

**OPINION NO. 65-124****Syllabus:**

Under Section 511.32, Revised Code, boards of township 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 a board of park commissioners do not have the authority to and may not expend the proceeds of a tax levied pursuant to Section 511.33, Revised Code, for:

1. establishing and maintaining recreational programs for youth in the township;
2. hiring supervisors and assistants or using township employees to establish and super-

wise recreational programs for youth in the township; or

3. purchasing supplies and/or equipment to establish and operate recreational programs for youth in the township.

Under Section 511.32, Revised Code, said boards of township trustees do not have the authority to, and may not, acquire, by rental agreement or lease, for the summer months, real estate having thereon recreational facilities to be used for park purposes. Opinion No. 6294, Opinions of the Attorney General for 1936, approved and followed.

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**To: Chester W. Goble, Auditor of State, Columbus, Ohio**  
**By: William B. Saxbe, Attorney General, July 12, 1965**

Your request for my opinion reads in part as follows:

"If a board of township trustees has levied a tax pursuant to Section 5705.19, Revised Code, for recreational purposes, may this township use the proceeds of the tax levy to hire a supervisor and assistants and purchase supplies and equipment to establish a recreational program for the children in the township under the provisions of Section 511.32, et seq., of the Revised Code, or any other section of the Code? If so, may the township charge a fee to the participants for the use of such facilities?

"Section 511.32, Revised Code, authorizes a board of township trustees having within its limits, 'grounds devoted to public uses for park purposes' to carry out certain functions relating to park purposes. Would a board of township trustees be authorized under this section, or any other section of the Code, to hire personnel and pay their salaries from the proceeds of a tax levied for recreational purposes, which personnel would supervise recreation programs on public school owned facilities located within the township? In the alternative, would the township be authorized under the provisions of Section 511.32, et seq., and

755.12, et seq., Revised Code, or any other section of the Code, to pay the salaries of personnel to supervise recreational programs using the real estate and other facilities of a non-profit recreation organization located either within or outside the limits of the township?

"May the township lease, during the summer months, real estate located either within or outside the limits of the township, and having thereon recreational facilities so that township employed personnel may supervise thereon a recreational program for the youth of the township?"

Inasmuch as your letter of request refers to Section 511.32, Revised Code, I must assume that the situation to which you refer does not involve a park district and board of park commissioners created and established pursuant to Sections 511.18 to 511.31, inclusive, Revised Code.

Section 511.32, supra, provides in pertinent part:

"The board of township 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 a board of park commissioners, may:

"(A) Control, care for, grade, and improve any such park, square, or grounds;

"(B) Plant or place therein and care for trees, shrubbery, and plants, and maintain lawns in good condition;

"(C) Construct and maintain fountains;

"(D) Lay out, construct, reconstruct, repair, and maintain in good condition suitable driveways and walks constructed of such materials as are most suitable, and provide and maintain suitable and sufficient lights in any such park, square, or grounds;

"(E) Construct, reconstruct, repair, and maintain therein all necessary sewers, drains, and ditches;

"(F) Protect and preserve to public uses for park purposes all of such property and improvements, and, to that end, adopt bylaws, rules, and regulations for the government and control of any such park, square, or grounds and the driveways and walks therein, and protect them and the trees, shrubbery, plants, and improvements from misuse, injury, or destruction, and provide for the enforcement of such rules and regulations by fines and penalties."

Section 511.33, Revised Code, provides in pertinent part:

"In paying any expenses of park management and of improvements authorized by section 511.32 of the Revised Code, the board of township trustees may appropriate and use for such purposes any funds in the township treasury then unappropriated for any other purpose. Should there be no available funds in the treasury or an insufficient amount to pay for the desired park management and improvements in any year, the board may levy a tax in order to pay for such park management and improvements. The tax shall be levied upon all of the taxable property in the township and shall be certified, levied, and collected in the manner prescribed for the certification, levy, and collection of other township taxes.\* \* \*"

Section 5705.19, Revised Code, to which you refer in your letter of request, provides in pertinent part:

"The taxing authority of any subdivision at any time prior to the fifteenth day of September, in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any

of the following purposes:

"\* \* \* \* \*"

"(H) For recreational purposes, provided the total levy for such purposes authorized by vote of the people shall not exceed five tenths of a mill;

"\* \* \* \* \*"

"Such resolution shall be confined to a single purpose, and shall specify the amount of increase in rate which it is necessary to levy, the purpose thereof, and the number of years during which such increase shall be ineffect, which may or may not include a levy upon the duplicate of the current year.\* \* \*"

In regard to your inquiry, it must be noted that the tax authorized by Section 511.33, supra, and levied pursuant to Section 5705.19, supra, is limited to "\* \* \* paying any expenses of park management and of improvements authorized by section 511.32 of the Revised Code \* \* \*" (Emphasis added). In referring to Section 511.32, supra, the authority of the board of township trustees is limited in two respects: first, it may perform the authorized tasks and functions for public parks, public squares or grounds devoted to public uses for park purposes, each of which must be within the township; and second, it is authorized to perform the tasks and functions specifically enumerated in subsections (A) through (F) of Section 511.32, supra, plus the building, equipping and maintaining of a swimming pool.

The term "park purposes" as used in Section 511.32, supra, was considered in Opinion No. 1647, Opinions of the Attorney General for 1920, and beginning at the bottom of page 1078, the then Attorney General stated:

"'Park purposes,' as used in the statute, must be construed to mean any ordinary and usual purpose, such as rest and recreation, games and entertainments, and out-door sports, etc., tending to promote the public welfare, health and enjoyment for which a park is suitable and for which it is usually used and maintained.\* \* \*"

Although park purposes include recreation, and although swimming is a generally recognized form of recreation, in Opinion No. 1556, Opinions of the Attorney General for 1939, page 2304, the then Attorney General was

requested to render an opinion upon whether the board of township trustees could, acting pursuant to the authority of Section 3427-1, General Code (the predecessor of Section 511.32, Revised Code), build, maintain and operate a swimming pool with the necessary accessories thereto in a park which was not under the control of a board of park commissioners. Although the conclusion reached was abrogated by the 1941 amendment to the statute considered, see 119 Ohio Laws, 63, the reasoning applied therein is sound and compelling. Beginning on page 2306 of the opinion, it was stated:

"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."

Boards of township trustees are creatures of statute and have only such powers as are expressly provided by law or necessarily implied therefrom. Trustees of New London Township v. Miner, et al., 26 Ohio St., 452, at 456. In view of the detailed grant of the express powers in Section 511.32, supra, and the absence of any necessity for implying such additional powers as are outlined in your

letter of request, I herewith adopt the reasoning of Opinion No. 1556, supra, as being dispositive of your inquiry relative to the supervised recreational programs and the supplies and equipment employed therein.

You also ask whether the township may lease, during the summer months, real estate having recreational facilities thereon so that township-employed personnel may supervise a recreational program thereon. The portion of this question pertaining to the authority of a board of township trustees to use township-employed personnel to supervise recreational activities has been disposed of in the negative in the immediately preceding paragraphs of this opinion. In regard to the question of the lease of real estate, your attention is directed to Section 511.18 et seq., Revised Code, pertaining to the acquisition and establishment of township parks. An examination of these sections fails to reveal any express authority provided by law. In regard to the implied authority, see Opinion No. 6294, Opinions of the Attorney General for 1936, wherein it was stated, in Volume III at page 1601:

"\* \* \*On the contrary, a consideration of all of the statutory provisions, above noted, relating to the power and authority of the park commissioners of a township park district with respect to the establishment and maintenance of public parks in the district clearly excludes any suggestion that such commissioners have any authority to acquire lands for this purpose by lease.\* \* \*"

It might be noted that Amended Substitute Senate Bill No. 30, 129 Ohio Laws, 235, effective August 4, 1961, broadened the authority of township boards of park commissioners by authorizing them to purchase lands on an installment basis. Section 511.23, Revised Code, now provides in pertinent part:

"\* \* \*It may locate, establish, improve, and maintain a free public park or parks 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.\* \* \*"

Yet, no such additional powers were granted to township trustees under Section 511.32, supra.



Consider also Section 505.26, Revised Code, which provides:

"The board of township trustees may purchase, appropriate, construct, enlarge, improve, rebuild, repair, furnish, and equip a township hall, a township park, and bridges and viaducts over streets, streams, railroads, or other places where an overhead roadway or footway is necessary, and such board may acquire sites for any of such improvements.

"If sufficient space for township offices is not available, the board of township trustees may purchase, lease, or construct, and furnish, equip, and maintain office space. When such offices are to be provided by construction, a site upon which to erect such offices may be acquired by purchase, lease for twenty-five years or longer, or otherwise. The cost of providing such office space shall be paid out of funds in the township treasury. If sufficient funds are not available the board shall proceed as provided in sections 511.01 to 511.04, inclusive, of the Revised Code."

Since the boards of township trustees have the power to acquire sites for township parks and halls, my determination in Opinion No. 1232, Opinions of the Attorney General for 1957, is highly relevant to your question. The syllabus states:

"Boards of township trustees, acting under authority of Section 505.26, Revised Code, have no authority to lease a building to be used as a township hall."

Since the rendition of this opinion, the legislature amended Section 505.26, supra, by Amended House Bill No. 314, 129 Ohio Laws, 1294, effective October 2, 1961, by adding the second paragraph to Section 505.26, supra, above quoted. The township trustees' authority to lease is predicated upon the insufficiency of space for township offices and does not abrogate the conclusions reached in Opinion No. 1232, supra. There is a distinct difference between a township meeting place and offices for township officials.

Giving effect to the above observations, it is my opinion and you are hereby advised that:

Under Section 511.32, Revised Code, boards of township 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 a board of park commissioners do not have the authority to and may not expend the proceeds of a tax levied pursuant to Section 511.33, Revised Code, for:

1. establishing and maintaining recreational programs for youth in the township;
2. hiring supervisors and assistants or using township employees to establish and supervise recreational programs for youth in the township; or
3. purchasing supplies and/or equipment to establish and operate recreational programs for youth in the township.

Under Section 511.32, Revised Code, said boards of township trustees do not have the authority to, and may not, acquire, by rental agreement or lease, for the summer months, real estate having thereon recreational facilities to be used for park purposes. Opinion No. 6294, Opinions of the Attorney General for 1936, approved and followed.