

OPINION 65-39**Syllabus:**

Funds raised by a township recreation levy pursuant to Section 5705.19 (H), Revised Code, may not be used to operate a free public park under the control of park commissioners of a township park district.

To: Joseph Loha, Jefferson County Pros. Atty., Steubenville, Ohio
By: William B. Saxbe, Attorney General, March 24, 1965

Your request for my opinion poses the following problem, to wit:

On July 27, 1964, a petition was filed with the board of township trustees requesting to organize a park district and to establish a free public park within the township. After considering the petition, the common pleas court appointed a board of park commissioners. Soon thereafter the township trustees passed a resolution authorizing a levy of five tenths (5/10) of a mill to be placed upon the ballot on November, 1964, for the benefit of the township for purposes of recreation. The levy was passed at the election when the voters also approved the establishment of a free public park. May the funds raised by the levy be used to operate the free public park?

Section 511.18, Revised Code, provides that a township park district may be organized and that a township board of park commissioners may be appointed in the manner which you have out-

lined in your letter. The board of park commissioners then makes a written report to the township trustees pursuant to Section 511.20, Revised Code, recommending that one or more free public parks be located and established. Upon the filing of the report of the board of park commissioners, Section 511.21, Revised Code, provides that the question of whether the park commissioners shall establish and maintain a free public park in the township shall be submitted to the voters for their approval. If the voters approve the establishment of a park, the park commissioners shall organize as a body politic and corporate and maintain a free public park in the township, all pursuant to Section 511.23, Revised Code.

In order to determine whether funds may be transferred from the township recreation levy fund to the township board of park commissioners, it is necessary to determine whether the township park district is a "taxing unit", separate and distinct from the township. The definition of "taxing unit" found in Section 5705.01, Revised Code, reads as follows:

"As used in sections 5705.01 to 5705.47, inclusive, of the Revised Code:

* * * * *

"(H) 'Taxing unit' means any subdivision or other governmental district having authority to levy taxes on the property in such district, ..."

The question of whether a township park district so created is a "taxing unit" was treated in Opinion No. 4881, Opinions of the Attorney General for 1932, page 1504. Paragraph one of the syllabus of that Opinion reads as follows:

"1. A township park district is a 'taxing unit' as such term is used in sections 5625-1 to 5625-39, inclusive, General Code (now Chapter 5705, Revised Code), and as such, has authority by virtue of the provisions of section 3423, General Code (now Section 511.27, Revised Code), to levy taxes on the property within the township for the maintenance of township parks."

When a township park district is created, it has the necessary authority to levy taxes on property within the township to operate parks under its control pursuant to Section 511.27, Revised Code.

The recreation levy to which you refer in your letter is authorized by Section 5705.19, Revised Code, which reads in part as follows:

"The taxing authority of any subdivision at any time prior to the fifteenth day of September, in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such

limitation for any of the following purposes:

"(H) For recreational purposes, provided the total levy for such purposes authorized by vote of the people shall not exceed five tenths of a mill;"

You will note that "subdivision" is defined in Section 5705.01 (A), Revised Code, as to include townships and township fire districts and waste disposal districts but not township park districts. Thus, the proceeds of the recreation levy are township funds to be used by the township for the specific purpose of recreation.

Township funds may be used for public park purposes only when there is a public park "not under the control of a board of park commissioners" as provided in Section 511.32, Revised Code. This problem was the subject of Opinion No. 271, Opinions of the Attorney General for 1945, page 274. Paragraph two of the syllabus of that Opinion reads as follows:

"Township trustees have no authority to appropriate or transfer township funds for the purpose of maintaining public parks under the control of the park commissioners of township park districts established under Section 3415, et seq., General Code (now Section 511.18, et seq., Revised Code)."

In Opinion No. 4881, Opinions of the Attorney General for 1932, page 1504, it was pointed out that Section 511.27, Revised Code, which authorizes a township board of park commissioners to levy taxes, specifically imposes upon the township board of park commissioners the duty of maintaining the parks by the proceeds of such tax levies and that no responsibility or duty in that regard rests upon the township trustees. There can be no transfer of funds from the township trustees to the township board of park commissioners since no provision is made for transfers from one taxing unit to another in the Revised Code.

Therefore, it is my opinion and you are advised that funds raised by a township recreation levy pursuant to Section 5705.19 (H), Revised Code, may not be used to operate a free public park under the control of park commissioners of a township park district.