

necessary amount, which bonds shall be of such denomination and payable at such place and times as the council or the commissioners determine, and bear interest not exceeding six per cent per annum, but not to be sold for less than their par value. A tax on the taxable property of the municipality or county not exceeding one-half mill in each year may be levied to pay the principal and interest of the bonds as they mature. After the improvement is completed, a tax may be levied by the municipality or county to pay the cost of maintaining and keeping in repair that part of the work required to be maintained and kept in repair by it."

The same reasoning by which we arrive, in answer to the first question, at the conclusion that sections 8863, et seq., are not repealed by implication by the enactment of section 6956-22, General Code, applies equally as well to section 8870, General Code; and as section 8870 specifically provides for the county issuing bonds to the necessary amount to pay its proportion of the cost of such improvement and further provides that a tax on the taxable property of the county, not exceeding one-half mill in each year, may be levied to pay the principal and interest of the bonds as they mature, it is my opinion that the county may issue bonds and levy a tax to pay its share of the cost of the improvement, under section 8870, General Code.

Respectfully,

C. C. CRABBE,

Attorney General.

2435.

MUNICIPALITY—MANAGEMENT OF PARKS DONATED TO MUNICIPALITY—SECTIONS 4067 AND 4326 G. C. CONSTRUED.

SYLLABUS:

It is the duty of the director of public service, under the provisions of section 4326 of the General Code, to manage parks donated to the municipality in those instances wherein the conditions of the instrument of donation do not expressly require the appointment of trustees under the provisions of section 4067, or in those instances wherein a park commission has not been appointed under the provisions of section 4053 et seq.

COLUMBUS, OHIO, May 4, 1925.

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

GENTLEMEN:—In your recent communication you request my opinion on the following:

"Property for park purposes was donated to the city of 'L' upon the following terms and conditions:

"I direct that my executor secure from the Hazelton Oil Company the area now in front of the house now occupied by me at South Logan, which area is bounded as follows: * * * and to donate this area to the town of Logan, to be used solely for a public park, to be called Kachelmacher

park, and I hereby direct my executors and trustee to contribute \$1,000.00 for a band stand to be erected in the park. I expect the town of Logan to further improve, beautify and forever maintain this park, which is to be used for no other purposes than as a beauty spot for the health and recreation of the people.' "

"Section 4066, G. C., reads:

" 'In any municipal corporation which has become or may hereafter become the owner or trustee of property for park purposes, or of funds to be used in connection therewith, by deed of gift, devise or bequest, such property or funds shall be managed and administered in accordance with the provisions or conditions of such deed of gift, devise or bequest.'

"Section 4067 G. C., reads:

" 'When such deed of gift, devise or bequest requires the investment, or change of investment of the principal of such property or funds, or any part thereof, to be made upon the approval of an advisory committee appointed by a court or judge, or by an advisory committee by a civic organization of the municipality, or by the council of such municipality, then such property or funds, and any park for the improvement of which in whole or in part such fund is to be used, or any property for the care or management of which in whole or in part such fund is used, shall be managed, controlled and administered by a board of park trustees.'

"Section 4326 G. C., provides that the director of public service shall manage parks.

"*Question:* In view of the terms of the bequest, is the park in question to be managed by a board of trustees as provided by section 4067 G. C., or by the director of public service in accordance with the provisions of section 4326, General Code?"

Analyzing the provisions of said section, it would appear that a certain defined condition must exist before trustees are appointed to administer or control a park under the provisions of section 4067. That condition, as defined by the section, would seem to be when the deed of gift, devise or bequest requires the investment or change of investment of the principal of such property or funds, or any part thereof, to be made upon the approval of an advisory committee appointed or required in the manner set forth in said section.

In the case of *Krause vs. Springfield*, 18 N. P. (N. S.), 129, the provisions of this section were under consideration. The court in its opinion used language which would seem to indicate that it was the idea of the court that these sections apply in all cases where the park funds come to the corporation by deed of gift, devise or bequest.

However, an examination of the facts in the case under consideration by the court in said opinion discloses that the devise required that the management should be under the exclusive supervision of trustees appointed for that purpose. Therefore, it would seem that the indication in this case that the requirement for trustees of a park to be appointed in all cases in which the park came by devise or deed of gift, is not to be taken seriously.

It may be further pointed out that in an opinion of the attorney general found in reports for the year 1912, page 1821, the following statement was made:

"The original park having been donated to the city, its care, custody, control and future are governed by sections 4066, et seq., General Code, which provide for a board of trustees to manage the same."

However, there is nothing in the opinion to indicate that the technical question which you present was considered.

It is therefore the opinion of this department that in order that a board of trustees must be appointed under the provisions of section 4067 to manage a park or the funds in relation thereto, it is necessary that such requirements be made in the instruments granting the park or the funds for such park.

Coming now to an analysis of the language set forth in the conveyance or gift to which you refer, it would seem to be clear that the direction is that the executors of the estate of the donor are to secure a park site and direct the executor and trustees to contribute one thousand dollars to a band stand to be erected in the park. All of these directions refer to the trustee and executor appointed by the donor under his will, and do not in any wise refer to the trustees that are mentioned in section 4066. Inasmuch as section 4326 provides that the director of public service shall manage parks in those cases in which trustees are not required under the provisions of section 4067, and in which a park commission has not been established under the provisions of section 4053, et seq., it would seem to be the duty of the director of public service to manage the park which you describe.

Respectfully,

C. C. CRABBE,
Attorney General.

2436.

CORPORATION FOR PROFIT—QUESTIONS PERTAINING TO ARTICLES OF INCORPORATION OF B. F. KEITH COMPANY DISCUSSED. SECTIONS 8728-5 AND 8698 CONSTRUED.

SYLLABUS:

A corporation for profit organized under the laws of this state with a nominal par value stock, either common or preferred or both, is not authorized to change its form of incorporation to provide for common stock without nominal or par value, except by the plan of reorganization as provided in section 8728-5 of the General Code of Ohio and incorporation fees regularly charged under the first plan of incorporation may not be applied in any manner in satisfaction of the fees provided in the later plan of incorporation.

COLUMBUS, OHIO, May 5, 1925.

HON. THAD H. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication requesting the opinion of this department as follows:

“On the 18th day of November, 1924, Articles of Incorporation for ‘The B. F. Keith Columbus Company’ were filed with the Secretary of State providing for an authorized capital stock of \$1,500,000.00, half common and half preferred, the shares of such stock to have a par value of \$100.00 each. Upon the filing of these articles a fee of one-tenth of one per cent of said authorized capital stock, to-wit: \$1,500.00 was paid the Secretary of State. No other papers have been filed. It is now desired to change the authorized capital stock of this company to ten thousand shares of no par value common stock and eliminating the preferred.