

as the county commissioners may designate by resolution, yet such compensation is thought to be strictly limited to that covering the salary provided for the judge of the police court, and although the jurisdiction of police courts has been vested in the municipal court of Zanesville, by section 1579 G. C. yet there is no provision of law authorizing the judge of the municipal court to receive the compensation allowed by the county commissioners to police judges under this section.

It is concluded therefore, that the salary or compensation of the judge of the municipal court of Zanesville as provided by law is \$1800.00 per annum, and payment of additional salary in the sum of \$250.00 per annum from the funds of the county treasury is unauthorized by law.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

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3859.

RECREATION CENTERS—POWER TO LEASE LANDS AND ACQUIRE BUILDINGS FOR SAID PURPOSE—VESTED IN CITY, VILLAGE OR COUNTY COMMISSIONERS—BOARD OF RECREATION UNAUTHORIZED TO LEVY TAXES—SCHOOL LANDS MAY NOT BE EQUIPPED FOR SAID PURPOSES UNDER SECTION 4065-1 G. C.—LIMITATION ON TAX LEVY.

1. *The power to lease lands and acquire buildings for recreation purposes under sections 4065-1 et seq. of the General Code, is vested in the council of the city or village, or in the county commissioners.*

2. *Under Section 4065-3 G. C., a board of recreation is unauthorized to levy taxes or appropriate money for the purposes of said act.*

3. *Under the provisions of sections 4065-1 et seq., of the General Code public or private school lands may not be equipped by the city for the recreation purposes defined by said section.*

4. *The amount of money which can be raised by a tax levy, for the purpose mentioned in section 4065-7 G. C., is subject to the general tax limitations prescribed by law.*

COLUMBUS, OHIO, January 4, 1923.

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

GENTLEMEN:—Receipt is acknowledged of your recent request, which is as follows:

“We respectfully request your written opinion upon questions submitted to us by your Mr. J. C. Daugherty, City Solicitor, Coshocton, Ohio, upon the creation of a Recreation Board and the extent of its powers and duties, as follows:

Question 1. Could a recreation board appointed under Section 4065-3 G. C., lease lands for the purpose of equipping such playground?

Question 2. Can such a board levy or appropriate money under the power given it by the provisions of section 4065-3 General Code?

Question 3. Can such board acquire lands and buildings and issue bonds?

Question 4. Can public or private school grounds be equipped and used for play grounds under this act?

Question 5. Is there any limit on the amount that can be raised for the purpose mentioned in section 4065-7 General Code?

We are enclosing herewith communication received from Mr. Daugherty."

Pertinent to your first question, Sec. 4065-1 G. C. as amended 109 O. L. 609, provides:

"That the council or other legislative authority of any city, village, or the county commissioners of any county, may designate and set apart for use as playgrounds, playfields, gymnasiums, public baths, swimming pools, or indoor recreation centers, any lands or buildings owned by any such city, village or county, and not dedicated or devoted to other public use. Such city, village or county may, in such manner as may be authorized or provided by by law for the acquisition of lands or buildings for public purposes in such city, village or county, acquire lands or buildings therein for use as playgrounds, playfields, gymnasiums, public baths, swimming pools or indoor recreation centers."

It is evident that the provisions of this section authorize the council, or any other legislative authority of any city or village or the county commissioners of any county, to provide in the manner authorized by law, for the acquisition of the lands and buildings necessary for the purpose of the act. It is also noted in this connection that section 6, that is, Sec. 4065-6 G. C., provides that the city or village council, or the county commissioners may issue bonds for the purpose of acquiring lands or buildings for playgrounds, playfields, gymnasiums, swimming pools, public baths, or indoor recreation centers, and for the equipment thereof. Seemingly then, the power to lease lands or acquire buildings for recreation purposes, is by the terms of this Section vested in the council of the municipal corporation.

Section 4065-3 G. C., however, provides that if the city or village shall determine that the power to equip, operate, and maintain playgrounds, etc., shall be exercised by a recreation board, they may establish in said city or village such recreation board, "*which shall possess all the powers and be subject to all the responsibilities of the local authorities under this act.*" While it is not altogether clear as to just what powers are vested in the said recreation board by the above phraseology, or as to the meaning of the term "local authorities" as used therein; it is believed, however, that the intention of the statute is to transfer the powers and

duties of the local authorities previously supervising such matters as playgrounds, etc., to the board of recreation provided by Sec. 4065-3 G. C. That is to say that relative to such matters, the board of recreation was to have the same supervisory control over said playgrounds, etc., as that exercised by the director of public service under Sec. 4325 G. C., and the board of park commissioners under Sec. 4057 G. C., and to possess the same powers and duties relative to the subject of playgrounds as these local authorities. Since, however, the powers and duties of said local authorities are merely supervisory in nature, such authority when transferred to the board of recreation as provided by Sec. 4065-3 G. C., could not vest in said board the power to directly purchase land and buildings since this power is not vested in such local authorities in the first instance. Thus it would seem that the said board of recreation under Sec. 4065-3 is clothed with no power in this respect. This view is thought to be strengthened by the legislative intention expressed in the specific provisions for the purpose of lands and buildings for such purposes provided by Secs. 4065-1, and 4065-6 G. C. Thus it would seem that the authority to lease lands and to provide buildings for the purposes of said act, is a power delegated to council and not to said board of recreation, and from this conclusion it must follow that your first question should be answered in the negative.

Pertinent to your second question, Sec. 4065-3 G. C., confers no authority upon the board of recreation to levy taxes or appropriate money for the purposes of said act, hence this inquiry is obviously answered in the negative.

For similar reasons a negative answer must be returned to your third question, since the board of recreation, by the provisions of the act in question is not clothed with the power to acquire lands, buildings or to issue bonds, such powers being by the provisions of Sec. 4065-1, and 4065-6 G. C., specifically delegated to the city council.

Relative to your fourth question, Sec. 4065-1 G. C., provides that council may designate and set apart for such recreation purposes any lands or buildings owned by such city when not dedicated or devoted to other public use. It would seem then that since the city does not own public school lands, and since public school lands are dedicated to public use, it would follow that public school grounds could not be equipped for playgrounds under the authority of this act. For similar reasons it follows that there is no authority in the city to equip for such purposes, private school lands, or such as are not owned by the city, hence a negative answer is returned to your fourth question.

In answer to your fifth question, it is thought that the amount of money which can be raised by a tax levy for the purpose mentioned in Sec. 4065-7 G. C., is subject to the general tax limitations in such case as are prescribed by law, such as Secs. 5649-1 et seq. of the General Code.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

3860.

MECHANICS LIEN LAW—WHEN FUNDS IN COUNTY TREASURY  
 SUBJECT TO SAID LAW—WHEN STATE AID HIGHWAY CON-  
 TRACTS NOT SUBJECT TO SAID LIEN LAW.

1. *Funds in the county treasury appropriated for and applicable to contracts entered into by the county for highway improvement are subject to the provisions*