WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1939

ENROLLED

SENATE BILL No. 267

(By Mr.)

PASSED

In Effect

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WILLIAM S. O'RIEN
SECRETARY OF STATE
ENROLLED
Senate Bill No. 267
(By Mr. Randolph)

[Passed March 9, 1939; in effect from passage.]

AN ACT to authorize municipal corporations to create boards of park commissioners; to provide for the qualifications of the members thereof; to define the public duties and powers of such boards; to authorize such boards to purchase, hold, sell, and convey real or personal property, receive any gift, grant, donation, and bequest or devise; to authorize such boards to disburse such moneys as they may receive by appropriations or otherwise; to authorize municipalities to issue bonds, in accordance with law, for the purpose of establishing, maintaining, improving, extending, or operating public park systems; and to authorize the municipalities and such boards to do any and all things and acts which may be necessary or convenient to carry out and effectuate the purposes and provisions of this act.
Be it enacted by the Legislature of West Virginia:

Section 1. (a) The term "municipality" as used in this act, shall be construed to mean any city or incorporated town in the state of West Virginia; (b) the term "board" when hereinafter used in this act shall be construed to mean the Board of Park Commissioners; and (c) the term "council" shall mean the chief legislative body of the city.

Sec. 2. Every municipality in the state of West Virginia is hereby authorized and empowered, by ordinance, to create a board of park commissioners for the purpose of establishing, improving, developing, operating and maintaining a municipal public park system.

Sec. 3. The board of park commissioners created by ordinance, enacted pursuant to the authority of this act, shall be a public corporate body, with perpetual existence and a corporate seal. It shall be known as the board of park commissioners of such municipality. It shall have the power to purchase, hold, sell, and convey real or personal property; receive any gift, grant, donation, and bequest or devise; sue and be sued; contract and be contracted with; and do any and all things
and acts which may be necessary or convenient to carry
out and effectuate the purposes and provisions of this act.

Sec. 4. The board shall consist of three members, any
two of whom shall constitute a quorum for the transaction of
business, except as hereinafter provided. Each member of
said board shall be a bona fide resident of the municipality
and shall own real estate within the limits of such munici-
pality. The council of the municipality may provide either
by the ordinance creating the board or by a subsequent ordi-
nance for the appointment of the members thereof by the
council, but unless and until it does so provide, the members
of the board shall be elected by the duly qualified voters of
the municipality at regular municipal elections. Such board
members shall serve for terms of six years, and until their suc-
cessors have been duly elected or appointed and qualified:

Provided, however, That the council of the municipality shall
appoint the members of the first board, such appointees to
serve, one for a term of six years, one for a term of four years,
and one for a term of two years. The ordinance creating the
board shall fix the date upon which the terms of such board
members shall begin. When any member of the board, during
his term of office, shall cease to be a bona fide resident of the
municipality or a freeholder thereof, he shall thereby be dis-
qualified as a member of said board and his office shall there-
upon be, and become vacant.

Sec. 5. When a vacancy occurs on said board by reason of
death, resignation, change of residence from the municipality,
or for any other cause, the remaining member or members of
said board shall appoint a successor or successors, or if there
should be no members left on said board, the council of the
municipality shall appoint successors, and in either event the
member or members so appointed shall serve until the next
general municipal election of the municipality, at which elec-
tion there shall be elected the necessary member or members
to fill the unexpired term or terms.

Sec. 6. After appointment or election, the members of the
board shall qualify by taking and filing with the clerk or re-
corder of the municipality the oath prescribed by law for
public officials, and they shall not be permitted to serve upon
said board until they have so qualified. If any member of
said board shall fail to so qualify on or before the date upon
which he should assume the duties of his office, the other quali-
fied members of said board may declare his position vacant
and appoint a successor, as hereinabove provided.

At the first meeting held after the first board has been ap-
pointed, as hereinbefore provided, and thereafter on a date
to be fixed by the ordinance creating such board, the
members of the board shall organize by electing one of their
number president, and another vice president, and by electing
a secretary who need not be a member of the board. The
secretary shall keep an accurate record of all the fiscal affairs
of the board, and shall keep a minute book in which he shall
record the proceedings and transactions of each meeting of
the board. The secretary shall be paid such compensation
for his services as the board shall fix from year to year. The
city treasurer shall be ex officio treasurer of said board, and
he shall take the oath prescribed by law and shall furnish such
bond as may be required by said board.

Sec. 7. The members of said board shall receive no compen-
sation for their services but they shall be entitled to reim-
bursement for any reasonable expenses incurred in the per-
formance of their duties as members of said board. They
shall not be personally interested directly or indirectly in
any contract entered into by said board, or hold any remunera-
tive position in connection with the construction, operation,
or maintenance of any of the property under their control
as members of said board.

Sec. 8. The council shall furnish said board an office at the
municipal building where it may hold its meetings and keep
its records. The board shall have complete and exclusive
control and management of all of the properties which it shall
operate in connection with the public park system for the mu-
nicipality, and shall have power to employ such persons as, in
its opinion, may be necessary for the construction, operation,
and maintenance of the property under its control, at such
wages or salaries as it shall deem proper, and shall have full
control of all employees.

Sec. 9. The board shall have power to acquire by purchase,
lease, or by exercise of the power of eminent domain, such land
or lands as it shall determine to be necessary or incidental to
the construction, operation, and maintenance of a system of
public parks, parkways, playgrounds, athletic fields, stadiums,
swimming pools, skating rinks, and other like public recrea-
tional facilities for the municipality.
Sec. 10. The board is authorized to take title in its or in
the name of the municipality to all real and personal property
acquired by it for the use of the public or useful to the public
in the operation, maintenance, or enjoyment of all public
parks, parkways, playgrounds, athletic fields, stadiums, swim-
ming pools, skating rinks, and all other like public recreational
facilities for the municipality, and shall manage and dispose
of the same as, in its opinion, will best serve the interests of the
public in carrying out the purposes of this act. The munici-
pality, and all other public bodies owning real estate intended
to be used for public parks, are hereby authorized to convey
the same to said board to be held by it for such purpose.

Provided, however, That nothing herein contained shall be
construed as limiting said board from going beyond the terri-
torial limits of the municipality, anywhere within the state
of West Virginia, to lease, purchase, or otherwise acquire any
real estate for the purposes herein set forth.

Provided further, That said board shall have the right to
sell and convey only such part of the real estate that it may
acquire by gift, devise, purchase, or otherwise, as it may de-
termine to be of no advantage in the operation, management
and maintenance of said public parks, parkways, playgrounds, athletic fields, stadiums, swimming pools, skating rinks, and other like public recreational facilities; except that the board shall have authority and power to make such sales and conveyances of its real estate as may be necessary, desirable or convenient to enable the municipality to obtain the benefits of chapter eight, article four-a of the code of West Virginia, entitled "Municipal Public Works," or any other like act or legislative authorization; and, Provided further, That under no circumstances shall any of such property be sold or conveyed except by unanimous vote of all of the members of said board. All deeds conveying the real estate of said board shall be executed in its official name by its president or vice president, and shall have its corporate seal affixed and duly attested by its secretary.

Sec. 11. The board shall have the necessary powers and authority to manage and control all public parks, parkways, playgrounds, athletic fields, stadiums, swimming pools, skating rinks, and other recreational facilities of all kinds used as a part of said public park system or as a means of maintaining places of beauty, education, and recreation, promoting the
health, property, lives, decency, morality, and good order of
the general public, and particularly of the inhabitants of the
municipality and vicinity; to abate or cause to be abated all
nuisances; to regulate or prohibit the selling of any article,
goods, wares, or merchandise within said park system so
designated; to regulate or prohibit the placing of signs, bill-
boards, posters, and advertisements within said park system
as so designated, or the grounds immediately adjacent thereto;
to have the same kept in good order and free from obstruction
for the use and benefit of the public; to restrict and prohibit
vagrants, mendicants, beggars, tramps, prostitutes, or dis-
orderly persons therefrom; to construct, improve, and repair
such parks, parkways, playgrounds, athletic fields, stadiums,
swimming pools, skating rinks, and other recreational
facilities, on any grounds controlled by said board; to acquire
for public use by lease or otherwise lands either within or
without the municipal limits as they now exist, or may here-
after be enlarged or diminished; to cause any public street,
road, alley, bridle path, or walkway, which is a part of the
public park system, to be graded, drained, and surfaced; to
construct, operate, and maintain all necessary sewers and
water lines in connection with said public park system; and
to do any and all other things or acts which may in any way
be necessary or incidental to the use and enjoyment of said
public park system by the general public as a place or places
of beauty, education, entertainment and recreation.

In order to accomplish the foregoing purposes, said board
shall be empowered to make or promulgate such ordinances
as may be necessary or incidental thereto; to enforce the
same by appropriate proceedings in any proper tribunal of
this state, or any county, district, or municipality thereof,
and to employ such police officers as it shall deem proper and
necessary. The city attorney shall be the official counsel for
said board and shall advise it on all legal matters, but said
board may, in its own discretion, employ other or additional
counsel.

Sec. 12. The board may make reasonable charges to the
public for the privilege of using any of the recreational
facilities provided in said park or parks and may use the
funds so received for the purpose of constructing, operating,
and maintaining said park or parks.
Sec. 13. In carrying out the purposes of the act, the said board shall be authorized to receive and disburse for such purposes, any monies appropriated to it by the council of the municipality, together with any other funds which may come into its hands by gift, grant, donation, bequest, devise, or from its own operation, or otherwise.

Sec. 14. Every municipality is authorized to issue, in the manner prescribed by law, bonds for the purpose of raising funds to establish, maintain, improve, extend and operate, a system of public parks for such municipality, or to refund any bonds of the municipality, the proceeds of which were expended in the establishing, maintaining, improving, extending or operating such public park system, or any part thereof. Any bonds issued for any of the purposes stated in this section shall contain in the title or subtitle thereto the words "public park bonds" in order to identify the same, and shall be of the form, denomination and maturity, and shall bear the rate of interest fixed by resolutions of the board of park commissioners of the municipality. The council may provide for issuing bonds for other lawful purposes of the municipality in the same ordinance in which
provision shall be made for issuing bonds authorized under this section. The board of park commissioners of the municipality shall pay all of the costs and expenses of any election which shall be held to authorize the issuance of public park bonds only. The expenses of holding an election to authorize the issuance of public park bonds and bonds for other municipal purposes shall be paid by the board of park commissioners and the municipality respectively, in the proportion that the public park bonds bear to the total amount of bonds authorized.

Whenever the council of the municipality and the requisite majority of the voters thereof shall authorize, in the manner prescribed by law, the issuance of bonds for the purpose of establishing, maintaining, improving, extending and operating a system of public parks in the municipality, or for refunding any outstanding bonds, the proceeds of which were applied to any of said purposes, said bonds shall be issued and delivered to the board of park commissioners of the municipality to be by it sold in the manner prescribed by law, and the proceeds paid into the treasury of the board of park commissioners, and the
same shall be applied and utilized by the board of park
commissioners for the purposes prescribed by the ordinance
authorizing the issuance of such bonds. In any ordinance
for the issuance of bonds for such purposes, it shall be a
sufficient statement of the purposes for creating the debt,
to specify that the same is for the purpose of establishing,
maintaining, improving, extending and operating a public
park system for the municipality, without specifying the
particular improvements, extensions, replacements or addi-
tions contemplated; but an ordinance for refunding
bonds shall designate the issue and the number of bonds
which it is proposed to refund.

Sec. 15. The provisions of this act shall be construed
as conferring additional authorization and powers upon
municipal corporations enacting ordinances hereunder, and
shall not be construed as affecting any authorization or power
heretofore conferred upon any municipality by the legislature
of the state of West Virginia by general, special, local or
municipal charters, or parts thereof.

Sec. 16. The provisions of this act shall be considered
2 severally, and should any one or more provisions thereof be
3 declared unconstitutional, the remaining provisions, if capa-
4 ble of operation when standing without such unconstitutional
5 provisions, shall be and remain in full force and effect.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

E. O. Hise
Chairman Senate Committee

Nell M. Miller
Chairman House Committee

Originated in the Senate

Takes effect from passage

Clerk of the Senate

Clerk of the House of Delegates

Will R. St. John
President of the Senate

James T. Morris
Speaker House of Delegates

The within this the day of, 1939.

Governor

This enrolled by

[Signature]