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PARK—COMMISSIONERS OF TOWNSHIP PARK DISTRICT  
UNAUTHORIZED TO ACQUIRE LAND BY LEASE FOR  
PUBLIC PARK.

*SYLLABUS:*

*The park commissioners of a township park district established under the provisions of Section 3415, et seq., General Code are not authorized to acquire lands by lease for use as a public park or part thereof under the general authority conferred upon them by Section 3420, General Code, to locate, establish, improve and maintain a free public park within and without the township, and accept a conveyance or purchase or to appropriate suitable lands for that purpose.*

COLUMBUS, OHIO, November 9, 1936.

HON. WARD C. CROSS, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your recent communication in which you refer to that part of Pymatuning Lake or Reservoir situated in the state of Ohio and the lands adjacent thereto owned by this state and as to which you request my opinion as to whether the Park Commissioners of the Andover Park District can take a lease of a part of such state lands and hold, use and maintain the same as a part of the public park lands of said district.

The lands here in question were acquired by the state of Ohio some years ago by a deed of conveyance from the Pymatuning Land Company and said lands are now under the jurisdiction of the Conservation Council of the Division of Conservation in the Department of Agriculture, under the general authority conferred upon this body by Section 472 of the General Code as this section was amended in the Conservation Act, 113 O. L., 551, 553. Whatever power and authority the Conservation Council has in the matter of leasing such lands or any part of the same is that conferred by Section 472-1, General Code, which was enacted in and as a part of the Conservation Act above referred to.

However, no question is made in your communication with respect to the power and authority of the Conservation Council to execute a lease of these lands or of any part thereof under the provisions of the section of the General Code above noted; but your inquiry is with respect to the power and authority of the Board of Park Commissioners of the Andover Township Park District to accept a lease of this kind and thereby acquire Pymatuning Reservoir lands as park lands of the district under the control and management of the Park Board.

In the consideration of this question, I assume that this Park District is one established by the favorable vote of the electors of the township in the manner provided by Sections 3415, et seq., General Code, and that the Park District is now under the control and management of Park Commissioners appointed and confirmed in the manner provided by the Township Park District law. By the terms of the statute, Section 3420, General Code, the Board of Park Commissioners of this Park District is a body politic and corporate. And although this Township Park District is not, in the accurate sense of the term, a political subdivision, it is a "taxing unit" as such term is used in the Budget Law, Sections 5625-1, et seq., General Code, and the Board of Park Commissioners of this district has authority to levy taxes on the property within the township for the maintenance of parks and park lands which said Board may have acquired for this purpose. See Opinions of Attorney General, 1932, Vol. III, page 1504. With respect to the acquisition of lands by the Park Commissioners, for park purposes, Section 3420, General Code, provides:

"They may locate, establish, improve and maintain a free public park within and without such township, and accept a conveyance or purchase or appropriate suitable lands and materials for that purpose, within and without the township. They shall have careful surveys and plats made of the lands acquired for such purposes, and establish permanent monuments on their boundaries. Such plats, when executed according to the law providing for the execution of plats by corporations, shall be admitted to and recorded in the office of the county recorder, and such records shall be admissible in evidence for the purpose of locating and ascertaining the true boundaries of the park."

Section 3422, General Code, provides as follows:

"When the commissioners can not procure lands or materials desired for park purposes by deed or gift, or purchase upon terms they regard reasonable, they may appropriate them for that purpose by proceedings in accordance with the provisions of law regulating the appropriation of private property by municipal corporations. If it is desired at any time to acquire additional grounds for enlarging such park and improving it, they may accept a deed of gift, purchase or appropriate lands therefor, in the manner provided for the original establishment of such park, and improve them. When gravel or other material is desired for the construction, improvement or repair of the roadway or other improvement herein authorized, they may appropriate and take it, and for this purpose they may go outside of the township limits."

By Sections 3422-1 and 3422-2, General Code, provision is made for the sale by the board of park commissioners of the park district, with the approval of the electors of the township in the manner therein provided, of lands acquired, owned and held by the board of park commissioners for park purposes and by Sections 3423, 3424 and 3425, General Code, provisions are made for the levy and collection of taxes on all real and personal property within the limits of the township and park district "to defray the expenses of purchasing, appropriating and improving lands for park purposes and maintaining them as a free public park."

Coming to the consideration of the question presented in your communication, which is hereinbefore noted, it is noted that among the powers conferred upon the commissioners of a township park district by the provisions of Section 3420, General Code, is that given to them to "accept a conveyance" of lands within or without the township for public park purposes. The use of this term in the statute suggests the question as to whether a legislative intent is thereby manifested to give to such park commissioners the right to take or accept a lease of lands for park purposes. The term "conveyance" is one of flexible meaning depending largely upon the context of the statute or instrument in which the term is used. And in association with other words extending its meaning, it has in some cases been construed to include a lease for a term of years. However, when the term "conveyance" stands alone or when its associated words, if any, are not such as to extend its meaning, the decided weight of authority supports the view that it is limited in its meaning to deeds conveying the title to real property. As stated by the court in the case of *Perkins v. Morse*, 78 Me., 17, 18, "a lease may be in a sense a conveyance, but such is not the commonly accepted nor the accurate meaning of the term. When we say premises are leased we generally mean that the use of them is transferred; and by the term conveyed that the title is deeded." In the case of *Miller v. Miller*, 91 Kan., 1, 4, the court, construing the words "conveyances of land," said "the words, 'conveyance of land,' mean, of course, the land itself in fee simple absolute." I do not deem it necessary to cite further authorities from other jurisdictions in support of this view as to the meaning of this term for the reason that the Supreme Court of this state is committed to this view with respect to the meaning of this term. Thus, in the case of *Langmede v. Weaver*, 65 O. S., 17, 37, having occasion to consider the question as to the meaning to be ascribed to the term "convey," the court said:

"To convey real estate, is to transfer the legal title to it from the owner to another by an appropriate instrument. *Abendroth v. Greenwich*, 29 Conn., 365. Land is conveyed only when the title to it passes. *Fairfax v. Lewis*, 11 Leigh (Va.), 248.

A conveyance is a deed which passes or conveys land from one person to another. *Brown v. Fritz*, 13 N. H., 285. Jacobs, L. D. The Century dictionary defines the word 'convey,' to mean in law, 'to pass title by deed;' and the word 'title' to mean the 'ownership, absolute ownership, the unincumbered fee.'"

Moreover, no reason is seen for giving to the term "accept a conveyance," as the same is used in section 3420, General Code, relating to the authority of the park commissioners to acquire lands for the establishment of a public park in the district, any more extended meaning than is to be ascribed to the term "accept a deed," as the same is used in section 3422, General Code, relating to the authority of the park commissioners to acquire additional lands for enlarging a public park established by them. None of the associated words found in section 3420, General Code, gives to the term "conveyance" any extended meaning with respect to the question here presented. On the contrary, a consideration of all of the statutory provisions, above noted, relating to the power and authority of the park commissioners of a township park district with respect to the establishment and maintenance of public parks in the district, clearly excludes any suggestion that such commissioners have any authority to acquire lands for this purpose by lease. These statutory provisions by their terms require the commissioners to acquire the title to all real property taken over by them for park purposes, whether such acquisition be by purchase, by appropriation or by deed of gift. The fact that provision is made for the sale of park lands by the park commissioners connotes the thought that the lands held by the park commissioners for park purposes must be such as they have a right to sell. Obviously, this power of sale can extend only to such lands as to which the park district or the commissioners as a board own and hold the title. I am of the opinion, therefore, that the question presented in your communication is required to be answered in the negative.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*