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PARK DISTRICT—§1545. RC—NO BASIS FOR DISSOLUTION—
MEMBER TOWNSHIP, SUBDIVISION CANNOT BE DE-
TACHED FROM A PARK DISTRICT.

SYLLABUS:

1. A park district created under Chapter 1545., Revised Code, cannot, under existing statutes, be dissolved.
2. A township or subdivision which has been included in a park district as provided in Chapter 1545., Revised Code, cannot, under existing statutes, be detached from such district.

Columbus, Ohio, July 22, 1957

Hon. Paul N. McKinley, Prosecuting Attorney
Hardin County, Kenton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I have been requested by the Probate Judge of Hardin County and the Trustees of Washington Township of Hardin County to write you and obtain your opinion relative to the pro-

cedure necessary to be taken by township trustees in order for them to withdraw from an existing park district established under authority of Sections 1545.01 et seq. of the Ohio Revised Code.

“Under these sections of the R. C., the procedure for the creation of a park district is set forth, but nothing therein relates how any one of the subdivisions within the established district may terminate their relationship; in Hardin County, we have a park district made up of the City of Kenton and several townships, some of which are desirous of withdrawing, and our Probate Judge is reluctant to entertain any application for the termination of any one of the subdivisions, since no statutory authority exists for him to do so.”

The procedure for the creation of park districts is provided in Sections 1545.02, 1545.03 and 1545.04, Revised Code.

Section 1545.02, Revised Code, reads:

“Application for the creation of a park district shall be made to the probate judge of the county within which the district is to be located. Such application shall either be signed by a majority of the electors residing within the proposed district as determined by the number of electors voting at the last preceding general election within such territory, or, in lieu thereof, shall be authorized by resolution adopted by any board of township trustees or legislative authority of any municipal corporation within such proposed district. Such application shall state the name of the proposed district, shall contain an accurate description of the territory to be included, and shall be accompanied with an accurate map or plat thereof.”

Section 1545.03, Revised Code, reads:

“Upon the filing of the application provided for in section 1545.02 of the Revised Code, the probate judge shall fix a time for the hearing of such application which shall not be less than twenty nor more than forty days subsequent to the date of the filing of the application. Such judge shall publish notice of the filing of such application and the date of hearing thereof in two newspapers of general circulation within such district, or if there is but one newspaper of general circulation within such district, in such newspaper. If there is no newspaper of general circulation within such proposed district, then such judge shall post such notice in five of the most public places within such proposed district. Such notice shall be published or posted for a period of not less than fifteen days prior to the date fixed for the hearing. The hearing may be adjourned from time to time upon good cause shown.”

Section 1545.04, Revised Code, reads :

“At a hearing on an application for the creation of a park district, evidence may be taken as in other civil cases in the probate court, and the probate judge shall hear all arguments for and against the creation of such district. If he finds that such application is signed or authorized as provided in section 1545.02 of the Revised Code, and that the creation of such district will be conducive to the general welfare, he shall enter an order creating the district under the name specified in the application.

“The judge may amend or change the limits of the territory described in the application at the time of the hearing, provided that in no case shall he increase the limits or size of said district. In case any of the original territory is eliminated from the district as finally established, the boundary lines of the district as finally ordered by the court shall not divide any existing township or municipal corporation.”

As you have correctly observed, there is no specific statutory provision for termination of park districts.

In Informal Opinion No. 562, August 13, 1956, my predecessor was concerned with the abolition of a township fire district, for which there is no specific statutory authority. In that opinion an analogy was drawn from the general principle that the power to create an office includes the power to abolish it, and it was concluded that the power to create a fire district implies the power to abolish it.

I am of the opinion that that process of analogy cannot be applied in the case of park districts. In the case of the township fire districts creation is by a simple legislative act of the board of township trustees, and the power implied is only that to perform another simple legislative act. But in the case of park districts creation is by the more complex procedure outlined in the statutes set forth above. What procedure would be sufficient to abolish an entity so created is not clear, and certainly it cannot be devised by implication and analogy. In the absence of statutory authority and procedure it would appear that park districts cannot be abolished.

Further, there is no statutory authority or procedure whereby a township or other subdivision can withdraw from a park district, and such authority cannot be implied from any statute. I am compelled to conclude that townships or subdivisions cannot, under the present statutory provisions, withdraw from a park district.

As you are aware park districts are empowered to acquire property and incur indebtedness, to contract and to lease lands, to levy taxes and to issue bonds. If a park district were to be abolished, or if a component subdivision were to withdraw, it would be necessary to make an orderly liquidation and a settlement or division of indebtedness. Such a procedure would necessarily be somewhat complex and cannot be based on implication but only on clear statutory provision.

It is my opinion and you are advised, that:

1. A park district created under Chapter 1545., Revised Code, cannot, under existing statutes, be dissolved.

2. A township or subdivision which has been included in a park district as provided in Chapter 1545., Revised Code, cannot, under existing statutes, be detached from such district.

Respectfully,

WILLIAM SAXBE

Attorney General