MAINE STATE LEGISLATURE

The following document is provided by the

LAW AND LEGISLATIVE DIGITAL LIBRARY

at the Maine State Law and Legislative Reference Library

http://legislature.maine.gov/lawlib

Reproduced from scanned originals with text recognition applied

(searchable text may contain some errors and/or omissions)

This document is from the files of the Office of the Maine Attorney General as transferred to the Maine State Law and Legislative Reference Library on January 19, 2022

May 28, 1929

To J. W. Hanson, Adjutant General
Re: Taking of Park Property

You ask my opin ion as to the validity of the title which the State of Maine would acquire by a deed from the City of Bangor, Albert E. Bass (residuary devisee of Joseph P. Bass) and the Eastern Maine Musical Association, assenting to the conveyance of the auditorium property in Bangor by proper deeds.

I regret to say that it seems to me that the title would be incomplete unless in addition to these conveyances legislative consent is obtained.

The title to the auditorium property stands in the City of Bangor for the benefit of the Eastern Maine Musical Association under the twentieth clause of the codicil to the will of Joseph P. Bass. The codicil further provides for a reversion of the property, should the musical association cease to function. . .

Bass Park is provided for under Clause 12 of the will. The property is to be,- "forever used only for and devoted to Public Park purposes, including, if the City shall see fit, semi-public purposes such as circuses, fairs; . . . said Park shall be forever known as 'Bass Park'; . . . to have and to hold to said City so long as said Park shall be used for and devoted to one of some or all of said purposes and those purposes only, and so long as said Park shall be called Bass Park. . ." The residuary devisee under the will is Albert E. Bass.

By the will and the codicil and under the rules of law, the public in general, for whom Bass Park was created, have an interest in the auditorium property in addition to the interest of the musical association, the City of Bangor as a corporation, and the residuary devisee. If the auditorium should revert to the city, it must thereafter be used for "public" and "semi-public" purposes for the benefit of the people generally.

The City is a municipal corporation and as such does not have the legal right to represent the people generally in conveying away property. If the City, the Eastern Maine Musical Association and the residuary devisee should all three join in a conveyance, the interest of the public would still be outstanding.

To cover this interest of the general public, my suggestion is that a special act of the Legislature be passed. The State Legislature represents the people generally in such a case, and I should say that legislative approval to the conveyance would legally complete it.

The decisions of the courts to the effect that real estate held by a city for public park purposes cannot be used for other purposes without express legislative consent are collected in 18 A.L.R. 1260.

In most of these cases the courts were passing on an attempt of a city to use or transfer park property for some private purpose, and in some of these cases the city purported to act under a general statute.

Such cases do not apply directly to our case because the use of the property for an armory is a use for a public purpose.

In several of the cases, however, the courts have passed directly on the question of the use of park property for non-park public purposes.

For instance, in Higginson v. Treasurer, 212 Mass. 583, the court forbade the City of Boston to construct in a public park a building which was to be used partly for administrative purposes. The Legislature had expressly authorized the city to build a high school in the park. The court said that the city exceeded this authority. The court discusses the legislative power over parks, pointing out that the municipal government as such has no right to use park property even for a school building unless the Legislature should approve, and therefore no power to use it for an administrative building which the Legislature had no authorized.

In this Massachusetts case the land had been originally acquired by eminent domain for park purposes. The ruling of the court would apparently apply even more to land which, like ours, had been conveyed to the city by will to be used for park purposes.

A somewhat similar case is Ward v. Field Museum, 241 Ill. 496, where it was held that even the Legislature could not authorize a museum to be erected on land which had been dedicated for a park with express prohibition against buildings. The proceeding was brought by an adjoining landowner.

See also Chicago v. Ward, 169 Ill. 392. In Hartford v. Maslen, 76 Conn. 599, it was held that the Legislature might permit the erection of a statue on land formerly belonging to the city, forming a part of the State Capitol Park.

In Brooklyn Park Commissioners v. Armstrong, 6 Hand (N.Y. Court of Appeals), 235, the court said that even the Legislature could not relieve a city from its obligation to hold lands for park purposes where bonds had been issued on the faith of the city's undertaking to that effect.

In Fessler v. Union, 67 N.J.E.14, it was held that even the Legislature could not authorize the erection of a tower on a public square to which a private citizen objected because he had bought land bordering on the square on the faith of its dedication as an open pleasure ground.

An instance of general statutes held insufficient to authorize a city to take park land for a public purpose, viz., a library, is Hopkinscille v. Jarrett, 156 Ky. 777. Other similar cases where general statutes were held insufficient to permit municipalities to convey park lands are,- Railroad Company v. City, 76 Ohio State, 481; Warren v. Lyons City, 22 Iowa 351; Bozarth v. Egg Harbor, 89 N.J. 26.

The power of the Legislature to authorize the taking of park property by eminent domain for another public use is, of course, clear.

The leading cases are,- Prince v. Crocker, 166 Mass. 347, and Codman v. Crocker, 203 Mass. 146, relating to the Boston subways; other cases in 18 A.K.R. 1271.

My conclusion, therefore, is that express legislative authority confirming or authorizing the city to use the auditorium property for an armory would, in connection with the deeds of the residuary devisee and the Musical Association clear up the title; but without legislative authority the title would be doubtful.

Clement F. Robinson
Attorney General

CFR/V