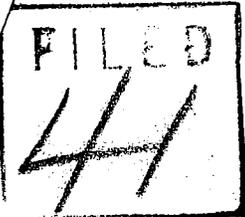


CITIES:
BOARD OF ALDERMEN:
POWERS OF BOARD OF ALDERMEN:
FUNCTIONS OF CITY:
MONEY IN THE GENERAL FUND:
CITY HALL:
PLAYGROUND SITE:

(1) A fourth class city, through its board of aldermen, may purchase land to be used for a city hall or playground site. (2) The money in the general fund may be used in payment for such lands.



April 18, 1956

Honorable Haskell Holman
State Auditor
Jefferson City, Missouri

Dear Mr. Holman:

This will acknowledge receipt of your opinion request of April 5, 1956, in which you ask the following:

"Will you please furnish this department with an official opinion based upon the following questions:

1. Is it permissible for the board of aldermen of a city of the fourth class to use money in the general fund for the purpose of purchasing a tract of land to be used for a city hall or playground site?
2. If not, what method is provided by the statutes for the purchase of land to be used for such purposes?"

Before holding that the money in the general fund may or may not be used as suggested in the opinion request, it must be determined whether or not the board of aldermen have the authority to make such a purchase.

Under Section 90.010, RSMo 1949, whenever any city desires to establish a park or pleasure ground, the board of aldermen is authorized to purchase the lands therefor. Said Section reads as follows:

"Whenever any city desires to establish a park or pleasure grounds, the common council or mayor and board of aldermen of such city is hereby authorized and empowered to acquire property for such purposes by gift, purchase or condemnation of lands in such city or within one mile thereof, and for that purpose may borrow money and issue bonds in payment thereof, and shall by ordinance describe the metes and bounds of such lands to

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be purchased or condemned. Lands owned by such city may by ordinance be converted, set aside or appropriated for parks, or pleasure grounds. Such city may levy an annual tax not to exceed two mills on the dollar for the maintenance of such parks or pleasure grounds, and such tax shall be levied and collected in like manner with other general taxes of such city and shall be known as the park fund."

It appears to this writer that "park or pleasure grounds" is broad enough to include playground sites. There are no cases construing "pleasure ground." Under the above section, however, the word, "parks," has been construed to be broad enough to include contemplated baseball and football fields and large arena buildings adapted to speaking, theatrical, and musical entertainments, dances, and indoor athletics, and a hall to accommodate small gatherings, benefits, and exhibits of various kinds. *Aquamsi Land Company vs. City of Cape Girardeau*, 142 S.W. 2d 332, 346 Mo. 524.

Chapter 79 of the RSMo 1949, is entitled "Cities of Fourth Classes." Under Section 79.390, it is provided that the board of aldermen may provide for the erecting, purchase or renting of the city hall and may purchase and hold grounds for public parks. Said section reads as follows:

"The board of aldermen may establish, alter and change the channel of watercourses, and wall them and cover them over, and prevent obstructions thereon, and may establish, make and regulate public wells, cisterns and reservoirs of water, and provide for filling the same. The board of aldermen may purchase grounds and erect and establish market houses and market places, and regulate and govern the same, and also contract with any person or persons, association or corporation, for the erection, maintenance and regulation of market houses, and market places, on such terms and conditions and in such manner as the board of aldermen may prescribe. They may also provide for the erection, purchase or renting of the city hall, workhouse, houses of correction, prisons, engine houses, and any and all other necessary buildings for the city, and may sell, lease, abolish or otherwise dispose of the same, and may enclose, improve, regulate, purchase, or sell all public parks or other public grounds

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belonging to the city, and may purchase and hold grounds for public parks within the city, or within three miles thereof."

The power "to erect, purchase or rent" a city hall would seem to imply or carry with it the power to purchase the site for the hall. It was held by the Supreme Court of Missouri in the case of City of Rich Hill vs. Connelly, 175 S.W. 2d 834, that the constitutional power of fourth class cities to issue bonds for the purpose of "purchasing or constructing electric light plants" includes power to issue bonds to purchase or construct extensions or improvements to existing plants.

That the board of aldermen have the power to purchase or to make such purchase is implied from the fact that any corporation can act only through its lawfully authorized agent. The board of aldermen is the governing body of the city and it exercises all the corporate powers not expressly committed by law to other boards or officers. 43 O.J. 238. Also by statute, the board of aldermen is given the authority to make such purchases. The power to purchase the land to be used for a city hall or public park site is in the board of aldermen under Section 79.390, supra. Such power, with respect to parks and pleasure grounds is found in Section 90.010, supra.

Now the question is, may money in the general fund be used for the purchase of such lands? There appears to be no reason why such may not be done. The statutes are silent on this matter except that Section 90.010, supra, provides that the city "may borrow money and issue bonds" in payment for the lands to be used for a park or pleasure grounds. The explanation of such language seems to be that in the absence of such, the authority to borrow money and issue bonds for such purpose would be questionable. The language does not imply that money in the general fund may not be used as suggested.

This writer believes that the case of Decker vs. Diemer, 229 Mo. 296, 129 S.W. 936, even though the question therein concerned the authority of the county court to use surplus county funds, can be cited as authority for holding that the payment of land to be used for a city hall or playground site can be made from the general fund. Involved in the case was the transfer of surplus funds of the county to a courthouse fund for the purpose of constructing a courthouse. The court held that the transfer was not improper. Admitting that the statutes involved in the case were different from those involved in the question with which we are concerned

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in that the transaction was on the county level, yet the reasoning of the court can be applied to the question at hand. The court at l.c. 336, of the official report said:

"* * * We are further of the opinion that when all warrants and debts properly chargeable to a fund in any one year are paid and provided for, the residue of such fund is a 'surplus' within the purview of the transfer sections. Is not the building of a courthouse as legitimate as any other county purpose? Are bonds so desirable that the people of a Missouri county must bond themselves when bonds are not necessary, or go without a courthouse? Must they levy special taxes when they have the means in the treasury to avoid such special levy? Running like a thread through the statutes is the idea of as low a rate of taxation as is compatible with the welfare of the people, and the other idea that the county's business must be done for cash. All these ideas are conserved by the holding made."

There being no earmarking of the money in the general fund for any particular purpose, and no statutory provision as to the source from which payment for such land is to be made, the board of aldermen may use money in the general fund for the purpose of purchasing a tract of land to be used for a city hall or playground site.

CONCLUSION

It is, therefore, the opinion of this office that:

- (1) A fourth class city, through its board of aldermen, may purchase land to be used for a city hall or playground site.
- (2) The money in the general fund may be used in payment for such lands.

Yours very truly,

JOHN M. DALTON
Attorney General

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