

567.

DISAPPROVAL, CONTRACTS FOR INSTALLATION OF SIDE TRACKS CONNECTING STATE HIGHWAY GARAGE WITH D. T. & I. R. R. TRACKS AT WASHINGTON C. H., OHIO.

COLUMBUS, OHIO, June 3, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of transmittal enclosing for my approval contracts in duplicate and blue print drawings in duplicate prepared by the D. T. & I. Railroad Company relating to the installation of a side track connecting the state highway garage located at Washington C. H., Ohio, with the track of the railroad company.

I have carefully examined these contracts and find that the contract designates the second party as the state of Ohio, division of highways of Marion, Ohio, hereinafter called the "Industry."

The contract should be between the "State of Ohio, acting by and through G. F. Schlesinger as Director of Highways and Public Works," without any designation as to any city in which the division representing the state of Ohio is located.

In the first paragraph and throughout the agreement the word "Industry" should be changed to the words "State of Ohio."

The agreement should be signed in behalf of the state as follows:

STATE OF OHIO

By and through.....

Director of Highways and Public Works.

I am herewith returning to you the contracts, together with the blue prints, submitted, and all correspondence.

When this agreement shall have been changed according to the above suggestions I will approve the same.

Respectfully,

EDWARD C. TURNER,

Attorney General.

568.

PARK—VILLAGE COUNCIL MAY ADOPT POLICE AND SANITARY REGULATIONS FOR TOWNSHIP PARK—TOWNSHIP TRUSTEES MAY ADOPT BY-LAWS AND RULES FOR THE PURPOSE OF REGULATING THE USE OF PARK.

SYLLABUS:

1. *A village council may adopt police, sanitary and other similar regulations and the proper municipal officers may enforce the same within the territorial limits of the municipality, including a township park controlled by township trustees.*

2. *Township trustees may adopt by-laws, rules and regulations for the purpose of controlling and regulating the use of such park, and for the protection of all things therein, but have no authority to permit things to be done which would violate the police, sanitary*

and other similar ordinances legally adopted by the village, or to make rules or regulations contrary thereto.

COLUMBUS, OHIO, June 3, 1927.

HON. SETH PAULIN, *Prosecuting Attorney, Painesville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion as follows:

“Pursuant to the provisions of Section 3415 and following of the General Code of Ohio, a public park was heretofore established in and for the Township of Mentor, Lake County, Ohio. Through inadvertence the Board of Park Commissioners, as provided in Section 3415 and following of the General Code, was either not appointed or reappointed so that the management and control of the Mentor Township Park has been taken over by the Board of Township Trustees of Mentor Township, and has been managed, operated and controlled by the Board of Township Trustees of Mentor Township for a number of years past down to and including the present time.

About two and one half years ago the residents of the territory surrounding the park on the east, south and west sides proceeded to have said territory incorporated, including within the territorial limits of said Village the Park premises, the same being known as the Village of Mentor-on-the-Lake, which said village now includes Mentor Township Park as before stated. Mentor Township Park and the Village are bounded on the north by the waters of Lake Erie.

The question has now arisen regarding the authority of the village officers to enforce regulations as provided by duly enacted ordinances of the Village of Mentor-on-the-Lake, and providing penalties for failure to comply with the provisions of said ordinances.

I have advised the Board of Township Trustees that it is my opinion that the territory now known as Mentor Township Park, being within the municipality of Mentor-on-the-Lake, is subject to the same rules as any other property lying within a municipality, and that the village authorities are properly within their rights in enforcing obedience to said ordinances. Section 3421 of the General Code of Ohio provides, however, that the Township Trustees may appoint a guardian for the park or other necessary officers and employ, fix their compensation and prescribe their duties, prohibit selling, giving away or using as a beverage any intoxicating liquors therein, pass by-laws, rules and regulations for the government thereof, and protect it from injury and provide for their enforcement by fines and penalties, but such bylaws, rules and regulations shall not conflict with the constitution and laws of the state.

The Board of Township Trustees, however, contend that this section gives them complete authority to control the park grounds to the exclusion of the municipal authorities to enforce their ordinances within the territory known as Mentor Park.

I would, therefore, appreciate an opinion from your department as to whether Section 3421 of the General Code of Ohio is complete in itself and operates so as to exclude the village authorities from the enforcement of their police regulations as prescribed by duly enacted ordinances of the village of Mentor-on-the-Lake.”

I call your attention to the fact that in former opinions of this department it was held that the provisions of Sections 3415, et seq., of the General Code relative to the appointment of township park commissioners are unconstitutional. See Annual Report of the Attorney General for 1911-1912, p. 1350; Opinions of the Attorney

General for 1920, p. 1079; and also Opinion No. 188 rendered March 15, 1927. This, however, does not dispose of your question even though, as stated by you, the township trustees claim the right to act under Section 3421 of the General Code, which was held invalid in the aforesaid opinions, because said section only refers to the powers and duties of the park commissioners and gives the township trustees no authority at all.

I find that Section 3427-1 of the General Code is applicable to your question, this section reading 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 drive-ways 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 drive ways 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.*" (Italics the writer's.)

Section 1 of Article XVIII of the Constitution of Ohio provides that municipal corporations shall be classified into cities and villages. Section 3 of the same article provides in part that:

"Municipalities shall have authority to * * * adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

The language of this part of said section of the constitution is very plain and needs no interpretation, and it is quite clear that the township trustees in exercising the authority vested in them by virtue of Section 3427-1 of the General Code can do nothing which would conflict with said constitutional authority granted to the village.

I am of the opinion that the aforesaid section of the General Code authorizes the township trustees to adopt by-laws and make regulations relative to the protection of the grounds and all things therein and the management and control of said grounds and the use thereof by the public, and to provide fines and penalties for violation of any of the provisions thereof. They can not, however, make any regulations which would permit any acts within the park that would be contrary to or which would be in conflict with any police or sanitary regulation or ordinance adopted by the municipality under the provisions of the hereinabove quoted constitutional provision.

It is therefore my opinion:

- (1) That a village council may adopt police, sanitary and other similar regulations and the proper municipal officers may enforce the same within the territorial limits of the municipality, including a township park controlled by township trustees.
- (2) That township trustees may adopt by-laws, rules and regulations for the

purpose of controlling and regulating the use of such park, and for the protection of all things therein, but have no authority to permit things to be done which would violate the police, sanitary and other similar ordinances legally adopted by the village, or to make rules or regulations contrary thereto.

Respectfully,

EDWARD C. TURNER,
Attorney General.

569.

ASSESSMENTS—AMENDED SENATE BILL NUMBER 27, AMENDING SECTION 3892, GENERAL CODE—PENALTY THEREIN PROVIDED MAY NOT BE ADDED TO ASSESSMENTS DELINQUENT PRIOR TO EFFECTIVE DATE OF SAID STATUTE.

SYLLABUS:

Under the provisions of Amended Senate Bill No. 27, amending Section 3892, General Code, the penalty therein provided may not be added to assessments delinquent prior to the effective date of said statute, namely, June 16, 1927.

COLUMBUS, OHIO, June 3, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication which reads as follows:

“You are respectfully requested to render your opinion to this department upon the following question:

Amended Senate Bill No. 27, passed at the present session of the General Assembly, amending Section 3892 of the General Code with reference to the collection of municipal special assessments, provides that each installment of such assessments remaining unpaid after becoming due and collectible shall be delinquent and bear the same penalty as delinquent taxes. Prior to this amendment, Section 3892 contained no provision for a penalty for nonpayment of assessments.

Question: When installments of such assessments have been delinquent for a period of years prior to the enactment of this provision, may the penalty provided for be added to such delinquent assessments?”

Amended Senate Bill, No. 27, as enacted, amended Section 3892, General Code, to read as follows:

“When any special assessment is made, has been confirmed by council, and bonds, notes or certificates of indebtedness of the corporation are issued in anticipation of the collection thereof, the clerk of the council, on or before the second Monday in September, each year, shall certify such assessment to the county auditor, stating the amounts and the time of payment. The county auditor shall place the assessment upon the tax list in accordance therewith and the county treasurer shall collect it in the same manner *and at the same time* as other taxes are collected, and when collected, pay such assessment, *together with interest and penalty, if any*, to the treasurer of the corporation, to be by him applied to the payment of such bonds, notes or