioners* shall constitute the board of park commissioners of such district \* \* \*.”

It will be noted from the foregoing that the legislature provided for a board, for any park district created pursuant to such sections of the General Code, composed of three persons only, commissioners appointed by the probate judge. There is nothing in said foregoing sections to indicate that the legislature intended that the county auditor and county treasurer of the county in which the park district was established should be *ex officio* members of the board.

The only provision in the statutes composing the park district act which might suggest that the county treasurer and county auditor are *ex officio members* of the board of park commissioners of a district, is section 2976-10b, General Code, which section reads as follows:

“All funds under the control of said board shall be kept in depositories selected in the manner provided for the deposit of county funds, insofar as such proceedings are applicable, and such deposits shall be secured as provided in case of county funds. The treasurer of the county wherein said district is located shall be the custodian of the funds of the board and shall be an *ex-officio* officer of said board. He shall pay the said funds out upon the warrant of the auditor of the county wherein said district is located. The auditor of the county in which said district is located shall be an *ex-officio* officer of the board and no contract of said board involving the expenditure of money, shall become effective until the auditor certifies that there are funds of said board in the county treasury and otherwise unappropriated, sufficient to provide therefor. The auditor shall issue warrants to the treasurer to disburse the funds of the board upon order of the board, evidenced by the certificate of the secretary in such manner as the bureau of uniform accounting may prescribe. The accounts of said board shall also be kept in the manner to be prescribed by said bureau.”

It is to be observed from a close reading of such section that the legislature has not provided that the county auditor and county treasurer, respectively, are *ex officio members* of the board. The language employed is “*ex officio officer* of the board.”

A reference to other sections of the statutes shows that the legislature

has clearly designated that a given officer shall be *ex officio* a *member* of a given board when it has intended to do so. For example, section 154-50, General Code, provides as follows:

“The director of education shall be *ex-officio* a *member* of the board of trustees of Kent state normal school and of the board of trustees of Bowling Green state normal school, and of the combined normal and industrial department at Wilberforce University, with power to speak, but not to vote in such boards of trustees. The membership in each of such boards herein provided for shall be in addition to the membership thereof as otherwise provided by law.” (Italics the writer’s.)

On the other hand, in several instances the legislature has stated that a designated officer shall be *ex officio* officer (of some named title) of a board or commission, which appears to indicate that when it intended a given officer to be *ex-officio* a board member, it so indicated by the use of the word “member” following the phrase “*ex-officio*.” An instance illustrating this is the comparison of language of section 154-38, General Code, namely, “The public utilities commission of Ohio shall be a part of the department of commerce for administrative purposes, in the following respects: The director of commerce shall be *ex-officio* *the secretary* of said commission” with the language of section 154-50, General Code, quoted *supra*.

In the case of *Seiler v. O’Maley*, 227 S. W., 141; 190 Ky., 190, it was stated, as shown by the sixth paragraph of the syllabus:

“6. One who is made by proper authority an *ex-officio member* of a created body or board has the same right and duties as members of the board appointed in the manner provided by the act creating the board.” (Italics mine.)

From the opinion of this case, it appears that the court was discussing a Kentucky statute which stated that city council is authorized “to appoint a board of health for the city to consist of six persons not members of the council, at least three of whom shall be competent physicians, and the mayor of the city shall be *ex-officio* a *member* of such board of health.” The court stated at page 143:

“When one is made by the proper authority an *ex-officio* member of a created body or board, it is to be presumed that those responsible for its creation had some purpose in view in designating the *ex-officio* member. Manifestly that purpose was

to constitute that individual a member of the board or body because of his holding some office of trust, and that whoever held that office should perform, in addition to his official duties, also those incumbent upon the board of which he was made an ex-officio *member*."

It seems clear from the foregoing case that when an officer is made an ex-officio *member* of a designated board, he is expected to vote on any matter to be transacted by such board. Sometimes, as in the case of section 154-50, General Code, the statute states, however, that such ex-officio member shall not be entitled to vote on such board. Of course, it is a general rule of law that a majority vote of the quorum of a public board is required only in transacting business of such public board, unless the statutes on a particular matter require a definite percentage or an unanimous vote of the membership of the board. See Opinions of the Attorney General for 1934, Vol. I, Page 164, 166; *The State ex rel. Cline v. Wilkesville Township*, 20 O. S. 288, 293; Opinions of the Attorney General for 1930, Vol. I, pages 266, 268.

Thus, if the legislature by the language employed in section 2976-10b, General Code, has, in fact and law, stipulated that the county auditor and county treasurer are ex-officio *members* of the board, it seems clear that it would require a vote of three of the five members to transact business of the board, including the allowance of bills, if all are present at a meeting and three members would be necessary to constitute a quorum for holding meetings, whereupon a majority of such quorum (or two members) could legally transact business.

However, it appears to me from the comparison of the wording of the park district statutes with other statutes of the General Code, as above set forth, that the legislature did not intend by the language of section 2976-10b, General Code, to make the county auditor and county treasurer ex-officio *members* of the board.

It is to be noted that your two specific questions were framed on the assumption that the language of section 2976-10b, General Code, made the county auditor and county treasurer ex-officio *members* of the board. In view of my conclusion, it is therefore impossible to give a categorical answer to your two questions as framed.

Since I conclude that sections 2976-5 and 2976-6, General Code, make provision for a board of park commissioners of a district of three members only, who are appointed by the probate judge of the county, and nowhere in such park district act is it required that action of such board shall be by unanimous vote, I am of the opinion that under the general rule of law the votes of only two of the three members are re-

quired for approval of bills of the board, and the transaction of business generally, and a quorum for holding meetings.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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5823.

APPROVAL—BONDS OF CUYAHOGA COUNTY, OHIO, \$2,000.

COLUMBUS, OHIO, July 9, 1936.

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

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5824.

APPROVAL—BONDS OF MAPLE HEIGHTS CITY SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO, \$7,500.00.

COLUMBUS, OHIO, July 9, 1936.

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

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5825.

APPROVAL—BONDS OF VILLAGE OF BAY, CUYAHOGA COUNTY, OHIO, \$31,500.00.

COLUMBUS, OHIO, July 9, 1936.

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

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5826.

APPROVAL—BONDS OF VILLAGE OF BAY, CUYAHOGA COUNTY, OHIO, \$31,500.00.

COLUMBUS, OHIO, July 9, 1936.

*Industrial Commission of Ohio, Columbus, Ohio.*