

OPINION NO. 78-045**Syllabus:**

1. A board of park commissioners is authorized by R.C. 1545.11 to purchase land with borrowed funds for which a promissory note secured by a first mortgage on the subject property is given to the lender.
2. The principal and interest on such notes may be paid from tax revenue payable to a park district pursuant to R.C. 1545.20.

To: Richard A. Yoss, Monroe County Pros. Atty., Woodfield, Ohio
By: William J. Brown, Attorney General, July 7, 1978

I have before me your request for my opinion which reads in pertinent part as follows:

1. Does Ohio Revised Code Section 1545.11 permit the Park Board to purchase land and borrow purchase money on promissory notes secured by first mortgages on the real estate purchased?
2. If the answer to Question No. 1 is 'Yes,' may the principal and interest on said notes be paid from general tax revenue payable to the Park District? (Such revenue consists of a one-half mill inside the ten mill limitation and placed on the tax duplicates by the Park Board without vote of the people.)

Your first question concerns the authority of a park district to purchase land with borrowed funds for which a promissory note secured by a first mortgage on the subject property is given to the lender. R.C. 1545.11 specifically authorizes a board of park commissioners of a park district created prior to April 16, 1920 to acquire land. That section provides, in pertinent part that:

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. (Emphasis added)

R.C. 1545.11 further provides, in part:

Such lands may be acquired by such board, on behalf of said district, (1) by gift or devise, (2) by purchase for cash, by purchase by installment payments with or without a mortgage, by entering into lease-

purchase agreements, by lease with or without option to purchase, or, (3) by appropriation.

. . . .

This section applies to districts created prior to April 16, 1920. (Emphasis added)

Thus, there appears to be no question, under the terms of R.C. 1545.11, that a board of park commissioners of a park district created prior to April 16, 1920 is authorized to purchase land by installment payments with a mortgage. However, further analysis is necessary in determining whether the portions of R.C. 1545.11 set forth above may be said to authorize a board created after April 16, 1920, to acquire land as provided therein.

As originally enacted G.C. 2976-7, the predecessor of R.C. 1545.11, authorized the commissioners of a park district to acquire lands within the district for the conservation of the natural resources of the district. H.B. No. 183, 197 Ohio Laws 65. However, in 1920, under the provisions of H.B. No. 387, 108 Ohio Laws 1097, the powers of a board of park commissioners were expanded. The provisions of G.C. 2976-7, now R.C. 1545.11, were expanded to permit a board to acquire lands either within or without the district for conversion into forest reserves or for the conservation of the natural resources of the state. G.C. 2976-7 was at that time also amended to specify that the provisions of the section were to apply to districts created before the effective date of H.B. No. 387. In 1929, the powers of the board were again expanded under the terms of G.C. 2976-7. H.B. No. 75, 113 Ohio Laws 659. In 1953 the provisions of S.B. No. 361, 125 Ohio Laws 903, 930 were enacted as an emergency measure designed to become effective as a corrective amendment on October 1, 1953, the date the Revised Code took effect. As the result of this amendment, the language of G.C. 2976-7 which had specified that "the provisions of this section shall apply to districts heretofore created" was altered so that the final sentence of the new R.C. 1545.11 provided, "This section applies to districts created prior to April 16, 1920."

From this legislative history, it is apparent that the last sentence of what is now R.C. 1545.11 was originally added to G.C. 2976-7 in 1920 to ensure that park districts created prior to the 1920 effective date of H.B. No. 387 enjoyed the broader powers conferred upon boards of park commissioners thereunder. This statutory provision was, of course, necessitated by the historic presumption applied by the courts of this state that the legislature intends statutes enacted by it to operate prospectively rather than retroactively. State, ex rel Moore Oil Co. v. Daoben, 99 Ohio St. 406 (1919); Batchelor v. Newness, 145 Ohio St. 115 (1945); Smith v. Ohio Valley Ins. Co., 27 Ohio St.2d 268 (1971); see also, R.C. 1.48. It is apparent, therefore, that the change in language in 1953 which set forth the specific date of April 16, 1920, in no way altered the operation of this final provision as one which included districts created both before and after that date. Thus, I am of the opinion that the terms of R.C. 1545.11 authorize boards of park commissioners created both before and after April 16, 1920, to acquire lands as specified therein.

Your second question concerns whether the principal and interest due on a mortgage note may be paid from the tax revenue of the one-half mill tax inside the ten mill limitation placed on the tax duplicates by the park board without a vote of the people. R.C. 1545.20 provides in pertinent part:

A board of park commissioners may levy taxes upon all the taxable property within the park district in an amount not in excess of one half of one mill upon each dollar of the assessed value of the property in the district in any one year, subject to the combined maximum levy for all purposes otherwise provided by law. (Emphasis added)

Accordingly, tax revenue generated from such a levy may be used for any purpose for which the board is authorized by law to expend funds. Since R.C.

1545.11 specifically authorizes a park board to acquire land by mortgage purchase, revenue generated by a R.C. 1545.20 levy may be used for such an acquisition.

Therefore it is my opinion and you are so advised that:

1. A board of park commissioners is authorized by R.C. 1545.11 to purchase land with borrowed funds for which a promissory note secured by a first mortgage on the subject property is given to the lender.
2. The principal and interest on such notes may be paid from tax revenue payable to a park district pursuant to R.C. 1545.20.