

SYLLABUS:

The annexation of an area comprising a township park by a municipal corporation has no effect on the millage which may be claimed by the township board of park commissioners.

Columbus, Ohio, November 1, 1963

Honorable Robert Webb
Prosecuting Attorney
Ashtabula County
Jefferson, Ohio

Dear Sir:

I am in receipt of your request for my opinion which reads as follows:

“The Conneaut Township Park was established sometime prior to 1926. The County Auditor has reviewed the action of the Budget Commission for the year 1933 and subsequent years to date to ascertain what millage has been allowed from the 10 mills to the Park Board. From this review he has discovered that commencing in the year 1933, that being the year in which Article 12, Section 2 of the Constitution was effective, and continuing up to the year 1961, the Budget Commission has allowed millage to the Conneaut Township Park, except in the tax years 1939, 1945 and in 1961.

“The Conneaut Township Park is, of course, located in Conneaut Township, Ashtabula County. All of this Township, outside of the Municipal limits of Conneaut City was incorporated about 1943 and became Lakeville Village, and the Budget Commission allowed a levy upon the property within Lakeville Village for every year from the year 1946, to and including the year 1961.

“The Budget Commission also allowed millage from Conneaut City for the years 1946 to 1960, inclusive. No millage was allowed from the City in the year 1961, the officials of the City thought that they needed it more than did the officials of the Township Park and the Township Park Board having consented to yield its millage for that year.

“Lakeville Village has now been annexed to Conneaut

City and our question is: What millage may the Township Park Board now claim, inasmuch as the entire area within the original limits of Conneaut Township are now within the corporate limits of Conneaut City?"

For the purposes of this opinion it is assumed that the use of the term "township park board" in the request is synonymous with the term "board of township park commissioners," as used in the statutes.

The matter of this particular park and its status was subject of a formal opinion rendered July 26, 1944, to the Honorable Roland Pontius, Prosecuting Attorney, Jefferson, Ohio, and is set forth in Opinions of the Attorney General No. 7038, 1944 wherein the first paragraph of the syllabus reads as follows:

"Where a township park has been established pursuant to the provisions of Section 3415 *et seq.* General Code, by vote of the electors of the township including those residing in a municipality lying within such township, the subsequent incorporation into a village of the remaining portion of such township will have no effect on a board of park commissioners appointed for the establishment and management of such park, or on the power of such board to levy taxes as provided in Section 3423 General Code, on all the property in such township."

In relation to the problem involved, Section 703.22, Revised Code states:

"When the limits of a municipal corporation become identical with those of a township, all township offices shall be abolished, and the duties thereof shall be performed by the corresponding officers of the municipal corporation, except that justices of the peace and constables shall continue the exercise of their functions under municipal ordinances providing offices, regulating the disposition of their fees, their compensation, clerks and other officers and employees. Such justice and constables shall be elected at regular municipal elections. All property, moneys, credits, books, records, and documents of such township shall be delivered to the legislative authority of such municipal corporation. All rights, interests, or claims in favor of or against the township may be enforced by or against such municipal corporation."

It would appear, from the positive and mandatory language of the above statute, that all township officers except that of constable

(as the exception for justice of the peace has been impliedly repealed by 127 Ohio Laws 978, 1039) are abolished, including the board of township park commissioners.

However, Sections 511.18 to 511.35, inclusive of the Revised Code, dealing with township parks, seems to indicate otherwise.

In Section 511.35, Revised Code, relating to the construction and meaning of the aforementioned statutes, it is stated:

“It is hereby declared that the proper construction and meaning of sections 511.18 to 511.31, inclusive, of the Revised Code, heretofore, has been that the said boards of township park commissioners therein provided for, were officers of park districts coterminous with the geographic township, wherein they existed, that said boards of park commissioners constituted bodies politic and corporate, *and that the offices of said park commissioners were not township offices, within the meaning of that term in section 703.22 of the Revised Code.*” (Emphasis added)

The language used in the statute seems to mean that the commissioners will be an exception to the abolishment of all township offices under the rule of Section 703.22, *supra*. To add weight to this construction, certain other sections of the Revised Code are pertinent.

Section 511.23, Revised Code, states in applicable part:

“* * * *Their office* (board of township park commissioners) *is not a township office within the meaning of Section 703.22 Revised Code* * * *.” (Emphasis added)

Taken in entirety, these particular statutes make it exceedingly clear that the board of township park commissioners is not abolished by Section 703.22, *supra*, but continues to function after the creation of the municipal corporation. The board will continue to operate with the same power and authority that it had under the township.

Since that is the case, the millage that the board may claim under the municipal corporation, if passed in a valid manner under the authority granted the board of township park commissioners, would not change. The board has continued undisturbed through the change from township to municipal corporation, and annexation and the valid actions taken prior to incorporation continue to be valid after incorporation.

Long term disposition of multiple existing parks may be disposed of under Chapter 1545 Revised Code, Park Districts, by the Probate Court.

On the basis of the foregoing, it is my opinion and you are advised that the annexation of an area comprising a township park by a municipal corporation has no effect on the millage which may be claimed by the township board of park commissioners.