

OFFICIAL OPINION NO. 88

August 25, 1945.

Hon. Frank H. Henley, Secretary,
Indiana World War Memorial,
Indianapolis, Indiana.

Dear Mr. Henley:

I have your letter of August 9th in which you request my opinion as follows:

"The National Tours Headquarters, Marine Corps League has made a request to put up a forty (40) by sixty (60) foot tent on the Plaza to exhibit a Jap Zero Plane, and charge admission for the purpose of raising funds for welfare work among the enlisted men of the Marine Corps.

"This matter was placed before the Board of Trustees of the Indiana World War Memorial at our meeting on August 8, 1945.

"I was directed by the Trustees to obtain from your office an opinion as to the legality of using State property for money raising programs for special organizations.

"The Plaza has been used many times by the Army, Navy and defense plants for exhibits, but without charge. It has also been used for many civic, religious and war activities without any fund raising program."

In arriving at any conclusions concerning your question, it should be remembered that the trustees of the Indiana World War Memorial is a limited statutory board with only such powers as are expressly granted by the statute creating the board, or such powers as are necessarily implied from the express powers.

Chapter 50 of the Acts of 1920 (special session) (59-201 Burns' 1933 R. S.) contains no express grant to the Board of Trustees of power to rent the Plaza or to authorize its use for an exhibition at which an admission charge is made. Practical considerations militate against the implication of such power since such an implication may logically be ex-

tended to all sorts of street fairs and carnivals. If the legislature intended such use, it would have been very easy to make provision therefor.

In *State v. City of Hiawatha*, 127 Kan. 183, 272 Pac. 113, the City of Hiawatha proposes to use its World War Memorial for a picture show exhibition. No express provision was made in the statute for such use. In discussing that use the court stated:

“This statute has already received consideration in cases where cities undertook to lease memorial buildings erected and maintained at public expense to private parties for private purposes. It was held that no power had been conferred by the legislature to lease the whole or any part of the building. (*Darby v. Otterman*, 122 Kan. 603, 252 Pac. 903; *Electric Theater Co. v. Darby*, 123 Kan. 225, 254 Pac. 1035; *State, ex rel. v. City of Independence*, 123 Kan. 766, 256 Pac. 799.) Since memorial buildings may not be leased to private parties to carry on private business, may they be used by the city or its trustees to carry on a commercial enterprise such as a picture show or theatrical business? It is conceded that there is no express authority in the act for the city to engage in the moving picture business or any other commercial enterprise in the building. A moving picture show is a well-recognized kind of private business, carried on by private parties in most of the cities, towns and community centers of the state. It is now almost as well recognized and common as the grocery and clothing businesses. A vast amount of money is invested in them, and a municipality engaged in the business will necessarily meet with sharp competition. Can it be said that the power exercised by the defendant in this commercial enterprise may be fairly implied from the powers granted? The legislature has conferred upon cities municipal powers and functions to be exercised for public purposes. In an early case it was held that—

“Municipal corporations are creations of law and can exercise only powers conferred by

law and take none by implication.' (City of Leavenworth v. Hankin, 2 Kan. 357.)"

It was there concluded that since a city is limited by its statutory powers (as is the statutory board in your case) there was no express or implied authority to devote the World War Memorial to such a use.

Furthermore upon reading all of Chapter 50, *supra*, it appears that the requested use or any similar use by a special group, is inconsistent with the purposes of the memorial. The ground and buildings were paid for by all the people of the State. The land was "dedicated and forever set apart for such World War Memorial provided for in the act." The title is in the State. The structure is to "commemorate the valor and sacrifice of the soldiers, sailors, and marines of the United States" and to provide a place for meetings and headquarters and the keeping of records "in order to inculcate a true understanding and appreciation of the duties, benefits, and privileges of American citizenship, inspire patriotism and respect for the law to the end that peace may prevail, good will be promoted, justice be administered and established, public order maintained, and liberty and freedom under the law perpetuated." Section 5, Chapter 50, Acts of 1920 (special session) as amended (59-205 Burns' 1933 R. S.).

In Section 12 of the Act, it is set forth that the use of the building may be granted for public purposes without rent or charge, or for only a *nominal rental* to certain organizations for a meeting place or a place to keep records. I am of the opinion that in the use of the words "nominal rental" the Legislature must have intended that the memorial buildings and grounds were not to be used to further a money raising enterprise either by the trustees, or any one else with the permission of the trustees.

Based upon those considerations, I am therefore of the opinion that however praiseworthy the subject enterprise may be, the trustees are without authority to permit the use of the World War Memorial or grounds for any exhibition at which an admission fee is charged.