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1. MEMORIAL BUILDING, COUNTY—REPEAL OF SECTION 3068 G. C. BY AMENDED SENATE BILL 224, 96 GENERAL ASSEMBLY ABOLISHED BOARD OF TRUSTEES OF COUNTY MEMORIAL BUILDING—COURT OF COMMON PLEAS NO LONGER HAS POWER TO APPOINT MEMBERS OF BOARD.
2. CUSTODY, MANAGEMENT AND CONTROL OF COUNTY MEMORIAL BUILDING VESTED IN BOARD OF COUNTY COMMISSIONERS.

SYLLABUS:

1. The repeal of former Section 3068 General Code, by Amended Substitute Senate Bill No. 224, enacted by the 96th general assembly, abolished the board of trustees of a county memorial building provided by that section, and the court of common pleas no longer has power to appoint members of such board.

2. Former Section 3068 of the General Code, having been repealed by Amended Substitute Senate Bill No. 224, passed by the 96th general assembly, and no new provision having been made for the appointment of any board to manage and control a county memorial building which had been erected and transferred to the county pursuant to said Section 3068 and related sections, also repealed, the custody, management and control of such memorial building are vested in the board of county commissioners of such county.

Columbus, Ohio, January 22, 1946

Hon. W. Thurman Todd, Prosecuting Attorney  
Mount Vernon, Ohio

Dear Sir:

I have before me your communication requesting my opinion and reading as follows:

“I would like to have your opinion as to the legal status of memorial building trustees operating as permanent trustees under

General Code, Section 3068, as that section was in effect from August 16, 1921, until the effective date of the new section on October 5, 1945. I would also like to know if there is any authority for appointing new trustees in the event of vacancies in such a board of trustees.

These questions arise by reason of the recent enactment of Sections 3059 through Section 3069-2 and the apparent repeal of old Section 3068. An examination of the statutes referred to will show that Section 3059 through Section 3064-2 provides for the submitting of a bond issue and tax outside the ten mill limitations for the election of a memorial and creates a board of trustees in Section 3061 for 'such memorials'. Section 3065 sets out the purpose of 'such memorials'. Section 3066 provides the powers of 'such trustees'. Up to this point the statute seems to provide for the creation or erection of new memorial buildings, as the old sections provided for such memorials after World War I. The old Section 3068 provided for the appointment and continuation of trustees of memorial buildings created prior to the enactment of the new law. The new Section 3068 provides certain duties of the permanent board of trustees for memorials, but eliminates the authority under which the old boards were created. I do not have Volume 121, Laws of Ohio, 224, Section 2, but according to the footnotes in the supplement to Page's Ohio General Code this repeals the old Section 3068. If this is true, what authority is there for the continuance of three trustees appointed under the old law and what authority is there for the Common Pleas Court to appoint successors on such a board?

We have in Knox County a memorial building created after World War I, and a board of trustees operating under Section 3068, as it existed prior to October, 1945. This problem, therefore, is very important to our county at this time."

Prior to the enactment of Amended Substitute Senate Bill No. 224 by the 96th general assembly, which undertook to revise and codify the sections of the General Code relating to memorials, there were provisions in the law providing for the construction by a county of a memorial building commemorating the services of soldiers, sailors, etc., of the county. These provisions were found in Sections 3059 to 3069-3, inclusive, of the General Code. The original Section 3062 which authorized a judge of the common pleas court to appoint trustees charged with the responsibility of erecting such memorial building appears to have been repealed by the act of April 21, 1947, which enacted what is known as the uniform bond law, apparently leaving the law without any provision for the appointment of any such board of erection thereafter. However, the statutes

which were not then repealed provided for the erection of such county memorial building, and Section 3068 as it then existed, provided as follows :

“Upon the completion, equipping and furnishing of the memorial building, the trustees shall transfer the same to the county, and the title of such site and building shall thereupon vest in the county and the tenure of office of said trustees shall terminate and end and said board of trustees shall cease to exist as an official board, and thereupon the court of common pleas shall appoint a board of permanent trustees or if the said memorial building is to be used as a public library, may designate any board of public library trustees within the county as a board of permanent trustees ex-officio who shall have sole control, management and supervision of such memorial building and grounds under such rules and regulations as they may from time to time adopt, subject to the approval of the court. Such board of permanent trustees unless it consists of a board of library trustees shall be composed of three members who shall be appointed by the court of common pleas, one for two years, one for four years and one for six years, and at the expiration of their terms their successors shall be appointed in the same manner for terms of six years each. Such memorial building shall be for the use of the general public, military organizations to be given the preference.”

The recent act of the general assembly to which I have referred, to wit, Amended Substitute Senate Bill No. 224, is entitled as follows :

“To revise and codify sections of the General Code, relating to the purchasing of a site and erecting, equipping and furnishing, or establishing, memorials by political subdivisions, by enacting new sections 3059, 3059-1, 3060, 3060-1, 3060-2, 3061, 3062, 3063, 3064, 3064-1, 3064-2, 3065, 3066, 3068, 3068-1, 3069-1, 3069-2, of the General Code of Ohio, to commemorate the services of all members and veterans of the armed forces of the United States, and pioneers of the county, and repealing present sections 3059, 3063-1, 3063-2, 3063-3, 3064, 3065, 3066, 3067-1, 3068, 3068-1, 3068-2, 3068-3, 3069-1, 3069-2, 3069-3 of the General Code.”

While the language of the title above quoted, does not specifically include the care and custody of memorial buildings theretofore erected, it would seem to be broad enough to include that purpose, particularly in view of the fact that all of the existing sections of the General Code relating to such county memorial buildings were expressly repealed. However, an examination of the provisions of this new act fails to disclose any provision whatsoever whereby the custody and management of pre-

viously erected memorial buildings were expressly transferred to or imposed upon the trustees provided for by the act.

Referring to the new law, we find that Section 3059 gives authority to the taxing authority of any township, municipality or county on its own initiative or upon presentation of a petition signed by not less than 2% of the electors of such political subdivision to submit to the electors the levy of a tax in excess of the ten mill limitation for purchasing a site and erecting a memorial building and for the operation and maintenance of it, such tax not to exceed one mill on each dollar of valuation.

Section 3059-1 authorizes the issuance of bonds for such purpose and the submission of that proposition to the electors. The sections following, prescribe the form of ballot and the conduct of the election. Section 3061 reads as follows:

“Within five days after certification to the taxing authority of the result of an election held under authority of section 3059-1 or of sections 3060, 3060-1, and 3060-2, provided sixty-five per cent of the votes cast on the proposal submitted be in favor thereof, or within five days after adoption by the taxing authority of an ordinance or resolution to authorize the issuance of any such bonds without a vote of the electors, the taxing authority of the township or county or the mayor of the municipality shall, appoint a board of trustees consisting of eleven members, which board shall at all times be so constituted that at least seven of its members shall be honorably discharged veterans of the armed forces of the United States having served in one or more wars in which the United States was a belligerent, and not more than six of said board shall be from the same political party. Five of such trustees shall be appointed for three years and six for five years, and thereafter on the expiration of original term, appointments shall be made for terms of five years. Appointments to fill vacancies shall be for the unexpired term.”

It will be noted that the appointing authority for this board of trustees is the taxing authority of the township or county or the mayor of the municipality.

Sections 3064-2, 3065, 3066 and 3068 General Code, outline the powers and duties of the board of trustees, which include the purchase of a site and the construction and equipment of such memorial building, together with the power to make rules and regulations for the administration and maintenance thereof. These sections repeatedly use the words “such mem-

orial” and “said memorial”, leaving the conclusion that reference is intended only to the building or other memorial which the board is authorized to build.

Section 3068, in continuing the duties of the board of trustees, refers to it as “the permanent board of trustees for memorials.” But only the one board is provided for by the act. It will thus be observed that the plan contemplated by the old law of construction of the memorial by one board of trustees, its transfer to the county when completed, and the appointment of a new permanent board of management, has been changed to the appointment and continuation of a single board for construction and permanent control.

Section 3069-1 of the new act provides as follows :

“The provisions of this act shall apply exclusively to memorials erected, equipped, furnished and maintained or established by any political subdivision of the state and all sections of the General Code of Ohio, inconsistent with or prohibiting the exercise of the authority conferred by this act shall be deemed for the purpose of this act to be inoperative.”

This might appear to indicate an intention on the part of the general assembly to commit the custody of all memorials previously erected by a county as well as those thereafter to be erected by any political subdivisions of the state to the board of trustees thus provided. However, we encounter a difficulty which seems to me to be insurmountable when we undertake to apply the act to a county memorial building such as is referred to in your communication, which had been erected under the old law.

Referring again to Section 3061 which I have quoted it will be observed that the appointment of the board of trustees is to be made “within five days *after certification to the taxing authority of the result of an election held under authority of Section 3059-1 \* \* \** or within *five days after adoption by the taxing authority of an ordinance or resolution* to authorize the issuance of any such bonds without a vote” etc. This statute makes no provision for an appointment of such board of trustees under any other circumstances than those just stated. There is no provision whatever for the appointment of a board to manage or maintain a memorial building already constructed. In fact the new act has not a single word directly referring to any memorial building theretofore erected. I must conclude that the legislative authority of the township or county or the mayor of a

city would search in vain for any express authority to appoint such trustees to manage and operate an existing memorial building. Accordingly, we are thrown back upon the law as it stood at the time the building which is the subject of your inquiry, was erected. At that time, as heretofore indicated, Section 3068 was in force, and provided that upon the completion of such building the trustees charged with its erection "should transfer the same to the county" and it was further provided that "the title of such site and building shall thereupon vest in the county \* \* \* and thereupon the court of common pleas shall appoint a board of permanent trustees." That board by the terms of that section was to consist of three members, one for two years, one for four years, and one for six years, and thereafter for terms of six years.

The repeal of former Section 3068 of course destroys the power of a board appointed pursuant thereto and the power of the common pleas court to appoint any further trustees thereunder. The repeal of said section, however, did not divest the county of its title to a building which had been constructed and transferred to the county as therein provided.

There being then no longer a board of trustees charged with the duty and authority to operate such building belonging to the county, it appears to me that that authority and responsibility is of necessity cast upon the county commissioners.

As said by Sullivan, J., in *Detrick v. Barr*, 22 O. L. R. 289:

"That the board of county commissioners, under the law, has control and custody of the court house itself as well as other public buildings of the county, there can be no question, because by virtue of their office, the care and maintenance of public property within its jurisdiction is lodged in that body."

To like effect see *State v. Allen*, 86 O. S. 244, 250.

It might be added that prior to the amendment of Section 3068 in 1921 (109 O. L. 284), the supervision and control of such county memorial building erected pursuant to the provisions of Section 3059 et seq. General Code, were vested directly in the board of county commissioners and the Supreme Court in the case of *Luginbuhl v. State ex rel.*, 100 O. S. 223, held that the commissioners had a wide discretion in using or permitting the use of a memorial building or any part thereof upon such terms as they deemed proper.

Accordingly, it is my opinion that the board of trustees which was appointed by the court for the Knox County Memorial Building referred to in your letter is by reason of the repeal of former Section 3068, abolished, and there being no provision in law authorizing any other board of trustees or commission to be appointed to have supervision of such building, the supervision and control of the same is now vested in the board of county commissioners.

Respectfully,

HUGH S. JENKINS

Attorney General.