

1698.

BELL, CHURCH OR SCHOOL—BOARD OF TOWNSHIP PARK COMMISSIONERS—MAY IN ITS DISCRETION EXPEND PUBLIC FUNDS TO ERECT SUITABLE TOWER OR OTHER STRUCTURE IN PARK PROPERTY TO PRESERVE AND DISPLAY BELL — BOARD NOT EMPOWERED TO EXPEND FUNDS WHERE PROPERTY NOT LOCATED IN PARK—CONDITIONS WHERE BOARD OF EDUCATION MAY EXPEND PUBLIC SCHOOL FUNDS TO MAINTAIN BELL—SUCH TWO BOARDS NOT EMPOWERED TO JOINTLY ERECT BELL TOWER ON PROPERTY, PARTLY SCHOOL OR PARTLY PARK.

SYLLABUS:

1. *Should it appear to the members of a board of township park commissioners that an old church bell or school bell is such an object of community interest, on account of its historical background and association as to be worthy of preservation and display for the edification of the patrons of the park, the said board may, in its discretion lawfully expend public funds under its control for the erection of a suitable tower or other structure on park property, for the preservation and display of the bell.*

2. *Under such circumstances, the board of park commissioners would not be empowered to expend public funds for the erection of a bell tower on property not located in the park under its control.*

3. *If a board of education determines that a bell is essential to the proper conduct of the schools under its control it is empowered to expend public school funds to acquire one, and to erect a suitable bell tower for it on school premises or on adjoining premises, with the consent and approval of the owners thereof, if in the exercise of a sound discretion the board determines by erecting it on property outside the school premises and operating it electrically or mechanically, the interests of the schools are thereby best served.*

4. *A board of township park commissioners for a park adjoining school property, and the board of education in control of said school property are not empowered to jointly erect a bell tower partly on park property and partly on school property each paying its proportionate share of the cost thereof, for the purpose of housing a bell for the use of the schools maintained by the said board of education, or for any other purpose.*

Columbus, Ohio, January 8, 1940.

Hon. Theodore Tilden, Prosecuting Attorney, Portage County,
Ravenna, Ohio.

Dear Sir:

This is to acknowledge receipt of your request for my opinion which reads as follows:

“A certain board of education in one of our townships in Portage County is the owner of an old church that has been the property of the board of education for many years and is used as a school auditorium and gymnasium. In the belfry of the old church was a big bell of great weight, and the board determined that the belfry was unsafe for the bell and the same has been removed.

The bell is of peculiar significance to the people in that community and the board of education is desirous of preserving it.

Close to the church is a township park and the board of township trustees has been requested to erect a tower with a roof on it to house the bell permanently on the township park property.

Does such a board of township trustees have the right to expend their public funds to erect a bell tower in their township park?

Does a board of township trustees have the right to expend public funds to erect the bell tower on grounds owned by the board of education of said township?

Does the township board of education have the authority to spend school funds to erect the bell tower on school property?

Does the township board of education have the authority to spend school funds to erect a bell tower on the township park property provided, however, that the bell is so installed that it can be operated electrically from the school house and be used as a school bell?

Does the board of township trustees and the board of education have the authority to expend their proportionate amount to erect a bell tower which will be constructed partly on the township park property and partly on adjacent school property?"

Although in your request you speak of a "township park" as being close to the church wherein is located the bell in question, the specific questions submitted relate to the powers of township trustees in the premises. It should be noted that township parks are parks controlled and maintained by boards of park commissioners under and by authority of Sections 3415 to 3427, inclusive, of the General Code of Ohio. Township trustees possess no powers with respect to either the acquisition, maintenance or embellishment of such parks. Authority is extended to township trustees to improve, grade, care for and control to some extent public parks in their respective townships which parks are not under the control of park commissioners. See Section 3427-1, General Code, Opinion No. 707 rendered by this office under date of June 5, 1939.

Public parks which are properly designated "township parks" are controlled and managed by a board of park commissioners appointed by the Common Pleas Court. (Section 3416, General Code.) Township trustees, by force of Section 3427-1, General Code, or any other provision of law, have nothing whatever to do with the establishment or maintenance of such parks. Inasmuch as the class of public parks over which township trustees have some jurisdiction by force of Section 3427-1, General Code, are not property denominated "township parks", I assume for the purposes of this opinion, that the park in question is a park established by authority of Sections 3415 et seq., of the General Code, and is maintained and controlled by a board of park commissioners appointed by the Common Pleas Court of Portage County, in pursuance of Section 3416, General Code.

In considering the matters submitted, it should be noted at the outset that both boards of education and boards of park commissioners for town-

ship parks are administrative boards created by statute and that courts in all jurisdictions have consistently and repeatedly held that the powers of such boards are limited strictly to such powers as are expressly granted to them or necessarily implied to carry out the express powers granted. *Board of Education v. Best*, 52 O. S., 138; *State ex rel. Locher v. Menning*, 95 O. S., 97; *State ex rel. Clarke v. Cook*, 103 O. S., 465.

While the courts constantly apply and jealously guard the principle of law above stated as is evidenced by a host of authorities, they as well zealously adhere to the principle that where power is extended by statute to administrative boards to act with respect to any matter the manner of so doing and the extent thereof if not fixed or limited by statute are within the discretion of the board, which discretion will not be interfered with by the courts. *Board of Education v. State ex rel. Wickham*, 80 O. S., 297; *Board of Education v. Bannon*, 99 O. S., 369.

Clearly, a board of education may lawfully provide a bell for the use of the school under its jurisdiction if in the judgment of the board a bell is needed for the proper and more efficient functioning of the schools of the district. While no authority is in terms extended by statute to purchase and install a bell, express authority is granted by Section 7620, General Code, to provide "necessary apparatus and to make other necessary provisions for the schools" which is express authority for the furnishing of other physical needs similar to apparatus, in addition to furnishing schoolhouses and schoolrooms, and I do not think it could be successfully contended that a bell is not apparatus, or at least something similar to apparatus, and if a board of education should in its discretion determine that a bell is needed, it is clearly within its powers to purchase one and place it where its use would be most convenient. For more than a hundred years bells have been regarded as a proper and useful instrumentality in the conduct of the schools, and the furnishing of them from public funds has never to my knowledge been questioned. In the present instance the board of education has the bell. The problem is where to put it, inasmuch as the bell tower in which it has hung for years has become unsafe and the board is not disposed to repair it. The law places no restriction on where a school bell should be located. While it has been customary to have such bells housed in towers on some building constructed for the purpose, it is not necessary that this be done. It is purely discretionary with the board of education whether to construct a special tower for the bell apart from any

of the buildings owned by the board or a tower on or in connection with the school buildings, and if it should be determined that it be in the interests of good school management to place the bell entirely outside of school premises, and operate it electrically or mechanically and necessary permission to do so is secured from the property owners where it is to be placed, the board's discretion in so doing and the necessary expenditure of school funds for the purpose would undoubtedly not be interfered with by the courts.

Moreover, a board of education is authorized by Section 7643, General Code, to found and maintain a museum in connection with or as an adjunct to a school district library, and if the primary purpose of the preservation of the bell in question is its historical and sentimental significance rather than its utility value it might lawfully be preserved and housed in a tower or otherwise on school property on the theory that it is such an object of interest as property constitutes an exhibit in a museum.

The building of monuments and the proper preservation and display of objects of neighborhood interest or those of historical significance have always been regarded as proper subjects for the expenditure of public park funds. No one, to my knowledge, has ever questioned the right of park commissioners to expend funds under their control to properly preserve and display within the boundaries of the park for the edification of park patrons objects of special interest to those patrons on account of their historical or sentimental background. The result is that parks throughout this country and foreign lands are full of such objects of interest, and I believe it is recognized by everyone that such things properly belong to a public park.

I come now to a consideration of your last question, that is, whether or not the park commission and board of education may lawfully join in the construction of a bell tower to be partly on park property and partly on school property, and each to pay from public funds under their control a proportionate share of the cost of constructing and maintaining the tower.

It is a generally accepted rule that administrative boards created by statute have no power to join with another or other similar board or boards in the accomplishment of any of the purposes for which any of the participating boards exist unless expressly authorized so to do by statute. In some instances express statutory authority is granted for joint action of such boards. Where power to act jointly is not granted by the legislature

it is safe to assume that it is not the intent of the law that such action may be taken. I find nowhere in the law any grant of power to township park commissions and boards of education or township trustees and boards of education to act jointly for the accomplishment of any of the purposes for which either board is created. See generally on this subject Opinion of the Attorney General No. 681, rendered under date of June 1, 1939.

Specifically answering the questions submitted it is my opinion:

1. Should it appear to the members of a board of township park commissioners that an old church bell or school bell is such an object of community interest, on account of its historical background and association as to be worthy of preservation and display for the edification of the patrons of the park, the said board may, in its discretion lawfully expend public funds under its control for the erection of a suitable tower or other structure on park property for the preservation and display of the bell.

2. Under such circumstances the board of park commissioners would not be empowered to expend public funds for the erection of a bell tower on property not located in the park under its control.

3. If a board of education determines that a bell is essential to the proper conduct of the schools under its control it is empowered to expend public school funds to acquire one to erect a suitable bell tower for it on school premises or on adjoining premises, with the consent and approval of the owners thereof, if in the exercise of a sound discretion the board determines by erecting it on property outside the school premises and operating it electrically or mechanically the interests of the schools are thereby best served.

4. A board of township park commissioners for a park adjoining school property and the board of education in control of said school property are not empowered to jointly erect a bell tower partly on park property and partly on school property each paying its proportionate share of the cost thereof, for the purpose of housing a bell for the use of the schools maintained by the said board of education or for any other purpose.

Respectfully,

THOMAS J. HERBERT,
Attorney General.