

Note from the Attorney General's Office:

1976 Op. Att'y Gen. No. 76-057 was overruled in part by
1988 Op. Att'y Gen. No. 88-042.

OPINION NO. 76-057

Syllabus:

A metropolitan park district, organized and existing under Chapter 1545 of the Ohio Revised Code, may pay for fire protection provided by a township within which one of its parks is located.

To: Anthony G. Pizza, Lucas County Pros. Atty., Toledo, Ohio
By: William J. Brown, Attorney General, August 13, 1976

Your request for my opinion is as follows:

"May a metropolitan park district, organized and existing under Chapter 1545 of the Ohio Revised Code, pay for fire protection to a township within which one of its parks is located?"

The Metropolitan Park District of the Toledo Area, organized and existing under R.C. Chapter 1545, has been requested by the trustees of Swanton Township to pay the cost of providing fire services to Oak Openings Preserve Metropark, which is part of the metropolitan park district. Oak Openings park constitutes a substantial portion of Swanton Township.

R.C. 1454.11 enables a board of park commissioners to acquire "lands either within or without the park district", and to "afforest, develop, improve, protect and promote the use of the same in such manner as the board deems conducive to the general welfare." (Emphasis added.) Inherent in the power to protect is the power to contract for fire protection.

R.C. 505.37 states in part:

"The boards of any two or more townships, or the legislative authorities of any two or more political subdivisions, or any combination thereof, may, through joint action, unite in the joint purchase, maintenance, use, and operation of fire-fighting equipment, or for any other purpose designated in sections 505.37 to 505.44, inclusive, of the Revised Code, and may prorate the expense of such joint action on such terms as are mutually agreed upon." (Emphasis added.)

The Ohio Supreme Court in Willoughby Hills v. Board, 3 Ohio St. 2d 49, 51 (1965), stated that "it becomes very clear that this court has found a park district to be a political subdivision of the state of Ohio which performs a function of the state that is governmental in character."

The board of park commissioners, therefore, is fully capable of agreeing with a township board regarding provision of fire protection under R.C. 505.37.

In respect to the authority of the township trustees, R.C. 505.37 also states:

"The board of township trustees may establish all necessary regulations to guard against the occurrence of fires, protect the property and lives of the citizens against damage and accidents, and may . . . provide such fire apparatus . . . for fire-fighting purposes as seems advisable to the board." (Emphasis added.)

The language of R.C. 505.37 is enabling and permissive. It is not language designating a legislative intent to impose a duty of fire protection on the township.

R.C. 505.37 further states:

"The board of any township may, by resolution, whenever it is expedient and necessary to guard against the occurrence of fires or to protect the property and lives of the citizens against damages resulting therefrom, create a fire district of such portions of the township as it deems necessary" (Emphasis added.)

My predecessor in 1943 Op. Att'y Gen. No. 5798, (second Syllabus) stated:

"In establishing such fire district or districts, the trustees are not required to cover the entire territory of the township which is outside the corporate limits of any municipality, but may include only such portion of such territory as they deem advisable."

This Opinion referred to purely agricultural areas, with buildings so infrequent and widely scattered that fire protection might not be practicable or even demanded. It would appear that whether there is a practical public interest mandating fire protection is a question of fact to be determined on a local level. Among the factors to be considered are the cost of protection and the potential for loss of lives or property, the ability of the township or the district to meet the financial burden of fire protection within R.C. 505.39 and R.C. 505.40, and the availability of firemen or another fire department with which to contract. See R.C. 505.44 and R.C. 505.442.

It is plain that township trustees may exclude the municipal park districts from other fire districts. If there is no public interest in creating a fire district (analyzing all existing circumstances) or if it is not "expedient and necessary" to do so, the township trustees may exclude a metropolitan park district from fire protection. On the other hand,

since the Revised Code recognizes the practicality of joint participation by legislative bodies in fire-fighting protection, (discussed supra), the township and the park district may contract for protection upon their determination of need.

In specific answer to your question, it is my opinion and you are so advised that:

A metropolitan park district, organized and existing under Chapter 1545 of the Ohio Revised Code, may pay for fire protection provided by a township within which one of its parks is located.