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1. RECREATION COMMISSION, COLUMBUS—NO MONEY MAY BE DRAWN FROM CITY TREASURY OR ANY OBLIGATION BE INCURRED BY RECREATION COMMISSION EXCEPT PURSUANT TO APPROPRIATIONS MADE BY CITY COUNCIL—CHARTER, SECTION 30.
2. DONATIONS OR BEQUESTS—TO MUNICIPALITY, COUNCIL OR ANY BOARD OR OFFICERS OF MUNICIPALITY MAY BE HELD IN TRUST—USED AND APPLIED ACCORDING TO TERMS AND CONDITIONS IMPOSED BY DONOR—SECTION 18 G. C.
3. CITY TREASURER—CUSTODIAN OF MONEY OR PROPERTY IN TRUST OR OTHERWISE FOR RECREATIONAL PURPOSES—DONOR'S INTENTIONS—DISBURSEMENT—ORDER OF COMMISSION—SECTION 112-2 CHARTER.
4. RECREATION COMMISSION—WITHOUT AUTHORITY TO FIX SALARIES OR ALLOW COMPENSATION OF ANY EMPLOYEES OF RECREATION DEPARTMENT—CITY COUNCIL HAS AUTHORITY—SECTION 112-2, CHARTER.

SYLLABUS:

1. Under the provisions of Section 30 of the charter of the City of Columbus, no money may be drawn from the treasury of the city or any obligation for expenditure of the city's money be incurred by the recreation commission of said city except pursuant to appropriations made by the city council.
2. Donations or bequests to a municipality or to the council or any board or officers of such municipality, may under the provisions of Section 18 of the General Code, be held in trust by such council, board or officers and used and applied according to the terms and conditions imposed by the donor.
3. Under the terms of Section 112-2 of the charter of the City of Columbus the recreation commission of said city is authorized to receive money or property in trust or otherwise, for recreational purposes, and may use and apply the same in accordance with the terms and conditions stipulated by the donor. Such money shall be in the custody of the city treasurer, as treasurer of such commission and may be disbursed on order of the commission.
4. Under the provisions of Section 112-2 of the charter of the City of Columbus, the recreation commission is without authority to fix salaries or allow compensation of any employees of the recreation department, such authority being reserved to the city council.

Columbus, Ohio, June 8, 1948

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen :

I have before me your request for my opinion reading as follows :

“The recent examination of the records of the Recreation Commission of the City of Columbus, Ohio, disclosed the fact that the compensation of many employes in the recreation department has been fixed by the Recreation Commission. Also, that certain funds under control of the commission have been expended without appropriation by council.

The following brief history is given in connection with the matters hereinafter presented for your consideration :

‘By enacting Ordinance No. 33,157, under date of March 6, 1922, the city council of Columbus specifically provided for the creation and operation of certain recreation division trust funds, and further provided that said trust funds should not be subject to appropriation by council. We note that for many years the recreation commission has expended money and fixed salaries of certain employes, payable from said trust funds, including extra compensation to the recreation director, claiming power to so act under the above referred to Ordinance.

‘There might be some basis of fact, in our opinion, for such contention, were it not for original Section 30, also recently adopted Section 112-2 of the city Charter, said sections reading in part as follows :

‘Section 30. No money shall be drawn from the treasury of the city, nor shall any obligation for the expenditure of money be incurred, except pursuant to appropriations made by council . . .

‘Section 112-2. The commission shall have the power and it shall be its duty to equip, operate, superintend, and maintain all the existing recreational facilities of the city, and from time to time, to acquire, improve and construct additional facilities; to appoint or employ a superintendent of recreation, which position is hereby created, and such other assistants as may be provided by council, at salaries or such compensation as may be fixed by council . . .’

In view of the above stated facts, the following questions are respectfully submitted :

“QUESTION: Taking into consideration Section 30 of the city Charter, can the recreation commission of Columbus, Ohio, expend funds, either trust or otherwise, without specific appropriation of the city council?”

QUESTION: In view of the restrictions as set forth in Section 112-2 of the city Charter, does the recreation commission of Columbus, Ohio, have power to fix salaries, whether payable from trust funds or otherwise, of employes within the recreation department?”

It seems apparent that funds which may be used for the operation of the recreation department of the city may come from three sources: (1) from direct appropriation from the general funds of the city, (2) from miscellaneous gate receipts, and (3) donations by gift or bequest, with or without conditions or restrictions prescribed by the donor.

Gate receipts from games would appear to me to be money belonging to the city and properly paid into the treasury. Section 88 of the Columbus charter provides that: “The treasurer shall be the custodian of all money belonging to the city and, subject to the provisions of any specific trust, of all money held in trust by it.” The fact that these receipts are earned by the activities of the recreation commission does not change their character because that board is merely one of the many departments or agencies of the city whose activities may produce income. Such funds could not by any process of reasoning be considered as trust funds in the hands of the commission which produced them. It would follow that these receipts would be subject to appropriation by the city council under the provisions of Section 30 of the charter which you have quoted. This charter provision is quite in line with Section 5625-33, General Code, which makes a similar provision as to appropriation.

As to gifts and bequests to the city intended by their donors to be used for recreational purposes, much would depend upon the terms and conditions if any, attached to them. They might be given directly to the city without any designation as to the department which should have their custody or disposition, in which event it would appear to me that they would go into the city treasury and be subject to appropriation by the council. If they are given to the city itself with certain stipulations as to their use, they would constitute a trust which under the terms of Section 18 of the General Code, should be executed in accordance with the direction of the donor.

If given to the recreation commission directly they would appear to fall within the provisions of Section 112-2 of the Columbus charter which provides in part as follows:

“The recreation commission may receive donations and bequests of money or property, in trust or otherwise, for recreational purposes. The treasurer of the commission (the city treasurer) shall be the custodian of all such trust funds which may be received by gift, devise, in trust, or otherwise, and all funds acquired for or by reason of the operation and extension of the recreational facilities of the city. Said treasurer shall carefully preserve, control and invest the said trust funds as required by the deeds of trust, and shall disburse the income from the same as shall be directed by said commission in accordance with and subject to the terms and conditions of said deeds of trust. Disbursements from all other funds in the custody of said treasurer, including funds appropriated by city council for the operation and extension of the recreational facilities of the city, shall be made only as the commission shall direct.”

It will be noted that money given to the recreation commission is to be in the *custody* of the city treasurer as “treasurer of the commission.” This would not result in putting these funds into the city treasury or making them subject to being appropriated or *possibly withheld from appropriation* by the city council.

The provision of the section above quoted appears to be entirely consistent with the provisions of Section 18 of the General Code, for it provides in part as follows:

“The state, a county, a township or cemetery association, the commissioners or trustees thereof, a municipal corporation, *the council, a board or other officers thereof*, a benevolent, educational, penal or reformatory institution, wholly or in part under the control of the state, the board of directors, trustees or other officers thereof, may receive by gift, devise or bequest, moneys, lands or other properties, for their benefit or the benefit of any of those under their charge, and hold and apply the same according to the terms and conditions of the gift, devise or bequest.”

(Emphasis added.)

Here it will be noted that a gift in trust may be given not only to a municipal corporation but to the “council or a board or other officers thereof,” and that they may hold and apply the same according to the terms and conditions of the gift.

It would follow that where funds have been raised by private organizations or groups or donated by individuals and paid over directly to the recreation commission for specific purposes or to be used in such way as the commission may determine, such funds would not find their way into the city treasurer's hands except as custodian of the funds of the commission, and would not be subject to control or appropriation by the council.

In conversation with the city attorney, it appears that what the city is undertaking to do is to provide some lawful method for the appropriation of the miscellaneous funds which may from time to time come into the treasury from the proceeds of games, etc., in such a way that they may be available for use by the recreation commission. I see no reason why the purpose and intent of the charter law as well as the statutes relative to appropriation would not be satisfied by carrying in the annual appropriating ordinance an appropriation of these miscellaneous receipts into a special fund in the nature of a rotary fund, to be subject to expenditure by the recreation commission. The commission would, of course, be subject to the provisions of Section 162 of the charter which applies to all departments of the city, requiring express authority of the city council for expenditures exceeding \$500.00.

Your letter raises the further question as to the power of the recreation commission of Columbus to fix salaries of the employes of the department. That question seems to me to be clearly answered by the provisions of Section 112-2 of the charter which is quoted in your letter, which authorizes the commission to appoint or employ a superintendent and such other assistants as may be provided by council "at salaries or such compensation as may be fixed by council." This would clearly exclude the right of the commission to fix salaries or grant compensation to any of such employes even though additional duties were imposed upon them. This conclusion is strengthened by the provisions of Section 15 of the Columbus charter which provides in part as follows:

"Subject to the provision of this charter as to the salary of councilmen and mayor, council shall fix by ordinance, the salary or compensation of all officers and employes of the city government; * * * and all fees pertaining to any office shall be paid into the city treasury."

Specifically answering your questions, it is my opinion:

1. Under the provisions of Section 30 of the charter of the city of Columbus, no money may be drawn from the treasury of the city or any obligation for expenditure of the city's money be incurred by the recreation commission of said city except pursuant to the appropriations made by the city council.

2. Donations or bequests to a municipality or to the council or any board or officers of such municipality, may under the provisions of Section 18 of the General Code, be held in trust by such council, board or officers and used and applied according to the terms and conditions imposed by the donor.

3. Under the terms of Section 112-2 of the charter of the City of Columbus the recreation commission of said city is authorized to receive money or property in trust or otherwise, for recreational purposes, and may use and apply the same in accordance with the terms and conditions stipulated by the donor. Such money shall be in the custody of the city treasurer, as treasurer of such commission and may be disbursed on order of the commission.

4. Under the provisions of Section 112-2 of the charter of the City of Columbus, the recreation commission is without authority to fix salaries or allow compensation of any employes of the recreation department, such authority being reserved to the city council.

Respectfully,

HUGH S. JENKINS,
Attorney General.