

Charles C. G. Evans, City Solicitor (cont'd)

Venable Park was purchased, and the various resolutions of the Board of Park Commissioners in connection with the use of a portion of the land for school purposes are set out with particularity in my opinion to you of May 24, 1940, to which reference is hereby made for those facts.

I am of the opinion that the above question should be answered in the affirmative. The answer to the question involves two considerations: (1) Whether there is power in the municipality to redetermine the public use to which land is to be used; and (2) if the power resides in the municipality, in what branch of the City government does the power reside - the Mayor and City Council of Baltimore, by ordinance, or the Board of Park Commissioners. As above indicated, I am of the opinion that the municipality has the power to designate another public use to be made of the land in question, and that the determination as to what other public use is to be made of the land must be made by the Mayor and City Council of Baltimore, by ordinance, and not by the Board of Park Commissioners.

A review of the pertinent facts discloses the following: The Act of 1904, authorizing the City to issue its stock to an amount not exceeding \$1,000,000.00 for the extension of the Park System, and Ordinance No. 228, approved March 20, 1906, effectuating the authorization, have been complied with; that is to say, the money used to purchase Venable Park was taken from the Park Loan and Venable Park became a part of the Park System of Baltimore City. It is important to observe that the deeds of October 29, 1907, and April 6, 1908, by which title to Venable Park was acquired, convey without designation of any use to which the property is to be put, so far as the habendum is concerned. There is a recital in the deeds that "Whereas the Board of Park Commissioners of the City of Baltimore, by virtue and in pursuance of the powers vested in them, have purchased from the party of the first part for and on behalf of the Mayor and City Council of Baltimore the property hereinafter described at and for the sum of . . . ." This clause showed a compliance with the Act of Assembly authorizing the loan, which, by Section 2, authorized the Mayor and City Council of Baltimore "acting by and through the agency of the Board of Park Commissioners" to "acquire by gift, purchase, lease . . . any land . . . which may be required for the purpose of extending said Park System . . . ."