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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1939

ENROLLED

SENATE BILL No. 267

(By Mr. Hambley)

PASSED March 9 1939

In Effect same Passage

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WILLIAM S. O'BRIEN
SECRETARY OF STATE

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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
2 act, shall be construed to mean any city or incorporated town
3 in the state of West Virginia; (b) the term "board" when
4 hereinafter used in this act shall be construed to mean the
5 Board of Park Commissioners; and (c) the term "council"
6 shall mean the chief legislative body of the city.

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

Sec. 3. The board of park commissioners created by ordi-
2 nance, enacted pursuant to the authority of this act, shall be
3 a public corporate body, with perpetual existence and a corpo-
4 rate seal. It shall be known as the board of park commissioners
5 of such municipality. It shall have the power to purchase,
6 hold, sell, and convey real or personal property; receive any
7 gift, grant, donation, and bequest or devise; sue and be sued;
8 contract and be contracted with; and do any and all things

9 and acts which may be necessary or convenient to carry
10 out and effectuate the purposes and provisions of this act.

11 Sec. 4. The board shall consist of three members, any
12 two of whom shall constitute a quorum for the transaction of
13 business, except as hereinafter provided. Each member of
14 said board shall be a bona fide resident of the municipality
15 and shall own real estate within the limits of such munici-
16 pality. The council of the municipality may provide either
17 by the ordinance creating the board or by a subsequent ordi-
18 nance for the appointment of the members thereof by the
19 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:
14 *Provided, however,* That the council of the municipality shall
15 appoint the members of the first board, such appointees to
16 serve, one for a term of six years, one for a term of four years,
17 and one for a term of two years. The ordinance creating the
18 board shall fix the date upon which the terms of such board
19 members shall begin. When any member of the board, during

20 his term of office, shall cease to be a bona fide resident of the
21 municipality or a freeholder thereof, he shall thereby be dis-
22 qualified as a member of said board and his office shall there-
23 upon be, and become vacant.

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

Sec. 6. After appointment or election, the members of the
2 board shall qualify by taking and filing with the clerk or re-
3 corder of the municipality the oath prescribed by law for
4 public officials, and they shall not be permitted to serve upon
5 said board until they have so qualified. If any member of
6 said board shall fail to so qualify on or before the date upon
7 which he should assume the duties of his office, the other quali-

8 fied members of said board may declare his position vacant
9 and appoint a successor, as hereinabove provided.

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

Sec. 7. The members of said board shall receive no compen-
2 sation for their services but they shall be entitled to reim-
3 bursement for any reasonable expenses incurred in the per-
4 formance of their duties as members of said board. They
5 shall not be personally interested directly or indirectly in

6 any contract entered into by said board, or hold any remunera-
7 tive position in connection with the construction, operation,
8 or maintenance of any of the property under their control
9 as members of said board.

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

Sec. 9. The board shall have power to acquire by purchase,
2 lease, or by exercise of the power of eminent domain, such land
3 or lands as it shall determine to be necessary or incidental to
3a the construction, operation, and maintenance of a system of
4 public parks, parkways, playgrounds, athletic fields, stadiums,
5 swimming pools, skating rinks, and other like public recrea-
6 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, swimming 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 municipality, 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 territorial 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 determine to be of no advantage in the operation, management

22 and maintenance of said public parks, parkways, playgrounds,
23 athletic fields, stadiums, swimming pools, skating rinks, and
24 other like public recreational facilities; except that the board
25 shall have authority and power to make such sales and con-
26 veyances of its real estate as may be necessary, desirable or
27 convenient to enable the municipality to obtain the benefits
28 of chapter eight, article four-a of the code of West Virginia,
29 entitled "Municipal Public Works," or any other like act
30 or legislative authorization; and, *Provided further*, That un-
31 der no circumstances shall any of such property be sold or
32 conveyed except by unanimous vote of all of the members of
33 said board. All deeds conveying the real estate of said board
34 shall be executed in its official name by its president or vice
35 president, and shall have its corporate seal affixed and duly
36 attested by its secretary.

Sec. 11. The board shall have the necessary powers and
2 authority to manage and control all public parks, parkways,
3 playgrounds, athletic fields, stadiums, swimming pools, skating
4 rinks, and other recreational facilities of all kinds used as a
5 part of said public park system or as a means of maintaining
6 places of beauty, education, and recreation, promoting the

7 health, property, lives, decency, morality, and good order of
8 the general public, and particularly of the inhabitants of the
9 municipality and vicinity; to abate or cause to be abated all
10 nuisances; to regulate or prohibit the selling of any article,
11 goods, wares, or merchandise within said park system so
12 designated; to regulate or prohibit the placing of signs, bill-
13 boards, posters, and advertisements within said park system
14 as so designated, or the grounds immediately adjacent thereto;
15 to have the same kept in good order and free from obstruction
16 for the use and benefit of the public; to restrict and prohibit
17 vagrants, mendicants, beggars, tramps, prostitutes, or dis-
18 orderly persons therefrom; to construct, improve, and repair
19 such parks, parkways, playgrounds, athletic fields, stadiums,
20 swimming pools, skating rinks, and other recreational
21 facilities, on any grounds controlled by said board; to acquire
22 for public use by lease or otherwise lands either within or
23 without the municipal limits as they now exist, or may here-
24 after be enlarged or diminished; to cause any public street,
25 road, alley, bridle path, or walkway, which is a part of the
26 public park system, to be graded, drained, and surfaced; to
27 construct, operate, and maintain all necessary sewers and

28 water lines in connection with said public park system; and
29 to do any and all other things or acts which may in any way
30 be necessary or incidental to the use and enjoyment of said
31 public park system by the general public as a place or places
32 of beauty, education, entertainment and recreation.

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

43 Sec. 12. The board may make reasonable charges to the
44 public for the privilege of using any of the recreational
45 facilities provided in said park or parks and may use the
46 funds so received for the purpose of constructing, operating,
47 and maintaining said park or parks.

Sec. 13. In carrying out the purposes of the act, the said
2 board shall be authorized to receive and disburse for such
3 purposes, any monies appropriated to it by the council of the
4 municipality, together with any other funds which may come
5 into its hands by gift, grant, donation, bequest, devise, or
6 from its own operation, or otherwise.

Sec. 14. Every municipality is authorized to issue, in the
2 manner prescribed by law, bonds for the purpose of raising
3 funds to establish, maintain, improve, extend and operate,
4 a system of public parks for such municipality, or to refund
4a any bonds of the municipality, the proceeds of which were
5 expended in the establishing, maintaining, improving, ex-
6 tending or operating such public park system, or any part
7 thereof. Any bonds issued for any of the purposes stated
8 in this section shall contain in the title or subtitle thereto
9 the words "public park bonds" in order to identify the
10 same, and shall be of the form, denomination and maturity,
11 and shall bear the rate of interest fixed by resolutions of
12 the board of park commissioners of the municipality. The
13 council may provide for issuing bonds for other lawful
14 purposes of the municipality in the same ordinance in which

15 provision shall be made for issuing bonds authorized under
16 this section. The board of park commissioners of the munici-
17 pality shall pay all of the costs and expenses of any election
18 which shall be held to authorize the issuance of public park
19 bonds only. The expenses of holding an election to authorize
20 the issuance of public park bonds and bonds for other
21 municipal purposes shall be paid by the board of park
22 commissioners and the municipality respectively, in the
23 proportion that the public park bonds bear to the total
24 amount of bonds authorized.

25 Whenever the council of the municipality and the
26 requisite majority of the voters thereof shall authorize, in
27 the manner prescribed by law, the issuance of bonds for
28 the purpose of establishing, maintaining, improving, ex-
29 tending and operating a system of public parks in the
30 municipality, or for refunding any outstanding bonds, the
31 proceeds of which were applied to any of said purposes,
32 said bonds shall be issued and delivered to the board of
33 park commissioners of the municipality to be by it sold in
34 the manner prescribed by law, and the proceeds paid into
35 the treasury of the board of park commissioners, and the

36 same shall be applied and utilized by the board of park
37 commissioners for the purposes prescribed by the ordinance
38 authorizing the issuance of such bonds. In any ordinance
39 for the issuance of bonds for such purposes, it shall be a
40 sufficient statement of the purposes for creating the debt,
41 to specify that the same is for the purpose of establishing,
42 maintaining, improving, extending and operating a public
43 park system for the municipality, without specifying the
44 particular improvements, extensions, replacements or ad-
45 ditions contemplated; but an ordinance for refunding
46 bonds shall designate the issue and the number of bonds
47 which it is proposed to refund.

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

Chairman Senate Committee

Will M. Walker

Chairman House Committee

Originated in the *Senate*

Takes effect *from* passage

Charles E. Smith

Clerk of the Senate

Wm. S. Hall

Clerk of the House of Delegates

Wm. W. Patton

President of the Senate

James T. Brown

Speaker House of Delegates

The within this the

day of , 1939.

Governor

This enrolled by record
Asb