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ENROLLED BILL
(SECOND EXTRAORDINARY SESSION, 1933)

House Bill No. 91

(By Mr. March (of Ohio))

Passed January 19 1934

In Effect from Passage

Originated in the *House of Delegates* Takes effect *January 19, 1934* Passage
Geo. Schaefer Clerk
Geo. Schaefer Clerk of House of Delegates

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James L. Smith Chairman House Committee
Anna K. Hyde Chairman Senate Committee

ENROLLED BILL

(H. B. No. 91)

[Passed January 19, 1934; in effect from passage.]

AN ACT to amend and reenact section thirty-six of that part entitled "The Greater Wheeling Charter", chapter twenty-one, acts of the Legislature of West Virginia, one thousand nine hundred fifteen (municipal charters), approved by the majority of the voters of the city of Wheeling at an election held on the fourth Thursday of May, one thousand nine hundred fifteen; to authorize the city of Wheeling to improve the Center Wheeling market by constructing a new building on the present site, and to equip, operate and maintain the same, which building when constructed is to be used for the purpose of conducting a public market, recreation center and playground; to authorize the city of Wheeling to lease and contract for the use of the said building, or any part thereof; to authorize the said city of Wheeling to issue revenue bonds pay-

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able solely from the revenues of said building, and to make such bonds exempt from taxation, and to authorize the said bonds to be secured by the said new building and improvements and/or the income therefrom.

Be it enacted by the Legislature of West Virginia:

That section thirty-six of that part entitled "Greater Wheeling Charter", chapter twenty-one, acts of the Legislature of West Virginia, one thousand nine hundred fifteen (municipal charters), approved by the majority of the voters of the city of Wheeling at an election held on the fourth Thursday of May, one thousand nine hundred fifteen, be amended and reenacted so as to read as follows:

Section 36. The council may establish markets in and for
2 said city, maintain or authorize the maintenance of any al-
3 ready established, appoint the time and places for holding
4 the same, provide suitable buildings therefor, and ordain and
5 enforce such regulations respecting the markets as in its opin-
6 ion the convenience or interests of the inhabitants of said
7 city shall require, among others such regulations as it shall
8 deem necessary or proper to prevent forestalling therein.

9 That the city of Wheeling is hereby authorized and em-

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10 powered to improve the Center Wheeling market by the con-
11 struction of a new building on the present site and to equip,
12 operate and maintain the same, which building when con-
13 structed shall be used for the purpose of conducting a public
14 market, recreation center and playground; that the said
15 city of Wheeling is hereby authorized to lease, rent or con-
16 tract for the use of the said building, or any part thereof,
17 and to charge fees for admission to the said building,
18 or any parts thereof; that the said city of Wheeling is author-
19 ized and empowered to issue revenue bonds to pay for the costs
20 of construction and equipping the said building, and no obli-
21 gation shall be incurred by the said city in such construction
22 except such as is payable solely from the funds provided under
23 the authority of this act.

24 The construction, improvement, equipment, custody, oper-
25 ation and maintenance of said new building, which when con-
26 structed shall be used for the purpose of conducting a public
27 market, recreation center and playground and the collection
28 of revenues therefrom, shall be under the supervision and
29 control of the council of said city of Wheeling.

30 The council of said city of Wheeling shall have power to take

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31 all steps and proceedings and to make and enter into all con-
32 tracts or agreements necessary or incidental to the perform-
33 ance of its duties in the execution of its powers under this act.

34 The council of the said city of Wheeling may employ engi-
35 neers, architects, attorneys, inspectors, a superintendent, a
36 manager, collectors and such other employees as in its judg-
37 ment may be necessary in the execution of its powers and
38 duties in the construction, improvement, equipment, custody,
39 operation and maintenance of said new building, and may fix
40 their compensation, all of whom shall do such work as the said
41 council shall direct. All said compensation and expenses, in-
42 cluding all preliminary expenses incurred prior to the adoption
43 of the ordinance hereinafter provided, shall be paid solely
44 from the funds provided for under the authority of this act.
45 No contract or sub-contract for material or labor exceeding
46 one thousand dollars, shall be made without advertising for
47 bids, with power in said council to reject any or all bids.

48 Before the city of Wheeling shall construct any such build-
49 ing the council of said city shall enact an ordinance which
50 shall (1) set forth description of said building; (2) set forth
51 the cost of said building, which shall include cost of construc-

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52 tion, engineering and legal expense; (3) order the construc-
53 tion of said building; (4) direct that revenue bonds of the said
54 city shall be issued pursuant to this act in such amount as
55 may be found necessary to pay the cost of the building; (5)
56 contain such other provisions as may be necessary in the prem-
57 ises.

58 After such ordinance shall have been adopted it shall be pub-
59 lished once a week for two successive weeks in two Wheeling
60 newspapers, stating that the ordinance has been adopted and
61 that the said city will issue bonds as described in the ordinance,
62 that any person interested may protest within six days from
63 the last publication of the notice. If thirty per cent or more
64 of the owners of real estate in said municipality file a protest,
65 then council shall not proceed unless three-fourths of the said
66 council assent thereto.

67 Such bonds shall bear interest at not more than six per cent
68 per annum and shall mature as may be determined by the
69 ordinance. Such ordinance shall determine the form and de-
70 tails of the bonds and fix their denomination and places of pay-
71 ment, which may be at any bank or trust company within or
72 without the state.

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73 The bonds shall contain a statement on their face that the
74 said city shall not be obligated to pay the same or the interest
75 thereon except from the special fund provided from the net
76 revenues of said new building.

77 All said bonds shall have all the qualities and incidents of
78 negotiable instruments. Said bonds shall be exempt from all
79 taxation, state, county and municipal.

80 Any surplus of bond proceeds, over and above the cost of
81 said building, shall be placed in the sinking fund hereinafter
82 provided.

83 In case of error or miscalculation or otherwise, and the pro-
84 ceeds are less than the cost of the building, additional bonds
85 may be issued to provide the amount of the deficit, said bonds
86 to be secured equally with all other bonds issued pursuant to
87 this act, and shall be deemed to be of the same issue, and said
88 council may also provide in said ordinance for additional bonds
89 for the purpose of extending or improving said building.

90 All moneys received from any bonds, pursuant to the act,
91 shall be applied solely to the cost of said building and improve-
92 ment and there is hereby created a lien upon such moneys,

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93 until so applied, in favor of the holder of the bonds or trus-
94 tees hereinafter provided.

95 All necessary preliminary expenses, actually incurred by
96 said council in making plans, estimates of costs and any other
97 necessary expenses of whatsoever nature, necessary to be paid
98 prior to the issue and delivery of the revenue bonds pursuant
99 to the provisions of this act, may be paid out of the general
100 funds of the said city or a temporary transfer may be made
101 from other funds: *Provided*, That any funds from which such
102 payments are made shall be fully paid by said council out of
103 the first proceeds of the sale of the revenue bonds herein pro-
104 vided. In the event that the said necessary preliminary ex-
105 penses shall not have been paid out of said general funds or no
106 transfers from other funds have been made, then said city
107 shall pay said necessary preliminary expenses out of said first
108 proceeds derived from the sale of the said revenue bonds.

109 The council of the said city of Wheeling may, by ordinance,
110 create a lien on the income and revenues received from said
111 building, improvements, or any part thereof, in favor of the
112 said bondholders. Said bonds may be further secured by a
113 trust indenture by and between the city of Wheeling and a

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114 corporate trustee, which may be any bank or trust company
115 in the city of Wheeling, and said trust indenture may convey
116 all of the said building and equipment in trust to secure the
117 said bondholders. The said trust indenture may provide for
118 the payment of the proceeds of the sale of the bonds and re-
119 venue obtained from said building to be paid to the said trus-
120 tee and for the custody and disbursement thereof, and such
121 trust indenture may contain such other provisions for protect-
122 ing and enforcing the rights and remedies of the said bond-
123 holders as may be reasonable and proper.

124 Before the issuance of any such bonds, council shall, by
125 ordinance, create a sinking fund for the payment of the bonds
126 as they fall due and the interest when due and expenses inci-
127 dental thereto, and shall pledge a sufficient amount of net reve-
128 nues, after payment of reasonable expenses of operation and
129 maintenance, to be set aside at intervals provided by the or-
130 dinance. The said sinking fund shall contain a margin for
131 safety and for the payment of premiums upon bonds retired by
132 call or purchase, which margin together with any unused sur-
133 plus of such margin carried forward from the preceeding year,
134 shall equal at least ten per cent of all other amounts required

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135 to be paid in said sinking fund. Said council may by ordi-
136 nance, before the issuance of the bonds, direct that such sink-
137 ing fund, or a part thereof, may be used to purchase any of the
138 said outstanding bonds at the market price, but not exceeding
139 the price which the same shall in the same year be payable or
140 redeemable, and all bonds so purchased or redeemed shall
141 forthwith be cancelled and shall not again be issued. After the
142 payments into the said sinking fund as herein required, said
143 council may, at any time, in its discretion transfer all or any
144 part of the balance of the net revenues, after reserving an
145 amount deemed by said council sufficient for operation, repair
146 and maintenance for an ensuing period of twelve months and
147 for depreciation, into the sinking fund or into a fund for im-
148 provements and additions to the said building.

149 This act shall, without reference to any other statute, be
150 deemed full authority for the construction, acquisition, im-
151 provement, equipment, maintenance, operation and repair of
152 the said Center Wheeling market herein provided and for the
153 issuance and sale of the bonds by this act authorized, and
154 shall be construed as an additional and alternative method

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155 therefor and for financing thereof, and no petition or election
156-57 or other further proceedings in respect to the construction of
158 said building or issuance or sale of said bonds shall be required,
159 except such as are prescribed by this act, any provisions of
160 other statutes of the state to the contrary notwithstanding.

161 Any holder of any such bonds herein provided, or any
162 coupons attached thereto, and the trustee, if any, may, except
163 as restricted by said ordinance or trust indenture, enforce and
164 protect any and all rights hereunder, either at law or in equity
165 by action, suit, mandamus or other proceeding. The sinking
166 fund provided for herein shall be transmitted to the state sink-
167 ing fund commission at such intervals as shall be provided
168 by ordinance and said commission is hereby authorized to act
169 as fiscal agent for such sinking fund under any ordinance
170 passed pursuant to the provisions of this act and shall invest
171 all such sinking fund, as provided by general law.

172 In the event bonds issued under the provisions of this act
173 are not secured by a mortgage or deed of trust on the project
174 constructed and/or acquired from the sale of such bonds, there
175 shall be, and there is hereby, created a statutory mortgage lien
176 upon the project so acquired or constructed from the proceeds

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177 of bonds authorized to be issued, which shall exist in favor
178 of the holder of said bonds, and each of them, and to and in
179 favor of the holder of the coupons attached to said bonds, and
180 such project and equipment connected therewith, shall remain
181 subject to such statutory mortgage lien until payment in full
182 of the principal and interest of said bonds. Any holder of
183 bonds issued under the provisions of this act, or of any cou-
184 pons representing interest accrued thereon, may, either at
185 law or in equity, enforce the statutory mortgage lien hereby
186 conferred and may, by proper suit, compel the performance of
187 the duties of the officials of the city of Wheeling set forth in
188 this act. If there be default in the payment of the principal
189 of and/or interest upon any of said bonds, any court having
190 jurisdiction in any proper action may appoint a receiver to
191 administer said project on behalf of the city of Wheeling, with
192 power to charge and collect rates, rents, fees or other income
193 to provide for the payment of said bonds and interest thereof,
194 and for the payment of the operating expenses and to apply
195 the income and revenues in conformity with this section and
196 the order or ordinance providing for the issuance of said bonds.
197 Said city shall, so long as any bonds issued under the pro-

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198 visions of this section remain outstanding, operate and main-
199 tain such Center Wheeling market so as to provide, charge,
200 collect and account for revenues therefrom as will be sufficient
201 to pay all operating costs, provide a depreciation fund, retire
202 the bonds and pay the interest requirements thereon as the
203 same may become due. The ordinance pursuant to which any
204 such bonds are issued shall pledge the revenues derived from
205 the project to the purposes aforesaid and shall definitely fix
206 and determine the amount of revenues which shall be necessary
207 and set apart in a special fund for the bond requirements.
208 The amounts, as and when so set apart into said special fund
209 for the bond requirements, shall be remitted to the state sink-
210 ing fund commission at least thirty days previous to the time
211 interest or principal payments become due, to be retained and
212 paid out by said commission consistent with the provisions of
213 this section and the ordinance pursuant to which such bonds
214 have been issued.

215 The provisions of this act are separable and if any of the
216 provisions, or parts thereof, are for any reason illegal, it is the
217 intention that the remaining provisions, or parts, shall remain
218 in full force and effect.

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Kenna K. Styn
Chairman Senate Committee

[Signature]
Speaker of the House of Delegates.

[Signature]
Clerk of the House of Delegates.

[Signature]
President of the Senate.

[Signature]
Clerk of the Senate.

James P. Smith
Chairman House Committee

The within is.....

this.....day of....., 1934.

.....
Governor.

Filed in the office of the Secretary of State
of West Virginia. JAN 31 1934
Wm. S. O'BRIEN,
Secretary of State