

person desire service during the first five years following the date the extension is put into service, he is required to pay an amount pro rata to that paid by the original subscribers. This payment by new subscribers is not made to the company but is made to and refunded to the original subscribers by the committee representing them.

1818.

MEMORIAL BUILDING—AUTHORITY OF BOARD OF PERMANENT TRUSTEES—EFFECT OF RULES AND REGULATIONS—SECTION 3068, GENERAL CODE, CONSTRUED.

SYLLABUS:

1. *Section 3068, General Code, does not require a board of permanent trustees of a memorial building to adopt rules and regulations as a condition precedent before such board may assume sole control, management and supervision of such memorial building and grounds.*
2. *A board of permanent trustees, appointed by virtue of Section 3068, General Code, has authority to lease or rent a memorial building under such terms and conditions as it deems proper for any lawful, private purpose, when the same does not interfere with the public use of such building.*
3. *Upon the appointment by the Court of Common Pleas of a board of permanent trustees of a memorial building, as provided by Section 3068, General Code, such board has the sole control, management and supervision of such memorial buildings and grounds.*
4. *Such moneys as a board of permanent trustees of a memorial building receives, under the provisions of Section 3068-1, General Code, shall be deposited by it in the county treasury to the credit of "the memorial building maintenance fund."*

COLUMBUS, OHIO, March 7, 1928.

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

GENTLEMEN:—This will acknowledge your letter dated February 2, 1928, which reads:

"We respectfully request your written opinion on the following questions submitted to us by one of our state examiners:

Under Section 3059, G. C., as it was originally enacted in 95 Ohio Laws, page 41, the Governor appointed a board to erect a memorial building; this board after being duly organized and the submission of the question to a vote, proceeded and erected said building; after the completion of the same, the law was amended, which gave the Common Pleas Court authority to appoint a permanent board of trustees under the provisions of Section 3068, General Code. This board assumed control of said building, but the court did not approve any rules or regulations concerning the same; and in fact no rules or regulations were made by the board.

Question 1. Has the board authority to manage the same, unless they adopted rules and regulations approved by the court?

Question 2. Has the board authority or power to enter into an arrangement with persons conducting a moving picture show, to allow said person the free use of the building, if said person contributes one-half of the janitor's salary, one-half of the heat and light, where more than one-half of the same is required by said theater, in other words has such board authority to make such a contract, that the public does not receive compensation for the use of said building?

Question 3. Do the county commissioners have any authority under Section 3069, G. C., over said building?

Question 4. Do the trustees have 'to place the fund, known as 'the memorial building and maintenance fund' as designated in Section 3068-1, G. C., in the county treasury, or may they deposit the same in their own depository?'

You further inform me that the county memorial building in question is the Knox County Memorial Building located at Mt. Vernon, Ohio. I am also informed that on August 25, 1919, the county commissioners of Knox County, Ohio, passed the following resolution:

"BE IT RESOLVED, that in the opinion of the commissioners it is desirable to erect, furnish and maintain in the county of Knox, a memorial building to commemorate the services of the soldiers, sailors, marines and pioneers, of said county, and to expend therefor not to exceed two hundred and fifty thousand dollars (\$250,000.00), and be it further resolved, that the commissioners certify to the Governor of the state their action for the purpose of securing the appointment of a board of trustees as provided by Section 3059 of the General Code."

Pursuant to the action of the board of county commissioners the Governor appointed a board of trustees and at the regular election held in November, 1919, the question of authorizing the issue of bonds was submitted to the voters of Knox County and a majority of the votes cast were in favor of the issue of such bonds and the construction of such memorial building.

On March 11, 1925 (111 v. 76), the Legislature enacted Section 3068-2, General Code, which in so far as pertinent to your inquiry, provides:

"In any and all cases where the erection and maintenance of a county memorial building under the provisions of the law relating thereto as existing prior to the passage of the act of April 26, 1921 (Vol. 109, Ohio Laws, pages 284 to 287), was authorized by a popular vote prior to said date, and in accordance with provisions of the law relating thereto then existing, and where since said date such county memorial building has been erected, or is in course of erection, but has not yet been furnished, equipped and decorated under said prior law, the same board of trustees that was appointed by the Governor to construct such memorial building shall proceed to provide the equipment, decoration and furnishing thereof. * * * Upon the completion of the additional duties hereby given to it, said board of trustees shall proceed to transfer said buildings to the county in accordance with the provisions of Section 3068 in said act of April 26, 1921, and then and thereafter said building or buildings, shall come within the provisions of said act, including the provisions of Section 3068-1, which shall thereafter apply to it, or them."

On March 12, 1902 (85 v. 41) the Legislature passed an act entitled:

"An Act—To provide for the construction and maintenance of a county memorial building to commemorate the services of the soldiers, sailors, marines and pioneers of the several counties of the state."

This act now appears as Section 3059, et seq., of the General Code. Section 10 thereof, which became Section 3068, General Code, read as follows:

"Upon the completion of the memorial building authorized, the board of trustees shall turn over the same to the county commissioners who shall provide for the maintenance of said building as a memorial for the purpose aforesaid in the same manner as they are authorized to maintain other property of the county, and shall levy an annual tax, in addition to all other levies authorized by law, sufficient to care for said building and to carry out the purposes for which the same is constructed."

Section 11 thereof, now Section 3069, General Code, reads the same as at the time of its original enactment, viz.:

"The commissioners of any county may permit the occupancy by any society or association of soldiers, sailors, marines and pioneers, or any historical association, of any county building, or part or parts thereof not necessary for other county purposes."

On March 26, 1906 (98 v. 126) the Legislature amended Section 10 (now Section 3068, General Code), supra, to read, in so far as pertinent to your inquiry, as follows:

"Upon the completion of the memorial building authorized * * * the board of trustees shall turn over the same to the county commissioners, who shall provide for the maintenance of said building as a memorial for the purpose aforesaid in the same manner as they are authorized to maintain other property of the county. * * * The board of commissioners may permit the occupancy and use of the memorial building, or any part thereof, upon such terms and conditions as they may deem proper."

By an act passed March 9, 1909 (100 v. 19), this section was again amended but this amendment does not affect your inquiry.

Again on April 26, 1910 (101 v. 151) the Legislature amended this section to read as follows:

"Upon completion of the memorial building the trustees shall turn it over to the county commissioners, who shall provide for the maintenance, equipment, decoration and furnishing thereof, not to exceed the sum of twenty-five thousand dollars in the same manner as they are authorized to care for and maintain other property of the county. The board of commissioners of the county, in addition to all other levies authorized by law, shall levy an annual tax in the year 1910 and annually thereafter to care for such building, and to make such improvements thereof as are necessary to carry out the purposes for which it was constructed. They may permit the occupancy and use of the memorial building, or any part thereof, upon such terms as they deem proper."

On April 26, 1921 (109 v. 284), this section was amended to read as it now appears in the General Code, to-wit:

"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 memorial building shall be for the use of the general public, military organizations to be given the preference."

A board of permanent trustees appointed by the Court of Common Pleas, as provided by Section 3068, supra, has sole control, management and supervision of such memorial building and grounds under such rules and regulations as it may from time to time adopt, subject to the approval of the court. You will note that this section does not impose a mandatory duty upon such board to adopt any rules with regard to the control, management and supervision of such memorial building and grounds nor is the promulgation and adoption of rules and regulations a condition precedent to such board assuming its duties in this regard. This section authorizes such board to adopt rules and regulations from time to time as it may deem necessary in the exercise of its discretion and good judgment, such rules and regulations being subject, however, to the approval of the Court of Common Pleas.

In view of the foregoing and answering your first question specifically, it is my opinion that Section 3068, General Code, does not require a board of permanent trustees of a memorial building to adopt rules and regulations as a condition precedent before such board may assume sole control, management and supervision of such memorial building and grounds.

In considering your second inquiry, your attention is directed to Opinion No. 119, dated March 1, 1927, addressed to the Prosecuting Attorney of Knox County, the syllabus of which reads:

"1. Neither the county commissioners nor the board of trustees for a county memorial building appointed under Section 3068, General Code, may legally engage in the business of conducting a motion picture or show business.

2. When a county memorial building has been constructed and completed as provided in Section 3059, et seq., of the General Code, and title thereto has vested in the county, and a board of permanent trustees therefor has been appointed by the common pleas court as provided in Section 3068, General Code, any one operating a show or attraction, in and upon said premises, wherein paid admissions are charged and collected, is chargeable with the duty of collecting and accounting for the United States tax levied upon paid admissions to the auditorium of such building as provided in Section 502, United States Revenue Act of 1926."

The following language appears therein:

"I know of no statute authorizing or permitting a board of county commissioners to engage in the motion picture or show business, nor do I find any authorization in any of the sections of the code contained in Chapter

2, Title X, Division IV, entitled 'Memorial Buildings' (Sections 3059 and 3069-3, inclusive), or any other section of the General Code, for the board of trustees provided for in Section 3068, supra, to engage in such business. And since such authority has not been conferred by the Legislature, it is my opinion that the board of trustees in question cannot legally engage in the motion picture or show business.

Nothing herein, however, should be construed as holding that a proper lease may not be entered into for the use of such building for any lawful purpose."

Your attention is also directed to the case of *State of Ohio et al., vs. Mills, et al.*, 20 O. N. P. (N. S.) 427; 20 O. D. 236. This case was decided February 2, 1918, which, you will note, was before the last amendment of Section 3068 (April 26, 1921, 109 v. 284). In other words, at the time this case was decided, Section 3058 provided: "They (the board of county commissioners) may permit the occupancy and use of the memorial building, or any part thereof, upon such terms as they deem proper." On page 238, Judge Geiger used the following language:

"Manifestly, the occupancy permitted by the statute is any occupancy to which the structure of the building is suitable. To hold that it may be occupied only for such purpose as would commemorate the services of various worthy persons, is to place a limitation upon the use of the building which was not controlling when the same was constructed.

Had it been the legislative intent that the building could be used only for certain memorial services there would have been some limitation upon the trustees who constructed it, but the Legislature having left the trustees free to select any style of building that to them seemed best, it would necessarily result in a great loss to confine its occupancy to purposes more restricted than those which governed its construction.

Memorial buildings constructed in the state of Ohio under favor of this act have as one of their principal features large auditoriums and it has been the custom of the county commissioners to permit the use of these for various and widely different classes of entertainment, some of which have been public in their nature, and others under private management.

Aside from these considerations, there are many cases which hold that if a building is constructed for certain public purposes, the public authorities in control of such building may derive a revenue by renting portions thereof not required for public service, or may even permit the use of same without compensation.

* * * * *

The court is of the opinion that there is clear statutory power vested in the county commissioners to permit the occupancy of the auditorium of the memorial building for any lawful, private purpose, when the same does not interfere with the public use of such building, and to lease the same to those desiring to use it for the purpose of giving entertainments."

See also the case of *Luginbuhl et al., County Commissioners vs. The State, ex rel, Blank*, 100 O. S. 223, decided July 8, 1919. In an opinion "By the Court" the following language appears on page 224:

"By the provisions of Section 3068, General Code, the supervision and control of such county memorial building, erected pursuant to the provisions of Section 3059, General Code, is vested in the board of county commissioners.

It is there provided that 'they may permit the occupancy and use of the memorial building, or any part thereof, upon such terms as they deem proper.' Authority to control the occupancy and use of such building or any part thereof is thereby lodged in the county commissioners, and a discretion is thereby vested in such board. The record in this case discloses no abuse of that discretion, nor does it disclose that the relator has been deprived of any right guaranteed to a citizen by the constitution of the state or of the United States, and therefore no case is made justifying the issuance of the extraordinary writ of mandamus. The courts will not usurp functions which by law are vested in administrative bodies."

A board of permanent trustees, appointed as authorized by Section 3068, supra, has sole control, management and supervision of such memorial building and grounds under such rules and regulations as it may from time to time adopt, subject to the approval of the court. Section 3068, supra, provides "Such memorial building shall be for the use of the general public, military organizations to be given the preference." In the absence of any rule or regulation to the contrary, adopted by a board of permanent trustees, I know of no reason why the language of Judge Geiger in the case of *State vs. Mills*, supra, would not be applicable and determinative of the question that you present.

In view of the foregoing and answering your second question it is my opinion that a board of permanent trustees, appointed by virtue of Section 3068, General Code, has authority to lease or rent a memorial building under such terms and conditions as it deems proper for any lawful, private purpose, when the same does not interfere with the public use of such building.

Your attention is invited to the fact that the provisions of Section 3068, supra, relating to the appointment of a board of permanent trustees are applicable only to such county memorial buildings as may be completed on and after the effective date of the act of April 26, 1921 (109 v. 284), at which time Section 3068, supra, was enacted to read as it now appears in the General Code. In other words, as regards county memorial buildings completed before such effective date, the control and management of such buildings is vested in the board of county commissioners.

By its act of April 26, 1921 (109 v. 284), when Section 3068, supra, was amended to read as it now appears in the General Code, the Legislature provided for the appointment of a board of permanent trustees in whom, when appointed as therein provided, is vested the sole control, management and supervision of such memorial buildings and grounds as should be erected after the effective date of said act.

You will note that Section 3069, supra, applies to county buildings generally, whereas Section 3068, supra, relates exclusively to county memorial buildings. By its amendment of Section 3068, supra, the Legislature has evidenced its clear intent that in so far as the control, management and supervision of county memorial buildings is concerned, such authority should be vested in a board of permanent trustees appointed as therein provided.

Answering your third question, it is my opinion that upon the appointment by the Court of Common Pleas of a board of permanent trustees of a memorial building, as provided by Section 3068, General Code, such board has the sole control, management and supervision of such memorial buildings and grounds.

Your fourth question involves consideration of Section 3068-1, General Code, which provides:

"The board of permanent trustees may receive donations and bequests to aid in the maintenance of such memorial building and such moneys, together with moneys received from all other sources, shall be placed in a fund

to be known as 'the memorial building maintenance fund' and shall be paid out on vouchers signed by two members of such board. The county commissioners, shall, upon request of the board, levy annually a tax sufficient to maintain such memorial building in a proper condition.

By the provisions of Section 3068, General Code, 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. Authority is vested in the Court of Common Pleas to appoint a board of permanent trustees who shall have sole control, management and supervision of such memorial building and grounds. By the terms of Section 3068-1, supra, such board is authorized to receive donations and bequests to aid in the maintenance of such memorial building. There is no doubt in my mind that such donations and bequests actually belong to the county both in a proprietary and beneficial sense. The service which such board performs is performed for and on behalf of the county. I have no hesitancy in reaching the conclusion that such moneys as a board of permanent trustees of a memorial building receives, under the provisions of Section 3068-1, General Code, shall be deposited by it in the county treasury to the credit of "the memorial building maintenance fund."

Respectfully,
EDWARD C. TURNER,
Attorney General.

1819.

BOARD OF EDUCATION—NO AUTHORITY TO PAY MOVING EXPENSES OF SUPERINTENDENT—TRAVELING EXPENSES OF MEMBERS AND SUPERINTENDENT WHILE LOOKING FOR TEACHERS—PUBLICATION OF SCHOOL PAPER.

SYLLABUS:

1. *A board of education is unauthorized to pay the expenses of a person employed as superintendent of the schools in transporting his household goods from his former place of residence to the school district, except as the incurring of such expenses may be considered in fixing the salary of such employe.*

2. *A village board of education is unauthorized to pay the traveling expenses of one of its members or its superintendent or other employes while in search of teachers, except when, because of the lack of applicants, it becomes necessary to incur such expenses in order to employ teachers and maintain the schools.*

3. *A board of education has no authority to pay the expenses of an applicant for the position of teacher in the schools, to visit the board for an interview. Where, however, because of a lack of suitable applicants for teaching positions in the schools, it becomes necessary for a board of education to search for teachers in order to maintain the schools, the board may in its discretion send for a prospective teacher and pay his necessary expenses in coming for a personal interview with the members of the board or the superintendent, with a view to determining his qualifications and the terms under which he will accept the position if found to be satisfactory.*