

schools shall devote to actual classroom teaching and may thereby provide that the principal need not devote any time to actual classroom teaching but shall devote his time exclusively to supervisory work.

Fourth: A rural or village board of education is without power to employ a superintendent of schools, as such.

Fifth: A rural or village board of education may in its discretion employ a supervisor or co-ordinator for the schools of its district who may under the direction of the county superintendent of schools and his assistants supervise the work of the schools of the district.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1556.

TOWNSHIP TRUSTEES, BOARDS OF—NOT AUTHORIZED TO EXPEND PUBLIC FUNDS TO CONSTRUCT, MAINTAIN AND OPERATE SWIMMING POOL IN PARK LOCATED IN TOWNSHIP WHERE PARK NOT UNDER DIRECT SUPERVISION, BOARD OF PARK COMMISSIONERS.

SYLLABUS:

Boards of township trustees are not authorized by law to expend public funds under their control for the purpose of constructing, maintaining and operating a swimming pool in a park located in the township which park is not under the direct supervision of a board of park commissioners.

COLUMBUS, OHIO, December 9, 1939.

HON. FLOYD A. COLLER, *Prosecuting Attorney, Bowling Green, Ohio.*

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

“The Trustees of Perrysburg Township, Wood County, Ohio, are desirous of taking care of controlling and improving a public park; to maintain the lawns, construct fountains and keep in good condition the driveways and sidewalks, under Section 3427-1 of the General Code.

The real estate for this park will in all probability be furnished by the Village of Perrysburg, and will not be under the jurisdiction of the Park Commissioners of Wood County, the County being under one board; nor will it be under the control of a Township Commission by election under Section 3415 et seq. of the General Code.

The moneys which the Perrysburg Township Trustees have are practically all to a great extent derived from the inheritance tax and they would like to build a swimming pool in this park.

The statute specifically provides they may do all things which I have mentioned in regard to control, care for the lawn, plant trees, shrubbery, keep the park in good condition, maintain fountains and repair and maintain drives and walks, but it says nothing about building, maintaining or operating a swimming pool with the necessary accessories thereto.

The question is: Can the Township Trustees use these moneys, especially those derived from inheritance tax to build, maintain and operate a swimming pool with the necessary accessories thereto in this park?"

Under the terms of Section 5348-11, General Code, it clearly appears that at least a portion of the proceeds of inheritance taxes distributable to a township would be available upon their receipt for use by the trustees of the township for public park purposes, as authorized by Section 3427-1, General Code. Said Section 3427-1, General Code, provides as follows:

"That the trustees of any township, having within its limits a public park, public square or grounds devoted to public uses for park purposes, and which are not under the control of park commissioners, are authorized and empowered to control, care for, grade and improve any such public park, public square or public grounds; to plant or place therein and care for trees, shrubbery and plants, and to maintain lawns in good condition; to construct and maintain fountains; to lay out, construct, reconstruct, repair and maintain in good condition suitable driveways and walks, constructing the same of such materials as are deemed most suitable, and to provide and maintain suitable and sufficient lights in any such public park, public square or public grounds; to construct, reconstruct, repair and maintain therein all necessary sewers, drains and ditches; and to protect and preserve to public uses for park purposes all of said property and improvements, and, to that end, to adopt by-laws, rules and regulations for the government and control of any such public park, public square or public grounds and the driveways and walks therein, and to protect them and the trees, shrubbery, plants and improvements from misuse, injury or destruction, and to provide for the due enforcement of such rules and regulations by fines and penalties, but such by-laws, rules and regulations shall not conflict with the constitution or laws of the state of Ohio."

As the only power extended to boards of township trustees by statute, to expend township funds for the improvement, protection and preservation of parks within the limits of their township which are not under the control of the park commissioners as provided by law is contained in the statute quoted above, and as boards of township trustees like similar statutory boards are limited as to the powers which they may exercise to those only which are granted by law, the question of whether or not they may build, maintain and operate swimming pools, with the necessary accessories thereto, within such parks is one purely of statutory construction.

It will be observed that the statute, Section 3427-1, General Code, supra, does not in terms extend to township trustees the power to build, maintain and operate swimming pools. The statute in extending to the trustees power to control and improve such parks and public grounds expressly and specifically mentions a number of things which may be done such as "to control, care for, grade and improve," "to plant or place therein and care for trees, shrubbery and plants, and to maintain lawns," "to construct and maintain fountains," "to lay out, construct, reconstruct, repair and maintain * * * driveways and walks," "to provide and maintain suitable and sufficient lights," "to construct, reconstruct, repair and maintain therein all necessary sewers, drains and ditches," and in the enumeration of the several things which it authorizes the trustees to do **with respect to the park** the statute concludes with the clause, "and to protect and preserve to public uses for park purposes all of said property and improvements."

It is quite clear that it was not the intention of the legislature in the enactment of Section 3427-1, General Code, to authorize the expenditure by township trustees of township funds for any and all purposes that might be included within the concept of a public park. In other words, unlimited authority to maintain the park in all respects and to construct buildings and structures thereon for any and all purposes was not intended else it would not have been necessary to set out the things that the trustees should be authorized to do in detail as was done. If it had been intended to extend unlimited power to the township trustees to maintain the park in all respects, the legislature would no doubt have done so in appropriate language instead of detailing the several things which the trustees might do. It seems evident that it could not successfully be contended that the building and maintenance of a swimming pool which connotes the securing and maintaining of a healthful water supply for the pool, the maintaining of a supply of bathing suits, and the renting of those suits, the maintenance of guards for the safety of the users of the pool, and various other things that go to make up the successful and proper maintenance of a swimming pool, as the term is generally understood, are included within the grant to build and maintain walks and driveways and lawns and fountains and sewers or drains and ditches or

the planting of trees or shrubbery or within the concluding blanket provisions to protect and preserve for public purposes the property of the park. From the language used in the statute it would seem that its purpose was to authorize the township trustees to provide from township funds for the protection and preservation of the property in such a state as to make it suitable for park purposes without any further expenditure by anyone else rather than to authorize activities apart from the physical property that oftentimes and perhaps usually are found in parks. It would hardly be contended that the authority extended by this statute would warrant the expenditure of township funds for the purposes of building and equipment and maintenance of a zoological or botanical garden or the construction or maintenance of a dance hall or skating rink or golf courses or similar recreational or playground activities and yet these things frequently are established and maintained as adjuncts to public parks and perhaps oftentimes are provided under blanket authority to maintain parks although municipalities which may own and maintain parks are also extended authority by statute to maintain playgrounds for recreational purposes, which is not true with respect to townships.

As a matter of fact, a "swimming pool," as the term is generally used and understood in modern parlance as distinguished from the historic "swimmin' hole" is generally regarded as a recreational activity and an accessory to a playground rather than to a park. The legislature, when it speaks of a "swimming pool" does so in connection with playground and recreational activities, and it might be noted incidentally that in none of the legislation pertaining to these subjects is any power extended to boards of township trustees either alone or in co-operation with other agencies to establish and maintain playgrounds or engage in recreational activities.

The only express statutory authority for the equipping, operating and maintaining of "swimming pools," and the only place in the statutes where the term is mentioned, to my knowledge, will be found in Sections 4065-1 et seq., of the General Code of Ohio. In Section 4065-1, General Code, it is provided that "the council or other legislative authority of any city or village or the county commissioners of any county may designate and set apart for use as playgrounds, playfields, gymnasiums, public baths, swimming pools, or indoor recreation centers, any lands or buildings owned by such city, village or county and not dedicated or devoted to any public use." This statute further provides:

"Such city, village or county may, in such manner as may be authorized or provided by law for the acquisition of land or buildings for public purposes in such city, village or county, acquire lands or buildings thereon for use as playgrounds, playfields, gymnasiums, public baths, swimming pools, or indoor recreation centers."

In Section 4065-2, General Code, it is provided that the authority to supervise and maintain playgrounds, playfields, gymnasiums, public baths, swimming pools and the like may be vested in any existing body or board, or in a recreation board, as the city or village council or the county commissioners shall determine. It is also provided in this statute:

“The local authorities of any such city, village or county, may equip, operate and maintain, the playgrounds, playfields, gymnasiums, swimming pools, public baths or indoor recreation centers, as authorized by this act.”

Again, in Section 4065-3, General Code, which fixes the powers and duties of a recreation board, swimming pools are expressly mentioned as one of the activities which shall be under the direct charge of a recreation board if it is determined by municipal or county authorities that a recreation board shall be appointed. In Section 4065-5, General Code, the joint acquisition and maintenance of recreational activities by municipalities and school districts is provided for. This statute reads as follows:

“Any two or more cities or villages, or any city or village, or any city or village and county, may jointly acquire property for and operate and maintain any playgrounds, playfields, gymnasiums, public baths, swimming pools, or indoor recreation centers. Any school district shall have power to join with any city, village or county, in equipping, operating and maintaining playgrounds, playfields, gymnasiums, public baths, swimming pools, and indoor recreation centers and may appropriate money therefor.”

Section 4065-6, General Code, provides:

“The city or village council, or the county commissioners, may issue bonds for the purpose of acquiring lands or buildings for playgrounds, playfields, gymnasiums, swimming pools, public baths, or indoor recreation centers, and for the equipment thereof.”

Section 4065-7, General Code, provides:

“All expenses incurred in the operation of such playgrounds, playfields, gymnasiums, swimming pools, public baths, and indoor recreation centers, established as herein provided, shall be payable from the treasury of such city, village, county or school district. The local authorities of such city, village, county or school district, having power to appropriate money therein, may

annually appropriate and cause to be raised by taxation, an amount for the purpose of maintaining and operating playgrounds, playfields, gymnasiums, public baths, swimming pools and recreation centers.”

It is significant to note that the statutes referred to above, Sections 4065-1 to 4065-7, both inclusive, were enacted in 1921 (109 O. L., page 609), whereas Section 3427-1, General Code, was enacted in 1915 (106 O. L., page 279) and yet no authority is extended to township trustees by the terms of the later act to engage in or foster any recreational activities whatever, either alone or in co-operation with counties, municipalities or school districts and I am of the opinion that boards of township trustees are not authorized by Section 3427-1, or any other provision of law to expend township funds under their control for the purpose of constructing, maintaining and operating a swimming pool within a park located in the township which is not under the direct supervision of a board of park commissioners.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1557.

MOTOR VEHICLES ON HIGHWAYS—OPERATION AND USE
—STREETS OF MUNICIPALITY—UNDER SECTION 1181-3
G. C. STATE HIGHWAY PATROL HAS AUTHORITY TO
ENFORCE STATE LAWS REGULATING SAME—NO AU-
THORITY TO MAKE ARRESTS, FAILURE TO STOP AT
MAIN THOROUGHFARES OTHER THAN STATE HIGH-
WAYS—FULL STOP—SIGNS—TRAFFIC SIGNALS—JURIS-
DICTION—STATE HIGHWAYS—ROADS WITHIN MUNICI-
PALITY—SEE SECTIONS 6310-31, 6310-35 G. C.

SYLLABUS:

1. *Under the provisions of Section 1181-3, General Code, the State Highway Patrol has authority to enforce the state laws relating to the operation and use of motor vehicles on the highways, including the streets of a municipality.*

2. *The State Highway Patrol has no authority to make arrests for failing to stop at main thoroughfares other than state highways, within a municipality.*

3. *Under the provisions of Section 6310-31, General Code, the operator of a motor vehicle traveling on an intersecting thoroughfare, not a state highway, within a municipality, must bring his vehicle to a full stop before entering on a state highway, regardless of the presence or absence*