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PARK DISTRICT, COMMISSIONERS, OPERATION OF GOLF COURSE OUTSIDE DISTRICT? EFFECT OF ZONING ORDINANCE—§1545.11, R.C.

SYLLABUS:

1. A board of park commissioners organized and acting pursuant to Chapter 1545., Revised Code, may, under the authority of Section 1545.11, Revised Code, operate a public golf course on lands owned by the park district but located outside of the district and within the boundaries of a contiguous county.

2. Land owned by a park district organized and acting pursuant to Chapter 1545., Revised Code, which land is located outside of the park district, is not subject to the zoning ordinance of a municipal corporation within which such land is located.

Columbus, Ohio, January 21, 1960

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"This office is in receipt of inquiries concerning the operation of the Board of Park Commissioners of the Cleveland Metropolitan Park District.

"The specific questions for answer are as follows:

(1) May a board of park commissioners organized and acting pursuant to Sections 1545.01 et seq., of the Revised Code, own and operate lands, specifically a public golf course, located outside of its own park district and within the boundaries of a contiguous county?

"The Cleveland Metropolitan Park District established in 1917 comprises all of Cuyahoga County and a portion of Medina County. In 1944 property known as Manakiki Golf Course was conveyed to the Cleveland Park Board as a gift, and since that date has been operated as a private club producing income for the District.

"In the case of *Metzenbaum vs. Board of Park Commissioners, Cuyahoga County Common Pleas Case No. 680,595,* the court held that the existing arrangement for the use of this golf course was legal and proper, but that within a certain number of

years in the future, such arrangement must be discontinued and the property made available to the public, either as a golf course or other recreational use.

"Due to the decision above cited and the fact that the course cannot be sold without extensive litigation to clear the title, the Park Board is now contemplating the operation of this course as a public course. The land in question is located in Lake County, is about 1,500 feet distant at its closest point from any other land owned by the Cleveland Park Board, and about one and one-half miles from the Cleveland Park District boundary at its closest point. In 1958 a Lake County Park District was established, including within its boundaries all of Lake County.

"The Lake County Park Board is not raising any question in respect to this matter. The golf course would be available for use by non-residents as well as residents of the park district, as in the case with all park property, but would be operated by tax monies collected only within the park district owning it if such operation did not pay expenses. The question has been raised as to whether the operation of a golf course under these circumstances is authorized by the provisions of Revised Code, Section 1545.11.

"In *1930 Opinions of the Attorney General, Volume 3, Page 1813, Opinion No. 2678,* it was held that a board of park commissioners was not authorized to acquire lands in another state for the purpose of establishing and maintaining thereon a golf course, but the exact question raised in this letter was not specifically answered in that opinion.

"In *1941 Opinions of the Attorney General, Page 109, Opinion No. 3516,* it was suggested that a park board had the authority to acquire property for, and establish thereon, a golf course to be operated as a recreational facility, but the precise question as to whether a park board may own and operate a golf course in an adjacent park district was not involved.

(2) Is a board of park commissioners, organized and acting pursuant to Sections 1545.01 et seq., of the Revised Code, subject to the zoning ordinance of a municipality located outside of the boundaries of such park district with respect to the operation of a golf course owned by said park district and located in such municipality?

"These questions are of interest to the several metropolitan park districts of the State of Ohio and your formal opinion on the questions presented above will be greatly appreciated."

Your letter states that the question is concerned with a board of park commissioners created and operating pursuant to Sections 1545.01 to

1545.30, inclusive, Revised Code. The authority of such a board to acquire property for the park district is contained in Section 1545.11, Revised Code, which reads in part:

> "The board of park commissioners *may acquire lands either within or without the park district* for conversion into forest reserves and for the conservation of the natural resources of the state, including streams, lakes, submerged lands, and swamplands, 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 deems 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 of each such donation or trust shall first be approved by the probate court before acceptance by the board.
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> "* * *
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> "This section applies to districts created prior to April 16, 1920." (Emphasis added)

As this section clearly states, a board of park commissioners may acquire lands without the park district. Though not specifically stated, it would follow that lands so acquired would become a part of the park district. Thus, the golf course property in the instant case is owned, and may be operated by the board of park commissioners of the Cleveland Metropolitan Park Districts. The question then remains as to whether the board may operate a public golf course on such lands.

Section 1545.11, *supra,* provides that a board of park commissioners "* * * 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 deems conducive to the general welfare. * * *" It would seem that a public golf course, being a means of recreation, would be conducive to the general welfare and thus be within the scope of authority of the board.

You make reference to Opinion No. 2687, Opinions of the Attorney General for 1930, page 1813. Since said opinion involved the question of a board of park commissioners being authorized to acquire lands outside

the boundaries of the State of Ohio, I do not deem it pertinent in this question.

Opinion No. 3516, Opinions of the Attorney General for 1941, page 108, also referred to, did not pertain to the authority to own and operate lands, specifically a public golf course, but dealt with the question of expenditure of park district funds for the purchase of liability insurance, and also the operation of "concessions upon land owned by the park district for the purpose of selling merchandise, food and drinks." The opinion did, however, note that the authority of a park board would probably include within its scope a right in the park board to acquire property for, and establish thereon, a golf course, to be operated by such board as a recreational facility. At page 111 of that opinion it is stated:

> "* * *
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> "In view of the above pronouncement by the Supreme Court of Ohio it is evident that a park board is not limited in its powers solely to acquiring lands for the purpose of conserving natural resources, but that such authority is much broader and would probably include within its scope a right in the park board to acquire property for, and establish thereon, a golf course, to be operated by such board as a recreational facility. Such a project, open to all, would certainly contribute to the health, welfare and benefit of the park district inhabitants who avail themselves of it.
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> "* * *

The Supreme Court pronouncement referred to above was contained in the case of *Snyder v. Park Commissioners,* 125 Ohio St. 336.

In view of the foregoing, I am of the opinion that a board of park commissioners may acquire lands without the park district, including lands located in an adjoining county, and may operate a public golf course on such lands. Further, in the case at hand, I do not perceive any problem resulting from the fact that the golf course property is located in Lake County even though the Lake County Park District presumably includes all of Lake County. Since the land in question was already the property of the Cleveland Metropolitan Park District, the mere designation of the boundaries of the Lake County District did not alter the ownership of such lands, just as such designation did not alter the ownership of any other privately owned or publicly owned lands in Lake County.

I am aware that Section 1545.14, Revised Code, would probably allow the Lake County Park District to assume control of the land here in

question by agreement with the Cleveland Metropolitan Park Board. Said section reads as follows:

> "A board of park commissioners may by agreement with legislative or other public authority in control of parks or park lands within any municipal corporation in the park district assume control of all or a portion of any existing parks or park lands within such municipal corporation. In such event, such parks or park lands may be developed, improved, and protected as in case of lands otherwise acquired by said board. This section does not authorize said board to acquire or control any park, park lands, parkways, playgrounds, other lands, or boulevards owned or controlled by any other public authority except by agreement as provided in this section."

Since the land in question is located in a municipal corporation (Willoughby Hills) the above section would be applicable. As such an agreement has not been made, however, it is unnecessary to further consider this aspect.

Your second question asks whether lands owned by a park district but located outside of the park district are subject to the zoning ordinance of a municipal corporation within which such lands are located. As noted earlier, it would seem that the lands acquired by a park district would become a part of the district on acquisition. Even, however, if such lands are not a part of the district though owned by the district, the use of such lands is limited to the "use of the same in such manner as the board deems conducive to the general welfare" (Section 1545.11, Revised Code).

Regarding the effect of municipal zoning on public property, the syllabus in Opinion No. 495, Opinions of the Attorney General for 1945, page 634, reads:

> "A zoning ordinance duly adopted by a municipality is not effective as against the state in locating, acquiring, constructing or using such public buildings and institutions as it deems necessary in the performance of its duties enjoyed by law."

On the same question, it was stated in the case of *State ex rel. Dr. Sanford A. Helsel v. Board of County Commissioners,* et al., (Cuyahoga County), 37 Ohio Opinions 58:

> "The issue here considered may be resolved by determining whether zoning restrictions of municipalities are effective to prevent a county from using property for the public purpose for which it has been taken under the power of eminent domain.

To suppose that zoning ordinances may limit or prevent the public use for which land is taken is to invest municipalities with power to restrict the exercise of the power of eminent domain.

"* * *

"Both principle and authority support the view that restrictions in zoning ordinances of municipalities are ineffective to prevent the use of land by a county for the public purpose for which it has been appropriated.

"* * *

"Zoning ordinances are upheld on the theory that they bear a real and substantial relation to the public welfare. * * * Through the medium of zoning ordinances municipalities may insist that private rights in real property yield to the general good of the community, but the presumption is that the use of public property for public purposes is designed to promote the general welfare also, and no case or textual authority has been cited, that supports the view that municipalities by zoning ordinances, may restrict or limit the use of public property for public purposes.

"* * *

Pursuant to these authorities and others too numerous to mention here, it appears that zoning ordinances of municipalities have no application to the state or any of its statutory agencies vested with the right to use public property for a public purpose.

Accordingly, answering your specific questions, it is my opinion and you are advised:

1. A board of park commissioners organized and acting pursuant to Chapter 1545., Revised Code, may, under the authority of Section 1545.11, Revised Code, operate a public golf course on lands owned by the park district but located outside of the district and within the boundaries of a contiguous county.

2. Land owned by a park district organized and acting pursuant to Chapter 1545., Revised Code, which land is located outside of the park district, is not subject to the zoning ordinance of a municipal corporation within which such land is located.

Respectfully,

MARK MCELROY

Attorney General