

2687.

BOARD OF PARK COMMISSIONERS—LANDS MAY NOT BE ACQUIRED
IN ANOTHER STATE FOR PURPOSES ENUMERATED.

SYLLABUS:

A board of park commissioners of a park district established and organized in this state under the provisions of Sections 2976-1, et seq., of the General Code, is not authorized to acquire lands in another state for the purpose of establishing and maintaining thereon a golf course or bathing beach.

COLUMBUS, OHIO, December 16, 1930.

HON. LEROY W. HUNT, *Prosecuting Attorney, Toledo, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication, which reads as follows:

"In the design of a park and parkway plan for the Toledo Metropolitan Park District, it is found that portions of the streams and some of the best water front areas extend into or lie just beyond the Ohio State line and in the State of Michigan. Due to the unfavorable bathing conditions immediately around the mouth of the Maumee River and along the south shore of Maumee Bay, some of the best water frontage accessible to Toledo is found between the mouth of the Ottawa River and Maumee Bay, just across the Ohio State line.

In addition, a very attractive stream dips southward in its course into Ohio, but has both its source and its mouth in Michigan. Due to its proximity to Toledo, it is felt that such a stream will be enjoyed almost exclusively by citizens of Lucas County and therefore should be considered in the design of a county park plan.

Another project is that of a newly established golf course of 250 acres, approximately one-third of which lies in Ohio. A movement is under way to interest one of Toledo's wealthy citizens to purchase this course and donate it to the park board for the public's use and enjoyment.

In view of the fact that of the four existing Metropolitan Park Districts in Ohio these problems, involving extra-territorial legislation, are peculiar only to the Toledo Metropolitan District, there is no precedent with which we are acquainted concerning them.

We therefore respectfully request your opinion upon the following pertinent question, the answer to which may have very important bearing upon the attitude of the board in dealing with some of the problems set forth in the foregoing:

Under the Ohio Park District act, may a Park Board acquire on behalf of a district, by gift or devise, by purchase, or by appropriation, land within an adjoining state?"

The questions presented in your communication call for a consideration of the provisions of the so-called Metropolitan Park District Law, which was originally enacted March 6, 1917, and which, as amended and supplemented by subsequent acts of the Legislature, has been carried into the General Code as Sections 2976-1 to 2976-10i, inclusive.

In considering the questions here presented, I do not deem it necessary to set

out in detail the statutory provisions relating to the establishment, management and control of park districts. It is sufficient to note that Section 2976-1, General Code, provides that in order to encourage forestry, to provide for converting into forest preserves lands required for that purpose and to provide for the conservation of the natural resources of the state, including streams, lakes, submerged and swamp lands, park districts may be created; and that said park districts may include all or a part only of the territory within a county, provided that the boundary lines of such district shall be so drawn as not to divide any existing township or municipality within such county. By the further terms of said law, provision is made for the establishment of such park district by the probate judge upon the hearing of an application filed for such purpose after notice of such hearing is given in the manner therein provided. Upon the establishment of such park district, the affairs of such district are managed and controlled by a board of park commissioners composed of three members appointed by the probate judge who, as such board, are constituted a body politic incorporate, capable of suing and being sued as in said law provided. The provisions of Section 2976-7, General Code, are applicable in the consideration of the questions here presented. This section, as amended by an act of the 88th General Assembly passed April 4, 1929, 113 O. L. 660, reads as follows:

“Such board shall have power to acquire lands either within or without such district for conversion into forest reserves and for the conservation of the natural resources of the state, including streams, lakes, submerged and swamp lands, and to those ends may create parks, parkways, forest reservations and other reservations and afforest, develop, improve, protect and promote the use of the same in such manner as the board may deem conducive to the general welfare. Such lands may be acquired by such board, on behalf of said district, by gift or devise, by purchase, or by appropriation. In furtherance of the use and enjoyment of the lands controlled by it, the board may accept donations of money or other property, or may act as trustees of land, money or other property, and use and administer the same as stipulated by the donor, or as provided in the trust agreement. The terms and conditions of each such donation or trust shall first be approved by the probate court before acceptance by the board.

In case of appropriation, the proceedings shall be instituted in the name of the board, and shall be conducted in the manner provided for the appropriation of private property by municipal corporations in so far as such proceedings are applicable. Either the fee or any lesser interest may be acquired as the board may deem advisable and the provisions of this section shall apply to districts heretofore created.”

By Section 2976-7a of the General Code, as enacted by said act of April 4, 1929, it is provided that in case of the appropriation of property by the board of park commissioners under the provisions of Section 2976-7, General Code, above quoted, the compensation to be paid for such property shall be assessed pursuant to proceedings had in the probate court of the county in which the lands so appropriated are situated. Sections 2976-9 and 2976-9a, General Code, provide that in the development and improvement of the land acquired by the board of park commissioners, such board may assess a portion of the cost of such development or improvement upon abutting, contiguous, adjacent and other specially benefited lands, subject to the limitations provided for in said sections. By the provisions of Section 2976-10, General Code, the board of park commissioners of any park district so established has the power to levy taxes upon all the taxable property within such district in an amount not in excess of one-tenth of one mill upon each dollar of the assessed value of the property in the district in any one year, subject, however, to the combined

maximum levy for all purposes otherwise provided by law. Sections 2976-10g and 2976-10h, General Code, are significant with respect to the question here presented. They provide generally, for the exercise of police powers by the board of park commissioners over lands under its control and jurisdiction through rules and regulations of said board and its employes who have all the powers of police officers.

It is clear from the statutory provisions above noted that it is thereby contemplated that the lands and territory included within a park district established and organized under the park district law or which may be acquired by the board of park commissioners for the purpose of said park district are such only as are subject to the sovereignty of the State of Ohio and to the jurisdiction and control of the board of park commissioners of such district and of the proper and competent courts of this state. The provisions of the park district law have been upheld as a legitimate exercise of the police powers of the state having a reasonable and proper relation to the public health, recreation and welfare, as well as to the encouragement of forestry within the purview of Section 36, Article II, of the State Constitution, providing that laws may be passed for such purpose. *McNab vs. Cleveland Park Board*, 108 O. S. 497, 503; *State ex rel. vs. Park District*, 120 O. S. 464. It follows from this, that only such lands and territory may be included within the confines of a park district or may be acquired for the purposes of said district as are subject to the jurisdiction and laws of this state and to the management and control of the board of park commissioners as an agency of the state in carrying out the police powers of the state with respect to the matters served by the establishment, management and control of such park districts under the laws of this state providing therefor.

It may be questioned whether the State of Ohio itself, can acquire and hold lands in another state without the express or implied consent of such other state. *Dodge vs. Briggs*, 27 Fed. 160. However this may be, it is certain that any lands owned and held by this state in another state would be owned and held by it in a subject and proprietary capacity only. *Dodge vs. Briggs*, supra; *Burbank vs. Fay*, 65 N. Y. 57. Such lands would still be subject to the sovereignty of such other state, and to such laws as it might enact in the exercise of its own police power. Obviously, the same observations may be made with respect to lands owned or held by a political subdivision or other governmental agency of the State of Ohio in another state. However, as above noted, the only lands to which a park district may acquire title under the provisions of Section 2976-7, General Code, above quoted, are those over which it may exercise its governmental functions as a park district pursuant to the laws of this state. The only lands over which a park district can exercise such governmental functions are lands situated in this state, and subject to the operation of its laws.

Aside from the obvious fact that the provisions of the Metropolitan Park District Law do not expressly authorize a park district established and organized under such law, to acquire lands outside of this state for the purposes of the district, the considerations above noted lead to the conclusion that the only lands that may be included within the confines of such park district or which may be acquired for the purposes for which such park district is established and organized, are lands situated in this state and subject to its laws.

By way of specific answer to the questions submitted in your communication, therefore, I am of the opinion that the Toledo Metropolitan Park District has no authority to acquire lands in the State of Michigan, for the purpose of using the same in the establishment of a golf course or bathing beach.

Respectfully,
GILBERT BETTMAN,
Attorney General.