

OPINION 65-231**Syllabus:**

It would be an unlawful exercise of discretion for a township board of park commissioners to levy a tax under Section 511.27, Revised Code, where the property so taxed already is taxed in excess of one per cent of its true value, without submitting such levy to a vote of the people of the taxing district and any such levy ordered without a vote would be unconstitutional and void.

To: Everett Burton, Scioto County Pros. Atty., Portsmouth, Ohio
By: William B. Saxbe, Attorney General, December 17, 1965

Your letter requesting my opinion reads as follows:

"We have received a request from the Board of Trustees of Porter Township, Scioto County, Ohio, inquiring whether or not the Board of Park Commissioners under Section 511.27 are permitted to levy a tax not to exceed one mill on each dollar valuation without the necessity of submitting such question to the electors. This Section seems to authorize such procedure but the Township has already exceeded the ten mill limitation as set forth in Article 12, Section 2 of the Ohio Constitution. It, therefore, would appear despite the wording of this Section that it is necessary even if the levy is to be one mill or less that a vote of the people be obtained. However, we request that you render your opinion concerning this matter."

Section 511.27, Revised Code, reads as follows:

"To defray the expenses of purchasing, appropriating, and improving lands for park purposes, and maintaining them as a free public park or parks, the township board of park commissioners may, each year, levy 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 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 election. Such vote shall be taken on the order of the board, which order shall specify the additional levy the board desires to make and the purpose for which it is desired."

This section is not inconsistent with Article 12, Section 2, Ohio Constitution. The fact that Section 511.27, supra, does not set forth when an election shall be held but leaves the determination to the discretion of the township board of park commissioners, does not mean that the discretion is absolute or may be exercised without regard to other fixed rules of law. Article 12, Section 2, Ohio Constitution, reads in pertinent part:

"No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitations, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation.

(Emphasis added)

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In the situation posited in your letter, the exercise of the Board's discretion is clearly controlled by the above rule. For the board to do otherwise than order a vote on the park levy would be an unconstitutional exercise of power and any levy of tax so ordered would be void. See Opinion No. 4211, Opinions of the Attorney General for 1932, page 475.

In conclusion then it is my opinion and you are so advised that it would be an unlawful exercise of discretion for a township board of park commissioners to levy a tax under Section 511.27, Revised Code, where the property so taxed already is taxed in excess of one per cent of its true value, without submitting such levy to a vote of the people of the taxing district and any such levy ordered without a vote would be unconstitutional and void.