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1. CONTRACT, LEASE OF MUNICIPAL PROPERTY, WHEREIN MUNICIPALITY BECOMES PARTNER WITH PRIVATE CORPORATION IN CONTROL OF PROPERTY OR FUNDS, INVALID — VIOLATION, ARTICLE VIII, SECTION 6, OHIO CONSTITUTION.
2. PURPORTED LEASE, MUNICIPAL PROPERTY, AKRON, TO AKRON AIRPORT EXHIBITION COMPANY, INC., THROUGH RESOLUTION OF COUNCIL, INVALID.
3. FREE PASSES TO ENTERTAINMENTS HELD IN MUNICIPAL STADIUM — ISSUED TO MUNICIPAL OFFICIALS AND EMPLOYES, NOT ILLEGAL — PROVISO.
4. WHERE MUNICIPALITY ACCEPTED GIFT OF LAND, NO RIGHT TO EXPEND FUNDS TO PAY NOTE OF COMPANY PREVIOUSLY GIVEN BY DONOR.

SYLLABUS:

1. A contract of lease of municipal property, by the terms of which the municipality becomes a partner with a private corporation in the control and disposition of such property or of funds arising therefrom, is in violation of Articles VIII, Section 6, of the Ohio Constitution, and therefore invalid.

2. The purported lease of municipal property by the city of Akron to the Akron Airport Exhibition Company, Inc., made pursuant to resolution of the council of the city of Akron passed July 30, 1940, is in violation of Article VIII, Section 6, of the Ohio Constitution, and therefore invalid.

3. The issuance to officials and employes of a municipality of free passes to entertainment held in a municipal stadium is not illegal unless done with the intent to corruptly influence their official action.

4. A municipality having accepted a gift of land, has no right thereafter to expend its funds in payment of a note previously given by the donor of such land.

Columbus, Ohio, August 25, 1942.

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

Gentlemen:

I have before me your letter accompanied by certain information

and requesting an opinion, which communication reads as follows:

> "We are enclosing herewith a letter received from our City of Akron Examiner, together with memoranda and a purported lease indenture with the Akron Airport Exhibition Company Inc., concerning the leasing and operation of the Municipal Stadium and adjacent property that is used for automobile parking, etc.
>
> In this connection the State Examiner also lists several questions, including:
>
> 1. As to the legality of the lease indenture, in view of the fact that the P.W.A. officials would not approve the leasing of facilities acquired through such Federal Aid, and they held the purported lease indenture to be of no legal effect, according to our understanding;
>
> 2. As to the legality of compensation paid to city employes for part time work in addition to their legally fixed salaries;
>
> 3. As to the revenues collected by the Company prior to the execution of the purported lease agreement and proper disposition thereof;
>
> 4. As to the legality of issuing free passes to city officials and employes by the Company;
>
> 5. As to the authority of the council to designate said Company as an advisory board to assist the Director of Public Service in the operation of the Stadium properties;
>
> 6. As to the legality of payment of a note and interest thereon from public funds through warrant of the city auditor, which note was issued by the Company;
>
> Will you kindly consider these matters and give us your opinion in answer to the Examiner's questions, at your earliest convenience?"

Attached to your letter is a somewhat extensive brief by your state examiner, setting forth relevant facts which I will not here quote but to a portion of which reference will be made. It will be well, however, to set out the action of the city council in authorizing and approving this lease, including a copy of the lease as executed:

> *"RESOLUTION NO.* 239-1940 confirming the terms of the lease for the Airport Stadium to the Akron Airport Exhibition Company, Inc.
>
> BE IT ENACTED BY the Council of the City of Akron:

Section 1. That the Council does hereby confirm the terms of the lease for the Airport Stadium, said lease to be granted to the Akron Airport Exhibition Company, Inc., in the following form, to-wit:

INDENTURE OF LEASE

INDENTURE OF LEASE, made at Akron, Ohio this 12th day of August, 1940, by and between the city of Akron, Ohio, a municipal corporation organized and existing under and by virtue of the Constitution of the State of Ohio, and the Akron Airport Exhibition Company, Inc.

WITNESSETH:

That, Whereas, on the 25th day of June, 1940, the Council of The City of Akron duly enacted Resolution No. 203-1940, as follows:

'Resolution No. 203-1940 authorizing the Director of Public Service and Purchasing Agent to advertise for bids for the leasing of the Airport Stadium and Park.

BE IT ENACTED by the Council of The City of Akron, two-thirds of the members elected or appointed thereto concurring:

Section 1. That the Director of Public Service and Purchasing Agent be and are authorized to advertise for bids for the leasing of the Airport Stadium and Park, said lease to be for a term of five years. Said lease shall provide, among other things, that the management and operation are subject to the control of the Director of Public Service of the City of Akron; and further, that all receipts from the operation shall be forthwith deposited with the Director of Finance of the City of Akron, to be disbursed upon the joint order of the lessee and the Director of Public Service for the following purposes:

1. Payment of necessary operating expenses.

2. Payment of indebtedness for completion of the Stadium and park.

3. For the procurement of necessary and useful additions and extensions in connection with the Federal aid or otherwise.

Section 2. That before execution of any agreement of lease of the Stadium and Park, the same shall be confirmed by the Council.

Passed June 25, 1940

C. M. Butler, Clerk of Council

Edward O. Flowers, President
of the Council

Approved: July 3, 1940,
Lee D. Schray, Mayor.

WHEREAS, The Purchasing Agent of said City of Akron did cause to be published in the Akron Beacon Journal an invitation, Section 38, for bids for the lease of the Akron Airport Stadium, all as more particularly appears in said advertisement; and

WHEREAS, the bid of the Akron Airport Exhibition Company, Inc., was the highest bid submitted as determined by the Board of Control of The City of Akron; and

WHEREAS, Said Board of Control did on the 30th day of July, 1940, make an award of said lease to the Akron Airport Exhibition Company, Inc., as more fully appears by the minutes of said Board for July, 1940.

NOW THEREFORE, For and in consideration of the sum of One Dollar ($1.00) receipt whereof is acknowledged, The City of Akron does by these presents grant unto the Akron Airport Exhibition Company, Inc., the use of the Akron Airport Stadium for the term commencing August 1, 1940, and ending July 31, 1945. Grantee shall be entitled to the use of surrounding lands as described and portrayed on the attached print which is made a part hereof.

The grantee covenants and agrees that in consideration of the use of said Stadium and as rental therefor, it will pay the sum of One and no/100 Dollars ($1.00) per year.

It is further agreed that all receipts from the operation of the Stadium shall be forthwith deposited with the Director of Finance of the City of Akron to be disbursed upon joint order of the lessee and the Director of Public Service for the following purposes:

1. Payment of necessary operation expenses.

2. Payment of indebtedness for completion of the stadium and park.

3. For the procurement of necessary and useful additions and extensions in connection with Federal aid or otherwise.

Funds remaining after the deductions hereinbefore referred to, shall be credited by the Director of Finance of the City of Akron to a fund designated 'Stadium Fund' from which disbursements may be made from time to time pursuant to appropriation made by the Council of the City of Akron.

Grantee covenants that it will file with the Director of Finance of The City of Akron at the end of each three month or quarterly period, a financial statement of the operation of said stadium showing among other things all receipts and ex-

penditures, said report to be verified under oath by the proper officer of grantee company.

The grantee may sub-let said stadium for sports events, patriotic observances, concerts, operas, theatrical exhibitions, and for any other lawful and appropriate purpose upon such terms as it shall deem in the best interests for the management and operation of said stadium. The terms and conditions and rentals shall be as uniform as practicable and grantee covenants that no discrimination shall be made in such subletting.

The grantee may enter into concession agreements for the the sale of foods, confections, programs, tobaccos and souvenirs. Grantee shall not sell nor permit or authorize the sale of any beverages containing in excess of three and 2/10 per cent (3.2%) of alcohol by weight. Grantee shall be entitled to the use of the parking grounds surrounding the stadium and in the use and management thereof, may charge a reasonable fee sufficient to defray the costs of policing, managing and operating said grounds.

Grantor covenants that it will procure public liability and property damage insurance within the limits of One Hundred Thousand ($100,000) and Two Hundred Thousand ($200,000) Dollars, and that grantee shall be designated in the policies as an additional assured.

It is mutually understood and agreed that grantee shall at all times manage, operate and control the grounds and stadium hereinabove referred to, subject to the direction and control of the Director of Public Service of The City of Akron, said authority to be in a reasonable and not in an arbitrary manner.

In witness whereof the parties hereto have affixed their signatures this 12th day of October, 1940.

THE CITY OF AKRON
By Wm. F. Peters

AKRON AIRPORT EXHIBITION CO., Inc.,

By { C. W. Seiberling
H. W. Maxson
Secy.

Section 2. This resolution shall be in force and take effect at the earliest time allowed by law.

Passed July 30, 1940.

President of the Council

Clerk of Council

Approved: August 1, 1940.
Lee D. Schroy, Mayor."

Considering your first inquiry as to the validity of the lease, I have given serious consideration to the question of its validity in the light of the provisions of Section 3698, of the General Code, limiting the power of municipalities in the matter of selling or leasing their real or personal property, to property "not needed for any municipal purpose". It is quite evident that the property in question was needed and continued under the purported lease to be used for a "municipal purpose". The courts of Ohio, however, have not yet made a clear pronouncement of the extent to which a municipality under its home rule powers may depart from the provisions of the statutes in this matter, and in view of my holding later on in this opinion, as to the conflict of this lease with a constitutional provision, I do not deem it necessary to pass upon the question above suggested.

The question of the validity of the lease, in view of the fact that it had possibly been disapproved by some federal authority, for reasons growing out of the contribution to the cost of the stadium by the PWA, cannot be answered, as I do not find any information in your communication as to the conditions, if any, that were attached to the PWA grant.

This brings me to the most serious question as to the validity of this lease, the question whether it violates the provisions of Article VIII, Section 6, Constitution of Ohio, which reads as follows:

> "No laws shall be passed authorizing any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation or association whatsoever; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation, or association: provided, that nothing in this section shall prevent the insuring of public buildings or property in mutual insurance associations or companies. Laws may be passed providing for the regulation of all rates charged or to be charged by any insurance company, corporation or association organized under the laws of this state or doing any insurance business in this state for profit."

This constitutional provision has been broadly construed by the courts through a long line of decisions as being intended to prevent a municipality or other public body from becoming in any way a partner with a private organization either in the ownership or control of property, or from raising money for or lending credit to any

private corporation or association. In its present form, there can be no doubt that the introductory words "No laws shall be passed" were intended to relate to municipal legislation as well as to acts of the Legislature.

Examples of the broad construction given to this constitutional prohibition are found in many decisions. Among these I note the case of Alter v. City of Cincinnati, et al., 56 O.S. 47, a portion of the syllabus of which reads:

> "1. Under section six of article eight of the constitution, a city is prohibited from raising money for, or loaning its credit to, or in aid of, any company, corporation, or association; and thereby a city is prohibited from owning part of a property which is owned in part by another, so that the parts owned by both, when taken together, constitute but one property.
>
> 2. A city must be the sole proprietor of property in which it invests its public funds, and it cannot unite its property with the property of individuals or corporations, so that when united, both together form one property."

The court in the opinion at page 63 uses this language:

> "The full scope of this section of the constitution has not yet been determined by this court. In Walker v. The City of Cincinnati, 21 Ohio St., 15, the court says: 'The mischief which this section interdicts, is a business partnership between a municipality, or subdivision of the state, and individuals or private corporations or associations. It forbids the union of public and private capital or credit in any enterprise whatever.' "

And at page 64:

> "This section of the constitution not only prohibits a 'business partnership,' which carries the idea of a joint or undivided interest, but it goes further and prohibits a municipality from being the owner of part of a property which is owned and controlled in part by a corporation or individual. The municipality must be the sole owner and controller of the property in which it invests its public funds. A union of public and private funds or credit each in aid of the other, is forbidden by the constitution. There can be no union of public and private funds or credit, nor of that which is produced by such funds or credit."

In the case of City of Newark v. Fromholtz, 102 O.S. 81, the court held:

> "When an electric railway company, exercising an easement in a city street about to be repaved and being liable by law and under the terms of its franchise for the cost of paving the part occupied by it, proposes that the city pave the railway's part along with the remainder of the street, agreeing to pay its proper proportion thereof, including the preliminary cost of survey, etc., upon the same terms as special assessments against abutting property are made payable, the city may accept such proposal and proceed accordingly. Such action is not violative of Section 6, Article VIII of the Constitution of Ohio."

The question in this case was not on the validity of any statute but rather on the legality of the action of the city in paving that part of the street which the street railway company was required to pay. The court said on page 93:

> "The city owes a duty to the public to keep the streets in proper repair, and, having determined to pave a certain street, is obligated to the public to pave it in its entirety, or all of it that is included within the boundaries covered by such determination, * * *
>
> * * * An arrangement of this nature is not in conflict with Section 6, Article VIII, of the Constitution of Ohio, because the primary obligation to build this part of the improvement rests with the city, the same as does the building of any other part."

In the case of Markley v. Village of Mineral City, 58 O.S. 430, the court had under consideration the action of a city in purchasing property for the purpose of donating it to a private corporation, and the court cited the constitutional provision in question, stating:

> "It is intended to prevent the union of public and private capital in any enterprise whatever."

In State ex rel. v. Cincinnati St. Railway, 97 O.S. 283, the court held:

> "An ordinance of a city providing for the grant to a street railway company of the right to operate jointly a subway or street railway owned by the city with a system of street railways already owned and operated by the company, which

provides that the gross proceeds from the operation of such properties shall be used for the payment of existing and hereafter issued securities of the company, is a pledging of the city's credit for the private debts of a street railway company, in violation of Section 6, Article VIII of the Constitution, which prohibits a city by vote of its citizens or otherwise from raising money for or loaning its credit to or in aid of any company, corporation or association."

Let us see in what respect the lease under consideration undertakes to establish joint control of this municipal property or lends its financial support or credit to a private enterprise.

In the first place it gives the lessee the right to sublet the stadium for sport events and other purposes upon such terms as the lessee shall deem proper; the receipts from such rentals and all operations from the stadium are to belong to the city and to be paid to the director of finance. It is further provided that all receipts from the operation of the stadium when so deposited are to be disbursed upon the *joint order* of the lessee and the director of public service for the following purposes:

1. Payment of necessary operating expenses;
2. Payment of indebtedness for completion of the stadium and park;
3. For the procurement of necessary and useful additions and extensions in connection with federal aid or otherwise.

It will be observed that these funds deposited in the city treasury can only be paid out by and with the consent and *joint order* of the lessee. In case of its arbitrary refusal to join in such order, it would follow that the city could not even pay out these funds for the payment of the bonded or other indebtedness on the stadium or the completion of the stadium and park, nor for necessary and useful additions and extensions to the property. I am not assuming that the lessee would take this attitude, but I am considering only the legal effect of such a stipulation.

It appears clear to me that in making such an agreement the city was undertaking to tie up its property and revenues and to enter into an arrangement which is plainly in violation of the intent of the constitutional provision above quoted, as interpreted by the courts.

In the next place, it is provided that the lessee shall manage, operate and control the grounds and the stadium, subject to the direction and control of the director of public service. This carries with it the power which was in fact exercised by the lessee to employ such persons as it deemed necessary in the operation of this property and to fix their salaries or compensation as it saw fit, these salaries, together with all other operating costs, to be paid out of the funds in the city treasury.

This seems to me to be a plain abrogation of the power and responsibility vested in the city council by the charter, which clearly lodges in the council the sole authority to fix the salary and compensation of all officers and employes. Section 31 of the charter reads as follows:

> "Except as otherwise provided in this charter, the Council shall have authority, by two-thirds vote of its entire membership, to create new departments, offices and employments, and continue or abolish existing departments, offices and employments, or establish temporary departments for special work; to appoint or provide for the appointment of all officers and employees of the municipality whose appointment is not otherwise provided for; to remove any such officer or employee by a majority of all members when such removal is not otherwise provided for, and by ordinance or resolution to prescribe, limit or change the compensation of all officers and employees."

The fact that the concluding paragraph of the lease undertakes to make this control and operation by the lessee subject to the direction and control of the director of public service, does not help the matter, for the director of public service is nowhere authorized to fix salaries of any employes.

In the third place, the lease provides that the city will procure public liability and property damage insurance for the protection of the lessee. How the city could undertake to procure and pay for insurance to protect the lessee from liability for torts caused by the negligence of its employes without incurring the condemnation of the constitutional provision above quoted, I am unable to see. It seems to me to be clearly a case of contribution to, or lending credit to a private corporation. The manner in which the operation of this property was carried on by the lessee and the part which the director of public service took by way of supervision do not, of course, have a

direct bearing on the validity of the lease or as to its conflict with the constitution, but they do throw some light on the practices which are apt to grow out of such an arrangement and which call for the safeguard that the constitution has sought to throw around the handling of public property. I quote the following from the report of your state examiner:

> "It was further disclosed that the rate of compensation paid to such employes had been fixed by the Exhibition Company only; no legislation of the council was enacted to fix rates of compensation to be paid for such services; nor was any legislative action taken to fix a schedule of fees to be charged for use of the stadium. Furthermore, the Service Director did not issue any orders nor did he take any action relative to the procedure followed in any phase of the stadium operation or management."

It might be added that the whole effect of this lease is to absolve the director of public service in part from the obligation and responsibility imposed upon him relative to the management and control of all public buildings, grounds, etc., and to make in a sense a partnership to such control with the lessee corporation.

Section 65 of the Akron city charter provides in part as follows:

> "Subject to the supervision and control of the chief administrator in all matters, the director of public service shall manage and supervise all public improvements, works and undertakings in the city except as otherwise provided in this charter. * * * He shall have charge of * * * all public buildings, the construction and maintenance of parks and playgrounds, boulevards, squares and other public places and grounds belonging to the city or dedicated to public use."

The case of McGuire v. Cincinnati, 22 O.O. 334, presents some elements that bear similarity to the situation here under consideration. In that case the city of Cincinnati entered into a contractual arrangement with the Zoological Society of Cincinnati, a non-profit corporation, by which the city was to turn over to said corporation the management and control of the city zoological gardens, it being stipulated that the corporation was to operate and manage the zoological gardens to the satisfaction of the board of park commissioners. The board of park commissioners reserved the right to terminate the contract at any time if in its opinion this was necessary to the public health or safety, or if

in its opinion the corporation did not properly operate and maintain the property.

That contract was not made as a lease but was made apparently under authority of Section 10193 of the General Code, which authorized a corporation, which provides in its charter that it is to operate public entertainments of various specified kinds for the benefit of the public, to take over public property and perpetually maintain its buildings thereon. The statute is vague and peculiar and evidently intended to fit particular situations. The court in the McGuire case held in its syllabus:

> "1. A non-profit corporation organized and pursuing the one purpose of managing zoological gardens is not only sanctioned by the general corporation laws, but the purpose also brings it within the operation of Section 10193, General Code, which authorizes municipalities and political subdivisions to deliver public land upon which to erect its buildings and carry out its purposes, without retention of any supervisory control by the municipality.
>
> 2. A contract providing that during a period of five years a non-profit corporation agreed to operate and maintain to the satisfaction of the board of park commissioners property known as the Zoological Gardens, the title and control of which to remain in the municipality at all times, is not beyond the power of the municipality nor in violation of the constitution of Ohio."

The decision was by a divided court in the Court of Appeals of Hamilton County, and Judge Ross, dissenting, calls attention to the fact that the charter of the corporation seemed to have been drawn in direct relation to the provisions of the statute; and the majority opinion, in discussing this charter, says:

> "These general purposes are broad enough to include all the activities carried on under the name Zoological Gardens, but no doubt is left on that point because the articles of incorporation specifically provide that the corporation shall have the power to lease the Cincinnati Zoological Park upon such terms as may be agreed upon and to operate it for the use of the public 'free from costs, charge, or expense' except such as should be necessary to operate, preserve and improve it."

Assuming that the court was right in holding that that contract was within the powers conferred by Section 10193, it does not appear

to me to follow that the present lease, attempted to be made under the provisions of the statutes relating to the leasing of municipal property, is in legal compliance with the statutes.

The purpose stated in the charter of the Akron Airport Exhibition Company, Inc., seems to make the statute last above quoted wholly irrelevant. It reads as follows:

> "The purposes for which said corporation is formed are as follows:
>
> 1. To promote and develop public interest in the Akron Municipal Airport.
>
> 2. To foster and develop interest in airline transportation and commerce at the Akron Municipal Airport.
>
> 3. To promote and sponsor exhibitions pertaining to aviation, industry and sports generally and in connection with the Akron Municipal Airport specifically.
>
> 4. To act as repository and disbursing agent for funds raised by popular subscription for the promotion, development and advancement of Akron Municipal Airport.
>
> 5. To sponsor patriotic observances, demonstrations and exhibitions generally, and more particularly at Akron Municipal Airport, with a view to inoculating the spirit of democracy, freedom and existing American institutions."

For the reasons above stated, I am therefore compelled to hold that the purported lease between the city of Akron and the Akron Airport Exhibition Company, Inc., is invalid.

Coming to your second question as to the legality of compensation paid city employes for part time work in addition to their legally fixed salaries, it seems unnecessary to repeat what has already been said about the fixing of the salaries of the employes appointed by the lessee company. If the contract lease is invalid, it necessarily follows that whatever was done by the lessee under it would not be binding upon the city. As already stated, no one but the city council has the right to fix salaries of any municipal employes, and accordingly any agreements made by the Akron Airport Exhibition Company, Inc., as to compensation of its employes, whether they be persons already employed by the city in other capacities or not, would be in nowise binding

upon the city, and their compensation could not be legally paid from the city funds.

Your third question apparently relates to transactions antedating the purported lease. Your examiner asks:

> "Should all revenues realized from attractions staged prior to August 12, 1940, for which no authorization was given by legislation of the council, have been deposited in the city treasury (deposited in private bank account in the name of Akron Airport Exhibition Company) and should findings for recovery be returned for the full amount so collected or the balance remaining after payment of expenses?"

It would appear from the information given that whatever was done in this matter was pursuant to an informal arrangement whereby the Akron Airport Exhibition Company collected revenues which belonged to the city and should have been deposited in the city treasury. If legitimate expenses were incurred by the authority of the director of public service, they might properly be paid out of the city treasury or the company reimbursed for the same, provided they did not involve expenditures which were beyond the power of the director to make without previous authorization of council.

As to your fourth question, relative to the legal right of the lessee of the city property to furnish free passes to officials of the city, I find no specific law on this subject excepting the statute against bribery of public officials, Section 12823, General Code.

It is to be noted that this statute makes payments or gifts to a public official unlawful and punishable only when done to influence him with respect to his official duty, or to influence his action, vote, opinion or judgment in a matter pending or that might legally come before him. In the absence of evidence of such intent, there would apparently be no direct illegality in giving such passes. I do not wish to be understood, however, as approving or commending such practices.

Question five, as submitted by your examiner, is as follows:

> "Under the Home Rule provisions of the Constitution may a municipal corporation operating under a charter, enact legislation through its council creating an advisory board to the Director of Public Service, whose functions include the making

of recommendations as to the procedure to be employed relative to the operation of a municipal stadium?"

I see no objection to the appointment of such an advisory board so long as its functions are purely advisory and none of the administrative duties or responsibilities of the director of public service are lodged in such board.

As to your sixth question, the examiner submits the following information:

"On November 28, 1939, the council passed ordinance No. 481-1939 accepting the offer of the Akron Airport Exhibition Company — to deed as a gift — certain lands near the airport with the condition attached thereto:

Section No. 2 of such ordinance relating to the condition above referred to provides in part as follows:

'Said gift is accepted upon the express condition that the Exhibition Company have and retain all concessions upon said lands until such time as the revenue from such concessions are equal to the total cost of such lands to said Exhibition Company, limiting such time to a ten year period following conveyance of said lands to the city of Akron.'

Investigation disclosed that the balance due on a note plus interest accruing thereon, issued by the Airport Exhibition Company for the purchase of the land aforenoted, was paid by the city from the Stadium Trust Fund. (Fund created for the purpose of recording receipt of revenues from and disbursements incident to the operation of the municipal stadium as directed by Ordinance No. 239-1940, aforenoted.)

Further investigation disclosed that all revenues derived from the use of said lands (parking charges collected from patrons of stadium attractions) which could have been retained under authority of the above noted ordinance, had been deposited in the city treasury along with other revenues derived from admission fees, concessions, etc."

I see no reason why the city could not accept a gift by the terms of which the donor reserves the right to retain the control and income from the property until such time as the income equals the total cost to him of the property. So long as the acceptance of the gift with that condition involves no responsibility on the part of the municipality, there is no apparent reason why is should not accept the gift with the condition attached. Authority for a municipality to accept gifts of

lands or other property upon conditions or with reservations is contained in Section 18, General Code, which reads as follows:

> "The state, a county, a township or cemetery association, the commissioners or trustees thereof, a municipal corporation, the council, a board or other officers thereof, a benevolent, educational, penal or reformatory institution, wholly or in part under the control of the state, the board of directors, trustees or other officers thereof, may receive by gift, devise or bequest, moneys, lands or other properties, for their benefit or the benefit of any of those under their charge, and hold and apply the same according to the terms and conditions of the gift, devise or bequest. Such gifts or devises of real estate may be in fee simple or of any lesser estate, and may be subject to any reasonable reservation. This section shall not affect the statutory provisions as to devises or bequests for such purposes."

This, however, is apparently not the whole situation, for it appears that the donor was indebted on a note given for the purchase of the land so given and that this note was paid by the city from the stadium trust fund, a fund which arose out of the operation of the attempted lease which we have been considering, which was authorized and made some time after the gift in question. It appears from the data submitted, that this gift was made and accepted November 28, 1939, whereas the legislation looking to the making of the lease under consideration was not started until June 25, 1940. It seems clear to me, therefore, that it would be a misapplication of municipal funds for the city to use funds which it had obtained under the terms of the purported lease for the payment of a pre-existing debt of the private corporation. Inasmuch, however, as the gift in question, and the whole transaction embodied in the attempted lease, appear to have been made in good faith, and represent a commendable purpose on the part of the donors, it would appear that the just and equitable solution of this financial confusion would be to have an accounting of the revenues which arose out of the use of the tract donated, and which were paid into the city treasury, and if such revenues exceeded the amount of the note paid by the city, the balance should be turned over to the donor; if on the other hand, the amount paid on the note exceeded the revenues so collected, a recovery should be had by the city for such excess.

Answering your questions specifically, I hold:

1. The purported lease by the city of Akron to the Akron Air-

port Exhibition Company, Inc., of the municipal stadium and ground appurtenant thereto, is invalid because in violation of Article VIII, Section 6, Ohio Constitution.

2. The compensation paid to city employes for part time work in addition to their legally fixed salaries was without authority and illegal.

3. The revenues collected by the company from the use of the stadium prior to the execution of the purported lease should have been paid into the city treasury.

4. The issuance by the company to city officials of free passes to entertainments held in the municipal stadium, while not approved, violated no law unless given for the purposes of corruptly influencing the official action of such officials.

5. The council may lawfully create an advisory board to assist the director of public service so long as its functions are purely advisory, but may not endow it with any administrative power or authority.

6. The payment out of city funds of a note of the Akron Airport Exhibition Company, Inc., was illegial.

Respectfully,

THOMAS J. HERBERT
Attorney General.