

may be, does not unreasonably interfere with the use of the park for public purposes the authorities are almost unanimous to the effect that the concession may be granted. In a Nebraska case, *Nebraska City v. Nebraska City Speed & Fair Association*, 186 N. W. 374, it was held that a city had power to grant a license or concession to hold in a public park race meets for short periods of time for the enjoyment of the public, and in a Missouri case, *State ex rel. Wood v. Schwickhardt*, 109 Mo. 496, it was held that a charter provision empowering the city to regulate its parks authorizes the city to rent the privilege of selling refreshments, including intoxicating liquors, in a public park.

There appear to be no reported cases in Ohio directly in point. The fact, however, that concessions for refreshment stands and amusement devices in public parks, not unreasonably interfering with the right of the public to use the park, but on the other hand, being conducive to the welfare and amusement of the patrons of the parks, have been in many cases granted in Ohio, and apparently without such serious objection as to lead to the question of the right to grant such concessions being passed upon by the courts, is reason to believe that the granting of such concessions does not unreasonably interfere with the rights of the public in park property, and I am of the opinion that such concessions may lawfully be granted when reasonable.

It should be noted, however, that in granting concessions of this kind such grants are mere permits revocable at the instance of the authorities granting them. A lease can not be granted for the exclusive right to exercise any privilege within a public park for a term of years or for any specific time. A revocable license is all that may be granted. See *Williams v. Hylan* (N. Y.) 162 N. W., 547, affirming *Williams v. Hylan*, 227 N. Y. S. 392.

I am therefore of the opinion, in specific answer to your questions:

First, that the council of the city of Mansfield may lawfully authorize the granting, to private parties, of a revocable license to operate a miniature golf course within "Johns Park" in said city, providing the operation of said golf course does not unreasonably interfere with the rights of the public in the use of said park for park purposes.

Second, the Director of Public Service of the city of Mansfield does not have authority, as manager of the public parks of said city, to grant concessions within said park, except as he may be authorized to do so by city council.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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3266.

PARLIAMENTARY LAW—COUNTY COMMISSIONERS AND TOWNSHIP TRUSTEES—RIGHT OF PRESIDING OFFICER TO SECOND MOTION.

SYLLABUS:

1. *The presiding officer of a board of county commissioners may second a motion made by one of its members.*
2. *Meetings of boards of township trustees need not be conducted in strict compliance with parliamentary procedure.*

COLUMBUS, OHIO, May 28, 1931.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent request for my opinion which reads:

“A question, or rather two questions, have been raised quite recently with reference to the matter hereinafter set out.

Both the board of township trustees and the board of county commissioners consist of three members. One of the three members is the president and presiding officer thereby by law, following an organization meeting as required by law. The question or questions that have been raised have to do with parliamentary procedure at a meeting of such boards. In particular, the question is—can the presiding officer second a motion in the transaction of the board's business and, if so, how should the same be done for the record? This question arises and has arisen in cases where the presiding officer and one of the other members of the board favor a measure. The other member of the board does not. The one member moves the adoption of a certain resolution. The other member sits silent and refuses to second the motion. Unless the presiding officer can second the motion in some manner, there is no way for the matter in question to come up for a vote in order for the majority of the board to cast a vote disposing of same. I would appreciate your advice as to the above questions of parliamentary procedure in the board of township trustees and the board of county commissioners.”

Although the question of whether or not the presiding officer of a deliberative assembly may second a motion is not free from doubt, the general rule is that such presiding officer cannot participate in the debate or other proceedings of the body in any other capacity than as such officer.

Cushing's Manual, 127.

Cushing's Law and Practice of Legislative Assemblies, 117.

Reed's Parliamentary Rules, 40.

Robert's Rules of Order, 159.

But see—Scanlan's Rules of Order, 61.

Section 2405, General Code, relative to boards of county commissioners, reads as follows:

“All the proceedings of the board shall be public, at the office of the auditor, or the usual office of the commissioners, and, as far as possible, be in conformity with the rules of parliamentary (parliamentary) law.”

An examination of the statutes of Ohio fails to reveal a similar provision in regard to the procedure of a board of township trustees.

It has been held that the provision in Section 2405, above quoted, relative to the procedure of a board of county commissioners being in conformity to parliamentary law, is merely directory. *Stolz v. Selz, Treas.*, 12 O. D. 664.

It would seem that to require strict compliance with parliamentary rules and regulations in the proceedings of a board of county commissioners would do violence to the provisions of the above quoted section and judicial decision,

and I can see no objection to the presiding officer of a board of county commissioners seconding a motion of another member of the board.

This conclusion is strengthened by a consideration of Section 2406, General Code, which requires that the clerk shall keep a full record of the proceedings of the board, "entering each motion with the name of the person making it upon the record." It is also apparent from this section that no record need be kept by the clerk of the board of the second to a motion of a member.

Technically speaking, the presiding officer of a body may name any member to perform the duties of the chair, providing the appointment of such member does not extend beyond adjournment. In the instant case, I do not believe that such procedure need be followed since meetings of a board of county commissioners are not required to be conducted in strict compliance with parliamentary procedure.

It is apparent from a consideration of the statutes relative to meetings of boards of county commissioners that the primary purpose of the record of such meetings is to show the concensus of opinion of that body upon the questions before it, and that technical parliamentary procedure appearing therein is of minor importance.

In view of the foregoing, I am of the opinion that the presiding officer of a board of county commissioners may second a motion made by one of its members.

Coming now to your second inquiry, as has been stated, there exists no express statutory mandate to the effect that township trustees must conduct their meetings in accordance with parliamentary procedure. If rules of procedure have been adopted by them, I suggest that it might be well to amend such rules so as to either dispense with the formality of a second to a motion as is done in Congress (Robert's Rules of Order, page 29) or adopt a rule permitting the presiding officer to second a motion.

That a deviation from strict parliamentary principles would render the acts of a meeting of township trustees void in a court of law does not seem reasonable. As was stated in *State ex rel. v. Archibold*, 66 N. W. (N. D.) 243:

"But it cannot be said that every violation of parliamentary usage will annul the action of the body guilty of such irregularity.

The course of procedure rests largely with the discretion of the majority, provided the course adopted affords a reasonable guaranty that the sense of the body on the particular measure before it has been fairly taken. In large bodies slight deviations from established practice might be fatal because in such bodies the confusion consequent on departure from settled modes of transacting business may seriously impair or utterly destroy the rights of the minority to be heard in argument to the end that they may convert an adverse majority into a minority. But in smaller bodies, one for instance composed of five members, sitting around the same table, each under the eye and within the reach of every other member—a strict compliance of all the formalities prescribed by parliamentary usage is not necessary. The question for the court in such cases is whether in view of the size of the body, the proceedings which were had resulting in the adoption of the motion afforded a guaranty that the sense of that body was fairly taken on that particular motion."

See also 46 *Corpus Juris*, 1383.

This view was followed in the case of *State ex rel. v. Evans et al.*, 90 O. S. 245 at page 251, in which the court stated:

“Obviously, the proceedings of boards of education, of county commissioners, township trustees and the like, must not be judged by the same exactness and precision as would be the journal of a court.”

In view of the foregoing, I am of the opinion that meetings of a board of township trustees need not be conducted in strict compliance with parliamentary procedure.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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3267.

APPROVAL, BONDS OF TULLY TOWNSHIP, MARION COUNTY,  
OHIO—\$7,703.15.

COLUMBUS, OHIO, May 28, 1931.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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3268.

APPROVAL, BONDS OF JEFFERSON RURAL SCHOOL DISTRICT,  
JACKSON COUNTY, OHIO—\$18,000.00.

COLUMBUS, OHIO, May 28, 1931.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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3269.

APPROVAL, BONDS OF CLEVELAND HEIGHTS VILLAGE SCHOOL  
DISTRICT, CUYAHOGA COUNTY, OHIO—\$10,000.00.

COLUMBUS, OHIO, May 28, 1931.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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3270.

SUSPENDED SCHOOL—WHEN BUILDING BURNS, SCHOOL LOT MAY  
BE SOLD IMMEDIATELY.