PARKS: City of second class may lease portion of public park for professional baseball games during limited periods.

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October 24, 1945

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Honorable W. N. McDonald
House of Representatives
Jefferson City, Missouri

Dear Sir:

We are in receipt of your letter of October 20, 1945, in which you present the following question for our official opinion:

> "May the City of Joplin, a city of the second class, purchase a park for general recreation and amusement for the public, and lease a portion of said park during certain seasons to professional baseball organizations, deriving revenue therefrom?"

The City of Joplin derives its general corporate powers from Section 6609, R. S. Mo. 1939, and among the powers granted we find the following:

> "XXXVI. To acquire by condemnation, purchase, gift, lease or otherwise, property, real and personal, within such city and beyond the limits thereof for the use of the city * * * for the purpose of establishing and maintaining parks, * * * and for any other public use or purpose, and to manage and regulate the use thereof, and to sell, lease or otherwise dispose of the same.
>
> "XXXVII. To acquire by condemnation, purchase, gift, lease or otherwise, property

> real and personal within such city or beyond the limits thereof, and to establish, construct, maintain, add to, equip, improve, * * * places of recreation, * * *."

Cities of the second class are given further powers under Article 5 of Chapter 133, R. S. Mo. 1939, to levy a tax not to exceed two mills on the one dollar valuation of all taxable property in the city, to establish a park fund, and if this is done, a park board of nine directors may be appointed, which board shall have exclusive control of the expenditure of the park fund, and shall supervise and improve all public parks.

Under Section 15537, R. S. Mo. 1939, the board also has power to acquire land for park purposes, this power being given in the following language:

> " * * * Said board shall have power to purchase or otherwise secure grounds to be used for parks; * * * and shall in general carry out the spirit and intent of this article in establishing and maintaining public parks."

The word "park" is in such common usage as to require no definition, but it has been variously defined as (46 C. J., page 1373):

> "A piece of ground adapted and set aside for purposes of ornament, exercise or amusement; a place to be kept open and ornamented for public uses, which may include anything conducing to the public pleasure, amusement, recreation, or health. * * * The term has been held to include a grove and a public golf course, * * *."

It is a well known fact that many cities in this state own and operate public golf courses, on which a fee is charged for playing, or public swimming pools, charging a fee for their use to defray current expenses of operation.

In Aquamsi Land Co. v. City of Cape Girardeau, 142 S.W. (2d) 332, an injunction suit was brought to prevent the city (third class) from expending the proceeds of a bond issue to construct a fair ground, community building, stadium, race track, grandstand, baseball and football fields, which would occupy approximately ninety per cent of the entire park site. It was contended that this construction would leave only ten per cent of available space for ornamentation and the unrestricted use of the public. We find the following in the opinion, l. c. 336:

> "It was held in Golf View Realty Co. v. City of Sioux City, 222 Iowa 433, 269 N. W. 451, that the statutory power to acquire land for parks embraces the power to purchase it for a golf course. In that case the tract was already under lease to the city and in actual use as a municipal golf course. It is a matter of common knowledge that golf courses require a large area and are subjected to restrictive use. Also City of Wichita v. Clapp, 125 Kan. 100, 263 P. 12, 63 A.L.R. 478, ruled the devotion of a reasonable portion of a public park to an aviation field for recreation and other attendant purposes, came within the legitimate and proper use for which public parks are created. The reasoning of these cases, which makes the outdoor recreative nature of the proposed use the determinative factor, would apply to a track and facilities for horse racing. Hialeah Park, Tropical Park, Belmont Park, Arlington Park, Jefferson Park and Woodbine Park, for example, are famous race courses. We do not say or know that these are municipally owned, but merely point out that the word park has been thus widely associated with the sport of horse racing."

The opinion also refers to a case in which thirty acres of a forty-six acre public park were leased exclusively to a fair association for twenty-five years for racing purposes. This was a case arising in Nebraska, and the Supreme Court of that state held that a city cannot grant to any person or

association the use and control of a park so as to deprive the public of its enjoyment continuously, but it was conceded that a concession to hold races in the park for limited periods of time was proper.

The Missouri Supreme Court concludes, l. c. 335:

> "There is no doubt in our minds about the fact that the contemplated athletic facilities come within proper park usage."

## CONCLUSION

It is, therefore, our conclusion that a city of the second class may purchase a park for the use of the general public, and may rent or lease a portion of said park to professional baseball organizations which perform for the amusement of the public. Such lease, however, must not operate to deprive the public of the use and enjoyment of the park, or a major portion thereof, continuously.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General

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