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VACANCY — VILLAGE — BOARD OF PARK TRUSTEES — BOARD OF SINKING FUND TRUSTEES — VILLAGE TREASURER—VILLAGE COUNCIL—WHERE FAILURE TO FILL VACANCY, MAYOR SHALL FILL SAME—SECTIONS 2295-14, 4252, ET AL., G. C.

**SYLLABUS:**

*The Board of Sinking Fund Trustees of a village having been abolished upon the retirement of all bonds issued previous to January 1, 1922, as provided for in Section 2295-14 of the General Code of Ohio, the village treasurer succeeds to only those duties specifically set out in Section 2295-14, supra, and, by virtue of Section 4356 of the General Code of Ohio, the village council is required to provide by ordinance the method by which the board of park trustees is appointed, and also the method by which vacancies arising during an unexpired term are filled.*

*However, in the event that the village council fails to provide for the filling of vacancies for an unexpired term, such vacancies are filled by the mayor as provided for in Section 4252, General Code of Ohio.*

COLUMBUS, OHIO, April 25, 1939.

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

GENTLEMEN:

This will acknowledge receipt of your recent communication, which reads as follows:

“We are enclosing herewith a letter from the Solicitor of the Village of Glendale, Ohio, in which he makes inquiry as to the appointing authority of Park Trustees in a municipality, which board is established under favor of Section 4068, G. C., when the board of Sinking Fund Trustees is abolished under the provisions of Section 2295-14, G. C.

A diligent search through our files and index cards having failed to reveal any definite ruling on this question, may we request that you examine this correspondence and advise us in answer to the following question:

Under the provisions of Section 4068, G. C., the members of the Board of Park Trustees are appointed by the Board of Sinking Fund Trustees, which latter board is abolished by the provisions of Section 2295-14 G. C., when all bonds issued prior to January 1, 1922, have been paid and redeemed.

Under such circumstances, does the municipal treasurer succeed to all of the duties of the Sinking Fund Trustees, including that of appointing members of the Board of Park Trustees?

If the treasurer does not succeed to this authority, then what authority makes the appointment to fill a vacancy in the membership of the Park Trustees, after the Board of Sinking Fund Trustees has been abolished?"

Your first question is whether the municipal treasurer succeeds to all the duties of the Sinking Fund Trustees, including the duty of appointing members of the Board of Park Trustees. For the purpose of this discussion, the pertinent part of Section 4068, General Code, reads:

"The board of park trustees shall consist of four resident electors of the municipal corporation, who shall be appointed by the trustees of the sinking fund, and shall serve without compensation for the term of four years and until their successors are appointed and qualified. \* \* \*"

Section 2295-14, General Code, provides:

"The board of sinking fund trustees of any county or municipality or the board of sinking fund commissioners of any school district shall continue to exercise the powers provided in §§2976-18 to 2976-27, inclusive, 4511 to 4522 inclusive, 3932 and 7613 to 7619 inclusive of the General Code and all other provisions of law relating to its powers, until all outstanding bonds of such county, municipality or school district issued previous to January 1, 1922, shall have been paid; and thereupon it shall be deemed to be abolished and its functions and powers relating to the purchase and sale of securities, receipt, deposit and investment of taxes, assessments and other funds raised for the payment of bonds and funded debts, the application of such funds to the payment of bonds and other indebtedness and all its other powers and functions as set forth in said provisions of law as amended in this act shall be deemed to be transferred to the treasurer of the county, municipality or school district, and all moneys, securities and other assets then in the custody and possession of such board shall be transferred and delivered to such treasurer. Thereafter all said moneys, securities and assets and all moneys received by the county, municipality or school district for the payment of the interest and principal of its bonds or other funded debts and all inheritance taxes and all other taxes and revenues which were theretofore payable, by virtue of provisions of law, into its sinking fund shall be paid to its

treasurer and placed and held by him in a separate fund to be known as 'bond payment fund' and, subject to the provisions of law relating to transfer to other funds, said fund shall be applied by him to the purposes for which the sinking fund had theretofore been applicable."

Thus, upon the happening of the event provided for, i. e., upon all outstanding bonds issued previous to January 1, 1922 having been paid, the Board of Sinking Fund Trustees is abolished, and thereupon certain powers and functions of the board are transferred to the treasurer. Section 2295-14, supra, designates what powers and functions are so transferred, and they are specifically those powers and functions "relating to the purchase and sale of securities, receipt, deposit and investment of taxes, assessments and other funds raised for the payment of bonds and funded debts, the application of such funds to the payment of bonds and other indebtedness and all its other powers and functions as set forth in said provisions of law as amended in this act." The power to appoint the Board of Park Trustees is neither in the specifically enumerated powers set forth above, nor is it within the "provisions of law as amended in this act" which comprise Sections 2295-9, 295-10, 3913, 5655, 3914, 3914-1, 5630-1, 3815, 2295-12, 2295-13, 2295-14, 2295-15, 3949, 5649-1b, of the General Code.

By the express terms of Section 2295-14, supra, therefore, the village treasurer succeeds only to those powers of the sinking fund trustees which are specifically enumerated therein, and in view of the fact that the power of appointing members of the board of park trustees is not one conferred upon him by said Section 2295-14, it must naturally follow that he does not succeed to such power.

Therefore, in answer to your first question you are advised that in my opinion after the board of sinking fund trustees is abolished, the village treasurer does not succeed to the power of the Board of Sinking Fund Trustees to appoint members of the Board of Park Trustees.

In considering the question then as to what authority does appoint the Board of Park Trustees after the Board of Sinking Fund Trustees has been abolished, two sections of the General Code are pertinent. The first section bearing on this question is Section 4356, General Code, which gives to the village council the power to provide by resolution or ordinance for the care, supervision and management of all public parks. This section reads as follows:

"The council shall provide by resolution or ordinance for the care, supervision, and management of all public parks, baths, libraries, market houses, crematories, sewage disposal plants, houses of refuge and correction, workhouses, infirmaries, hospitals, pest houses, or any of such institutions owned, maintained

or established by the village. When the council determines to plat any of the streets as authorized by law, it shall provide for the platting thereof."

From the foregoing section it will be seen that this power in the village council to provide for the management of parks is without any limitation whatsoever, and therefore includes those parks under the management of the board of park trustees.

The powers conferred upon a village council by the above section with reference to the supervision and management of hospitals was considered by the then Attorney General in 1929, in an opinion rendered by him (Opinions of the Attorney General, 1929, p. 1569). It was stated that the power to supervise and manage hospitals includes the power to provide for the appointment of a board or other officers to manage such institution. The syllabus of said opinion reads, in part, as follows:

"When a hospital is erected in a village, council is required to provide for the management of same under the provisions of §4356 of the General Code. In making such provision, council may authorize the appointment of a board or other officers for a definite term or otherwise, to manage such institution. \* \* \*"

Therefore, I would conclude from the foregoing that, the village council is given the power to provide by ordinance for the manner of the appointment of the members of the Board of Park Trustees.

However, in the event that the village council fails to provide for the filling of vacancies arising during a term of office, Section 4252, General Code, provides that any such vacancy arising because of death, resignation, removal or disability of any officer or director in any department of any municipal corporation, unless otherwise provided by law, shall be filled by appointment of the mayor. This section reads:

"In case of death, resignation, removal or disability of any officer or director in any department of any municipal corporation, unless otherwise provided by law, the mayor thereof shall fill the vacancy by appointment, and such appointment shall continue for the unexpired term and until a successor is duly appointed, or duly elected and qualified, or until such disability is removed."

But since Section 4356, *supra*, states that the council shall have this power to provide for the manner of appointment of the park trustees, if the council does so provide, then the power of the mayor ceases for the filling of vacancies is "otherwise provided by law."

Therefore, in answer to your last question, by virtue of Section 4356, supra, the village council is required to provide by ordinance the method by which the board of park trustees is appointed, and also the method by which vacancies arising during an unexpired term are filled, however, in the event that the village council fails to provide for the filling of vacancies for an unexpired term, such vacancies are filled by the mayor as provided for in Section 4252, supra.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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INSURANCE—CASUALTY COMPANY—FOREIGN STATE—  
LICENSED TO OPERATE IN OHIO—ACCIDENTS—WHERE  
POLICY PROVIDES IT SHALL NOT BE IN FORCE IF AS-  
SURED HAS THREE OR MORE WORKMEN OR OPERA-  
TIVES REGULARLY EMPLOYED, ETC.—SUCH COMPANY  
MAY ISSUE VALID CONTRACT OF INSURANCE—SEC-  
TIONS 1465-61, 1465-101 G. C.

**SYLLABUS:**

*A casualty insurance company of another state licensed to do insurance business in Ohio may issue in this state a valid contract of insurance to cover claims on account of accidents occurring to employes of the assured while employed in connection with the ownership, maintenance or use of the premises described in the policy if such company is authorized by its articles of incorporation to issue such a policy and if such policy contains a provision that it shall not be in force if the assured shall have in service three or more workmen or operatives regularly employed in the same business or in or about the same establishment.*

COLUMBUS, OHIO, April 25, 1939.

HON. JOHN A. LLOYD, *Superintendent of Insurance, State House Annex, Columbus, Ohio.*

DEAR SIR: I have your request of recent date for my opinion, which reads as follows:

“May a casualty insurance company of another state, which is authorized to write workmen’s compensation insurance under its Articles of Incorporation in its home state, and licensed to do insurance business in Ohio, issue in this state a valid contract which would cover claims on account of accidents occurring to employees of the assured while employed in connection with the