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1. PARK, COMMISSIONERS OF TOWNSHIP—MAY LEVY TAX NOT TO EXCEED FIVE-TENTHS OF MILL ONLY AFTER APPROVAL OF TOWNSHIP ELECTORS—SECTION 3415 ET SEQ. G. C.—ELECTION HELD PURSUANT TO SECTION 5625-15 ET SEQ., G. C.
2. QUESTION, APPROVAL OR DISAPPROVAL OF LEVY MAY BE SUBMITTED TO VOTE OF ELECTORS ONLY BY ACTION OF TOWNSHIP TRUSTEES AS TAXING AUTHORITY OF TOWNSHIP.

SYLLABUS:

1. The commissioners of a township park established under authority of Section 3415 et seq. of the General Code, may levy a tax of not to exceed five-tenths of a mill only after approval of the township electors in an election held pursuant to Section 5625-15 et seq., General Code.
2. The question of approval or disapproval of such levy may be submitted to a vote of such electors only by action of the township trustees as the taxing authority of the township.

Columbus, Ohio, August 15, 1950

Hon. C. J. Borkowski, Prosecuting Attorney
Jefferson County, Steubenville, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“At the November, 1949, election there was submitted to the voters of Warren Township in this county, the question of establishing a free public park in accordance with Sections 3415 et seq. of the General Code. The vote was in favor of establishing a free public park.

The park commissioners have asked my advice on the matter of levying taxes or issuing bonds for the purpose of defraying the expenses of purchasing lands and maintaining them.

All the taxable property in the township or its overlapping taxing districts is now up to the ten mill limitation.

Under these circumstances, and taking into consideration the ten mill limitation imposed by the constitution and by statute,

do the park commissioners have the right to levy a tax of less than one mill or more than one mill with or without a vote of the people in accordance with the provisions of Section 3423 et seq., or any other section of the General Code?"

Section 3423, General Code, which you mention, reads as follows:

"To defray the expenses of purchasing, appropriating and improving lands for park purposes and maintaining them as a free public park, the township park commissioners may levy, each year, a sufficient tax, not to exceed one mill on each dollar of valuation on all real and personal property, including property within any municipal corporation within the limits of the township, over and above all other taxes and limitations thereon, authorized by law, unless the question of increasing such levy is submitted to and approved by a vote of the electors of such township, at a general or township election. Such vote shall be taken on the order of the township park commissioners, specifying the additional levy they desire to make and the purpose for which it is desired."

In considering the authority of the township park commissioners to levy a tax under authority of this section, one of my predecessors in office expressed the opinion in 1932 Opinions of the Attorney General No. 4881, that:

"1. A township park district is a 'taxing unit' as such term is used in sections 5625-1 to 5625-39, inclusive, General Code, and as such, has authority by virtue of the provisions of section 3423, General Code, to levy taxes on the property within the township for the maintenance of township parks.

2. There is no legal duty on the township trustees to levy a tax for the maintenance of township parks in townships in which township park districts have been created."

Section 3423, General Code, must, of course, be considered in conjunction with Section 5625-2, General Code, the so-called "ten mill limitation law" and Article XII, Section 2, Ohio Constitution. Section 5625-2, General Code, reads as follows:

"The aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit of the state shall not in any one year exceed ten mills of each dollar of tax valuation of such subdivision or other taxing unit, except taxes specifically authorized to be levied in excess thereof. The limitation provided by this section shall be known as the 'ten mill limitation,' and wherever said term is used in this chapter, or elsewhere in the General Code, it shall be construed to refer

to, and include both the limitation imposed by this section and the limitation imposed by article XII, section 2 of the constitution.”

The language of Section 3423, General Code, standing alone, would appear to authorize the township park commissioners to (a) levy a tax not exceeding one mill on each dollar of valuation of all real and personal property within the limits of the township, and (b) to levy a tax in excess of such rate after submission of the issue to a vote of the township electors, as provided by Section 3424, General Code.

However, since the enactment of Sections 3423 and 3424, General Code, a limitation on the taxing power of political subdivisions and taxing units was effected with the adoption of Article XII, Section 2, Ohio Constitution, and the enactment of Section 5625-2, General Code, quoted above. These later constitutional and statutory provisions will, of course, modify the provisions of Section 3423, General Code, to the extent that they are in irreconcilable conflict with each other.

State ex rel. Guilbert v. Halliday, 63 O. S. 165.

Accordingly, it would appear that this tax cannot be levied by the township park commissioners where such levy would have the effect of making the aggregate levy within the taxing unit exceed the ten mill limitation unless such levy is permitted by some other provisions of law.

Tax levies may exceed the ten mill limitation, however, if approved by a vote of the electors of the subdivision concerned. Section 5625-7, General Code, reads in part as follows:

“The taxing authority of any subdivision may make the following levies outside of the ten mill limitation and irrespective of all limitations on the tax rate:

* * * (c) Tax levies hereafter authorized outside of said ten mill limitation by a vote of the people under the provisions of law applicable thereto.”

Further on this subject, Section 5625-15, General Code, reads in part as follows:

“The taxing authority of any subdivision at any time prior to September 15, in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which may be raised within the ten mill limitation will be insufficient to provide an adequate amount for the necessary

requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the following purposes: * * *

“For recreational purposes, provided, however, the total levy for such purposes authorized by vote of the people shall not exceed five-tenths of a mill.

Such resolution shall be confined to a single purpose, and shall specify the amount of increase in rate which it is necessary to levy, the purpose thereof and the number of years during which such increase shall be in effect which may or may not include a levy upon the duplicate of the current year. The number of years shall be any number not exceeding five, except that when the additional rate is for the payment of debt charges the increased rate shall be for the life of the indebtedness.

Such resolution shall go into immediate effect upon its passage, and no publication of the same shall be necessary other than that provided for in the notice of election.”

Accordingly, I conclude that where the tax levies already authorized within a taxing unit equal ten mills the township park commissioners may levy a tax for this purpose only after the question of making such levy has been submitted to a vote of the township electors as provided by Section 5625-15 et seq., General Code.

However, it must be observed at this point that township park commissioners cannot themselves take the necessary steps to require an election under Section 5625-15, General Code. Such action can be taken only by the “taxing authority” of any “subdivision.”

Although, as indicated in the opinion of my predecessor cited above, a township park district is a “taxing unit” and the township park commission is the “taxing authority” of such taxing unit, the township park district is not a “subdivision”, as defined in Section 5625-1, General Code. That definition is as follows:

“(a) ‘Subdivision’ shall mean any county, school district, except the county school district, municipal corporation, township, township fire district or township waste disposal district in the state.”

For these reasons I conclude that a levy by township park commissioners outside the ten mill limitation can be authorized only by a favorable vote of the township electors in an election held pursuant to Section 5625-15 et seq., General Code, and that the question of such levy can be

submitted to a vote under such statutory provisions only by the township trustees as the taxing authority of the subdivision.

Assuming that the acquisition and improvement of the township park in question is entirely for recreational purposes, it must be observed that the maximum levy which could be authorized is five-tenths of a mill as provided by paragraph 8 of Section 5625-15, General Code. In this situation it is unnecessary to consider your question relative to the possibility of a levy in excess of one mill outside the ten mill limitation.

Specifically answering your inquiry, therefore, it is my opinion that:

1. The commissioners of a township park established under authority of Section 3415 et seq. of the General Code, may levy a tax of not to exceed five-tenths of a mill only after approval of the township electors in an election held pursuant to Section 5625-15 et seq., General Code.

2. The question of approval or disapproval of such levy may be submitted to a vote of such electors only by action of the township trustees as the taxing authority of the township.

Respectfully,

HERBERT S. DUFFY,
Attorney General.