

110

SYLLABUS:

1. A board of park commissioners of a township park district may accept gifts for specific park purposes and may carry out those purposes provided they do not require actions inconsistent with the maintenance and operation of a free public park.

2. A board of park commissioners of a township park district is without authority to enter into any arrangement purporting to give long-term assurance of a right of use of any facility of a free public park.

Columbus, Ohio, March 26, 1963

Honorable William H. Conner
Prosecuting Attorney
Hardin County
Kenton, Ohio

Dear Sir:

I have your request for my opinion which reads as follows:

“I respectfully request your opinion in reference to the following, to-wit:

“In 1946, a free public park was established in Liberty Township, Hardin County, Ohio, pursuant to law, and since said date the park has been operated and managed by a park board under the provisions of Chapter 511 of the

Revised Code. Funds for the operation of said park are derived by a tax levy voted upon and approved by the township voters.

“Upon the establishment of the park, Ohio Northern University located in said township deeded land to the Park Board to be used for park purposes with a reverter clause contained in the deed providing for the land to revert to the University if and when the land ceased to be used for park purposes.

“There has been constructed upon the park lands a football field and stadium which has been made available for use by the Ada High School and Ohio Northern University football teams. In return for the use of these facilities both the high school and the University pay to the park board a small sum to help cover the costs of lighting and maintenance.

“Ohio Northern University is now engaged in a project of developing its athletic program and as a part of said program, needs a larger stadium with more adequate facilities than are present in the stadium located in the township park. The University has proposed to the Park Board that it is willing to furnish the necessary funds needed to construct and expand the facilities of the present stadium, if, in return can be assured of continued use of the field and its facilities. Since the proposed investment would be large, the University does require this assurance of continued right of use, or otherwise, it will be necessary for it to construct its own separate stadium.

“The issue involved is: Can the park board legally accept University funds for the improvement of the stadium located in the public park, and, is there any authority under Chapter 511 and with particular reference to Section 511.23, which reads as follows:

“ ‘When the vote under section 511.21 of the Revised Code is in favor of establishing a free public park, the board of park commissioners shall constitute a board, to be called the board of park commissioners of that township park district, and they shall be a body politic and corporate. Their office is not a township office within the meaning of section 703.22 of the Revised Code. The members of the board shall serve without compensation. It may locate, establish, improve, and maintain a free public park within and without the township, and may accept a conveyance of or purchase for cash, by purchase by installment payments with or without a mortgage, by entering

into lease-purchase agreements, by lease with option to purchase, or appropriate suitable lands and materials for that purpose. The board shall have careful surveys and plats made of the lands acquired for such purposes, and shall establish permanent monuments on the boundaries of the lands. Such plats, when executed according to sections 711.01 to 711.38, inclusive, of the Revised Code, shall be recorded in the office of the county recorder, and such records shall be admissible in evidence for the purpose of locating and ascertaining the true boundaries of the park.

“ The board shall devise plans for the improvement of the park, and award all contracts therefor, in the manner provided by the law governing township trustees in awarding contracts for public improvements. The board may appoint a guardian for the park and it may appoint all other necessary officers and employees, fix their compensation and prescribe their duties, prohibit selling, giving away, or using any intoxicating liquors in such park, pass by-laws, rules, and regulations for the government of the park, and protect it from injury and provide for their enforcement by fines and penalties’

“or any other applicable statutes for the park board to enter into a leasing agreement or other similar arrangement with the University wherein it would be provided that the University would be assured of continued use of such facilities for a long duration?”

Initially, it must be noted that a board of park commissioners of a township park district is a creature of statute and as such has only the powers given to it by statute.

In addition to Section 511.21 of the Revised Code, which you quote in your inquiry, I find two other provisions which relate to the problem presented.

Section 511.24, Revised Code, provides for the acquisition of lands and materials by a board of park commissioners. It reads in part:

“When the board of park commissioners cannot, by deed of gift, or by purchase, procure the lands or materials desired for park purposes upon terms which it regards as reasonable, the board may appropriate such lands or materials for that purpose under sections 719.01 to 719.21, inclusive, of the Revised Code. * * *”

From this it is apparent that the board of park commissioners may accept gifts for park purposes with conditions attached, provided it regards those conditions as reasonable. This means, of course, that the conditions must be consistent with the maintenance and operation of a free public park.

The other pertinent section is 511.25, Revised Code, which sets forth a procedure whereby, upon petition signed by one-tenth of the electors, the board shall submit the question of sale of all or any part of lands held by it to the electors at a general or special election. If a majority of the electors vote in favor of such sale the board is required to sell and convey the land for the best possible price. The requirement of submitting the question to the electors upon proper petition and the requirement of sale of the lands involved upon a majority affirmative vote are in mandatory terms. It is therefore apparent that a board of commissioners of a township park district is without authority to give long-term assurance of any right to use a facility in a free public park.

In answer to your specific questions, it is my opinion that:

- (1) A board of park commissioners of a township park district may accept gifts for specific park purposes and may carry out those purposes provided they do not require actions inconsistent with the maintenance and operation of a free public park.
- (2) A board of park commissioners of a township park district is without authority to enter into any arrangement purporting to give long-term assurance of a right of use of any facility of a free public park.

Respectfully,
WILLIAM B. SAXBE
Attorney General