

## Municipal Corporations Authorized to Develop Off-street Parking Facilities

Traffic congestion in central business districts has been one of the most acute post-war problems of urban communities. Decentralization of business districts has wrought very marked reductions in assessed valuation of property in central business districts, and shrinkage in tax base, of many cities.<sup>1</sup> Ownership and operation of off-street parking facilities by local government units is one of the most highly recommended attacks upon the problem. In 1948 at least 492 American cities of over 5,000 population were operating parking lots or garages.<sup>2</sup>

Ohio cities have been slow to undertake a venture of this type, because there have been grave doubts whether the cities might constitutionally be authorized to do so. The Ohio Supreme Court in 1936 held that the Municipal Auditorium Garage in Cleveland was being operated in competition with private enterprise and not for a public purpose. Further operation of the garage was enjoined upon the ground that tax monies were being used to conduct a private business.<sup>3</sup> The opinion indicates that private cars could be parked in the garage and a charge collected when public meetings were held in the Auditorium.

The Ohio Constitution grants to municipal corporations the home-rule power to issue mortgage revenue bonds without limitation to finance the acquisition and construction of public utilities.<sup>4</sup> Whereas other states have brought within the definition of public utility such things as cemeteries,<sup>5</sup> golf courses,<sup>6</sup> swimming pools,<sup>7</sup> and convention halls,<sup>8</sup> Ohio courts have given a narrower, more traditional meaning to the term public utility.<sup>9</sup> Whether the utility theory could be sufficiently fortified by functionally tying municipi-

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<sup>1</sup> From 1930 to 1946 the assessed valuation in the central business district in Detroit has dropped \$200,000,000. Yocum and Whipple, *Municipal Provisions of Parking Facilities—State Laws and City Projects*, Bureau of Business Research, The Ohio State University, Research Monograph No. 44, p. 2 n. (1946).

<sup>2</sup> MUNICIPAL YEAR BOOK 1949 (International City Mgrs. Ass'n) 440.

<sup>3</sup> City of Cleveland v. Ruple, 130 Ohio St. 465, 200 N. E. 507 (1936).

<sup>4</sup> OHIO CONST. Art. XVIII, §12. See Comment, 9 OHIO ST. L. J. 141 (1948).

<sup>5</sup> Denton v. City of Salpulpia, 78 Okla. 178, 189 Pac. 532 (1920).

<sup>6</sup> Golfview Realty Co. v. Sioux City, 222 Iowa 433, 269 N. W. 451 (1936); Capen v. Portland, 112 Ore. 14, 228 Pac. 105 (1924).

<sup>7</sup> City of Belton v. Ellis, 254 S. W. 1023 (Tex. Civ. App. 1923).

<sup>8</sup> Schmoldt v. Oklahoma City, 144 Okla. 208, 291 Pac. 119 (1930).

<sup>9</sup> Comment, 9 OHIO ST. L. J. 142, 143 (1948).

pal parking lots to a public transportation system, as by integrating lots on the fringe of the congested downtown area with a shuttle bus system, remains to be seen.

The 97th General Assembly provided authority for municipal corporations to acquire property for off-street parking, and to finance such acquisitions.<sup>10</sup> But authority to operate such parking facilities was extremely limited. The statute appeared to require the cities to re-sell or lease the property within two years after acquisition.<sup>11</sup>

The 1949 legislature has provided specific authority for cities and villages to lay out, establish, construct, maintain and operate off-street parking facilities within the corporate limits. "Parking facilities" is doubtless broad enough to embrace garages as well as open lots. There is authority in the new act<sup>12</sup> for municipalities to acquire by purchase, gift, devise, exchange, lease or sub-lease any existing facility or any interest in real property to be devoted to this use.

Municipalities are authorized to exercise the power of eminent domain, except as to real estate owned, leased or held by a public utility or railroad, or real estate upon which off-street parking facilities open to the general public are and have been established for one year prior to the proposed acquisition. The latter part of this limitation may be very important. If most vacant lots in desirable locations are used for parking cars, this restriction may mean that cities and villages will be unable to acquire the more suitable sites at all, or they will be required to pay a price set by the seller.

Municipal corporations are given power to sell, lease or sub-lease property used for parking facilities. If, however, property acquired under the power of eminent domain is sold or leased within ten years after acquisition, the instrument of sale or lease must contain a covenant running with the land requiring the continued use of the property for parking purposes during the remainder of a ten-year period from the date of acquisition by the city.

The act states that real estate acquired under provisions of the act shall not be tax exempt.

Three methods of financing off-street parking facilities are provided by the new act.<sup>13</sup> Municipal corporations are given power to:

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<sup>10</sup> OHIO GEN. CODE §3939-2 (1938), repealed effective August 12, 1949.

<sup>11</sup> Following the grant of power to sell and convey property which had been acquired for off-street parking facilities, the statute contained these words, "Such sale shall be made within two years after the date of acquisition . . ." OHIO GEN. CODE §3939-2 (1938), repealed by the new act under discussion.

<sup>12</sup> OHIO GEN. CODE §3939-2, effective August 12, 1949 (House Bill No. 234).

<sup>13</sup> OHIO GEN. CODE §3939-3, effective August 12, 1949 (House Bill No. 234).

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(a) use any moneys in the general fund, not otherwise obligated or encumbered;

(b) issue and sell bonds pursuant to the provisions of the Uniform Bond Act;<sup>14</sup> and

(c) issue and sell mortgage revenue bonds in the same manner and under the same terms and conditions as provided in Article XVIII, Section 12 of the Ohio Constitution. There is no express grant of authority to pledge parking meter receipts as security for parking facility revenue bonds. It is noteworthy that such a pledge has been upheld in Michigan without consideration of the interesting question whether the pledge, coupled with a covenant to continue to operate the meters, constituted an unconstitutional attempt at abdication of the police power.<sup>15</sup>

Operating revenues of such parking facilities, after taxes and operating expenses are paid, are to be paid into a bond-retirement fund or sinking fund. The same disposition would be made of the proceeds of a sale or lease.

This act is substituted in the General Code for existing Sections 3939-2 and 3939-3 of the General Code.<sup>16</sup>

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<sup>14</sup> OHIO GEN. CODE §§2293-1 *et seq.* (1937).

<sup>15</sup> Parr v. Ladd, 323 Mich. 592, 36 N. W. 2d 157 (1949).

<sup>16</sup> The act does not purport to authorize the construction and financing of parking facilities beneath parks and squares by private enterprise under leases from municipalities. That type of attack has been made in other states. See Lowell v. City of Boston, 322 Mass. 709, 79 N. E. 2d 713 (1948); City and County of San Francisco v. Linares, 16 Cal. 2d 441, 106 P. 2d 369 (1940).