

house bill No. 1, as passed by the 86th general assembly, and in view of the provisions and limitations of section 7181, General Code, so long as no specific provisions are made for additional compensation therein to the county surveyors, none can be paid.

Respectfully,
C. C. CRABBE,
Attorney General.

2775.

CONSTITUTIONAL OBJECTIONS AGAINST TOWNSHIP PARK LAW
NOT REMOVED BY HOUSE BILL 461.

SYLLABUS:

House bill number 461, as enacted by the eighty-sixth general assembly, designating what was formerly termed "township parks" as "park districts," etc., did not remove the constitutional objections raised against the original act.

COLUMBUS, OHIO, Sept. 11, 1925.

HON. C. B. McCLINTOCK, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—You request my opinion upon a state of facts presented by the Canton Chamber of Commerce, as follows:

"Some years ago the state legislature passed what was known as the Township Park Law, which we understand to be included in sections 3415 to 3427 of the General Code. This was passed at the instance of Youngstown to permit the city to acquire Mills Creek Park and provided for appointment by the common pleas court of a park commission which was given authority to levy taxes and to acquire park areas within or without the township. A number of townships throughout the state acquired park areas under this law.

"An opinion of the attorney general, rendered November 5th, 1920, and found in volume II, pages 1078-1079, refers to an opinion of the former attorney general found in Attorney General's Reports for 1911 and 1912, volume II, page 1350, which holds certain sections to be unconstitutional, principally in that the township park officers are appointed and not elected, which it appears is a constitutional requirement for all township officers vested with authority to levy or expend public funds.

"Two years ago the Canton Chamber of Commerce, through its legal committee, took this matter up with the legal advisers of the Youngstown park commission. Mrs. Ott, of Youngstown, introduced in the last legislature a bill, No. 461, which is designed to correct the defects of the former act.

"The legal committee of the Canton Chamber of Commerce is in doubt as to whether the amendment passed by the last legislature covers and corrects the defects in the former act. The Chamber of Commerce desires to secure from you an opinion as to whether it would be justified in assuming that the law covering the appointment of park boards is constitutional and whether in your opinion they could properly proceed under the act above mentioned."

Careful consideration has been given to the subject presented. An opinion found in Reports of the Attorney General for 1911 and 1912, page 1350, rendered by Attorney General Hogan, specifically and unqualifiedly held that the sections to which you refer, governing the regulation of township parks, were unconstitutional. It is pointed out in that opinion that it is unusual for the attorney general to question the constitutionality of a law. However, as pointed out by the attorney general, section 4 of article X of the Ohio constitution provides:

"Township officers shall be elected by the electors of each township."

In view of this provision, it is concluded by the attorney general that the sections above referred to are unconstitutional. In support of this conclusion, the attorney general cites *State vs. Brennan*, 49 Ohio St. 39; *State vs. Halliday*, 61 Ohio St. 171; *State vs. Thrall*, 59 Ohio St. 369; and further states that there are numerous decisions of the circuit court to the same effect.

The attorney general, in said opinion, further states:

"That the board of park commissioners are township officers is too plain for argument. Their powers are continuing, not temporary. They are exercised with respect to the whole township, and are highly governmental in their nature, including as they do the exercise of the right of eminent domain and the power to levy taxes.

"For this reason the whole act relating to township parks is unconstitutional, and clearly so; and while I have made it a rule of this office not to express an opinion upon the constitutionality of an act, and particularly against the constitutionality of a given act, unless the matter is clear and unless my opinion is solicited, yet, what I may term, the glaring unconstitutionality of these provisions has constrained me to make an exception to the rule in this case."

In examining the act to which you refer, which amended sections 3415, 3418, 3420, 3421, 3422-1, 3422-2, 3425 and 3427, of the General Code, it will be observed that the general powers and duties of the park commissioners are unchanged. Under the law as it now exists, the commissioners would be appointed in the same manner and perform the same duties. In examining the act and comparing it with the original sections, it will be noted that the chief changes are to designate the original "township park" as a "park district." Section 3 of the act provides:

"It is hereby declared that the proper construction and meaning of sections 3415 to 3427, inclusive, of the General Code, heretofore, has been that the said boards of township park commissioners therein provided for, were officers of park districts coterminous with the geographic township, wherein they existed, that said boards of park commissioners, constituted bodies politic and corporate, and that the offices of said park commissioners were not township offices, within the meaning of that term in section 3512 of the General Code."

From the foregoing, it must be concluded that the sole purpose of the act in question was to attempt to create a district park board, in order to avoid the constitutional objections that were raised under the original law.

In considering the powers, duties and method of appointment of the officers under the existing law, it must be concluded that they differ in no material respect, if at all, from such powers and duties of the original board. The original action

is taken by the people of a township and such officers, having the same powers that the original township officers had, would seem to still be township officers. The fact that the legislature designates them by some other title is not the controlling factor. It is the powers, duties and functions that an officer exercises that are determinative of the character of the officer, and not the official designation that may happen to be given to him by the legislature. As the courts have frequently said, "There is no magic in words."

After carefully considering the matter and comparing the present act with the original act, it is the opinion of this department that whatever constitutional objections existed in reference to the original act were not cured by the act under consideration.

Respectfully,
C. C. CRABBE,
Attorney General.

2776.

ABSTRACT, STATUS OF TITLE, LOT NO. 77 IN THE CITY OF ATHENS, ATHENS COUNTY, STATE OF OHIO, APPEARING IN THE NAME OF JOHN RODOLPH SLATTERY AND MARY SLATTERY LOGAN.

COLUMBUS, OHIO, Sept. 12, 1925.

Trustees of Ohio University, Athens, Ohio.

GENTLEMEN:—An examination of a deed and abstract submitted by your board to this department discloses the following:

The abstract under consideration was prepared by R. D. Williams, Abstracter, under date of September 9, 1925, and pertains to the following premises:

Part of in-lot No. 77 in the city of Athens, county of Athens, state of Ohio, appearing in the name of John Rodolph Slattery and Mary Slattery Logan.

Upon examination of said abstract, I am of the opinion that same shows a good and merchantable title to said premises in John Rodolph Slattery and Mary Slattery Logan, subject to the following:

Attention is directed to the taxes for the year 1925, which are now and have been since April 12, 1925, a lien upon the premises under consideration. Said taxes have not as yet been paid but it appears, from the certificate of Fred Cornwell, auditor of Athens county, Ohio, that sufficient moneys have been deposited with said county auditor to pay all taxes due to the premises under consideration.

It is suggested that the proper delivery of the already executed deed as submitted will be sufficient to convey the title to the premises to the president and trustees of the Ohio University.

Attention is also directed to the necessity of the proper certificate of the director of finance, to the effect that there are unencumbered balances legally appropriated sufficient to cover the purchase price, before this purchase can be finally consummated.

Attention is also directed to the provisions of section 12 of the general appropriation act of the eighty-sixth general assembly, wherein it provides that