

I find nothing in this statute which would justify construing the word "shall" in any other than its usual and ordinary use.

I am therefore of the opinion that the premiums on the bonds of deputies, assistants, bookkeepers, clerks and other employes, duly appointed or employed by county officers, which bonds are required to be given to the state by such officers by virtue of section 2981, General Code, must be paid by the county commissioners.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4881.

TOWNSHIP PARK DISTRICT—TAXING UNIT AND MAY LEVY TAXES
—TOWNSHIP TRUSTEES NOT REQUIRED TO LEVY TAX FOR
PARK PURPOSES WHERE TOWNSHIP PARK DISTRICT EXISTS.

SYLLABUS:

1. *A township park district is a "taxing unit" as such term is used in sections 5625-1 to 5625-39, inclusive. General Code, and as such, has authority by virtue of the provisions of section 3424, General Code, to levy taxes on the property within the township for the maintenance of township parks.*

2. *There is no legal duty on the township trustees to levy a tax for the maintenance of township parks in townships in which township park districts have been created.*

COLUMBUS, OHIO, January 9, 1933.

HON. J. FRANK POLLOCK, *Prosecuting Attorney, Painesville, Ohio.*

DEAR SIR:—This acknowledges receipt of your recent request for my opinion upon the following:

"The question has been raised in Lake County as to the proper method of handling the funds of Park Commissioners appointed under Section 3416, General Code, and functioning under the subsequent sections.

Section 3423 provides that the park commissioners may levy for the maintenance of the park not to exceed one-mill on each dollar, but section 5625-3 authorizes only taxing authorities to levy a tax and the park commissioners are not taxing authorities under the definition given in Section 5625-1.

In the past the township trustees have been making a levy for park purposes and turning the amount of the levy over to the park commissioners upon the receipt of the same from the auditor, and the park commissioners went ahead and handled the money without making any report to the township trustees. This is rather unsatisfactory because the trustees have no way of checking the requirements of the park board for their budget. It has been suggested that the township trustees should hold the money in their possession and pay the bills of the park commissioners upon invoices properly approved by the park commission-

ers. This has the disadvantage of a duplication of work, and of putting a burden upon the trustees that could be handled by the park commission.

We have analogous situations in the county, the Library and the Soldiers' Relief Commission. In the case of the Soldiers' Relief Commission, the money is held by the Auditor and paid out upon the order of the Relief Commission, while in the case of the Library the money is turned over to the Library Board immediately upon the receipt of the same by the school board. Both methods seemed to have been approved in the past by the Examiners and as far as I can find there is no opinion from your department as to the propriety of either method.

Will you kindly furnish me with an opinion as to the proper method to proceed under the circumstances?"

This office on several occasions has held that the enactment of the Uniform Bond Act repealed all sections of the General Code authorizing the issuance of bonds which were inconsistent with the provision of such act. A similar opinion was rendered by the Court of Appeals of Lucas County in the case of *State ex rel. Finegold vs. Board of County Commissioners*, 20 O. App., 364. These rulings are based on the reasoning that only "subdivisions", as such term is defined in section 2293-1, General Code, are authorized by such act to issue bonds, and that such act specifically repeals all sections of the General Code which are inconsistent with its provisions.

An examination of the provisions of the so-called "Budget Act" or "Uniform Tax Levy Law" (Secs. 5625-1 et seq. G. C.), does not disclose such limitations therein. In section 5625-3, General Code is found the following language:

"The taxing authority of each *subdivision* and *taxing unit* shall, subject to the limitations of this act, levy such taxes annually as are necessary to pay the interest and sinking fund on and retire at maturity the bonds, notes and certificates of indebtedness of such *subdivisions* and *taxing unit* including levies in anticipation of which the *subdivision* or *taxing unit* has incurred the indebtedness." (Italics the writer's.)

It hardly can be contended that a township park district is a "subdivision" within the meaning of the "Budget Act" or, as it is sometimes called, "The Uniform Tax Levy Law" (Secs. 5623-1 to 5625-39, G. C.). Section 5625-1, General Code, defines such term as follows:

"(a) 'Subdivision' shall mean any county, school district, except the county school district, municipal corporation or township in the state."

I might add that by reason of the rule *expressio unius est exclusio alterius*, it excludes every other type of district.

Is a township park district a "taxing unit" within the meaning of such act? A "taxing unit" is defined in such section as follows:

"(i) 'Taxing unit' shall mean any subdivision *or other governmental district having authority to levy taxes on the property in such district* or issue bonds which constitute a charge against the property of such district including conservancy districts, metropolitan park districts, sanitary districts; road districts *and other districts.*" (Italics the writer's.)

In Bouvier's Law Dictionary "district" is defined as "a certain portion of the country, separated from the rest for some special purpose." In a township park district the portion of the country set off is co-extensive with the township. The purpose is to perform certain duties delegated by the legislature to a board, namely, the establishment and maintenance of a public park. I do not believe that it will be seriously contended that the legislature has no authority to establish public parks, or that it has no authority to establish an agency to maintain or preserve them. This it has done in the creation of a board of township commissioners. I therefore must be of the opinion that the township park district is a governmental district.

If I am not in error in my conclusion, section 3423, General Code, specifically gives to the township park commissioners the right to levy taxes on the property within the district. Such section reads:

"To defray the expenses of purchasing, appropriating and improving lands for park purposes and maintaining them as a free public park, the township park commissioners may levy, each year, a sufficient tax, not to exceed one mill on each dollar of valuation on all real and personal property, including property within any municipal corporation within the limits of the township, over and above all other taxes and limitations thereon, authorized by law, unless the question of increasing such levy is submitted to and approved by a vote of the electors of such township, at a general or township election. Such vote shall be taken on the order of the township park commissioners, specifying the additional levy they desire to make and the purpose for which it is desired."

Thus it is evident that a township park district is a "governmental district having authority to levy taxes on the property in such district" and is therefore a "taxing unit" as such term is used in sections 5625-1 to 5625-39, General Code.

If my deductions are correct, the tax levy for the maintenance of township parks should be made by the township park commissioners rather than by the board of township trustees, and the proceeds should be disbursed by them; each in the manner provided by statute for similar taxing subdivisions and taxing units.

Since the legislature has specifically placed the duty upon the township park commissioners to levy the tax in question, it would appear that no responsibility was intended to be placed upon the township trustees either as to the levy or expenditure of the tax in question. Since in Section 3427a, General Code, the legislature has specifically declared that boards of township park commissioners are "bodies politic and corporate" it would appear that such funds should be expended by an accounted for by such board, either by means of direct payment from its treasury or by allowing the funds to remain in the county treasury and be paid out by means of warrants drawn by such board upon the county treasury in amounts not less than one hundred dollars pursuant to Section 2690, General Code.

Specifically answering your inquiries, it is my opinion that:

1. A township park district is a "taxing unit" as such term is used in sections 5625-1 to 5625-39, inclusive, and as such, has authority by virtue of the provisions of section 3424, to levy taxes on the property within the township for the maintenance of township parks.

2. There is no legal duty on the township trustees to levy a tax for the maintenance of township parks in townships in which township park districts have been created.

Respectfully,
GILBERT BETTMAN,
Attorney General.