

## OPINION NO. 1187

**Syllabus:**

1. Funds for maintaining a public park under the control of the park commissioners of a township park district established under Section 511.18, Revised Code, may be secured by tax levies made by the park commissioners under the authority of Section 511.27, Revised Code.

2. 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 511.18, et seq., Revised Code. (Opinion No. 271, Opinions of the Attorney General for 1945 is hereby approved and followed.)

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**To: Paul R. Young, Montgomery County Pros. Atty., Dayton, Ohio**  
**By: William B. Saxbe, Attorney General, July 2, 1964**

Your request for my opinion reads in pertinent part as follows:

"The Township of Madison is the owner in fee of a parcel of real estate used for park purposes. The township had a park commission appointed pursuant to authority of Sections 511.18, et seq., of the Ohio Revised Code. The Park Commission is without funds to operate both the parcel of real estate used for park purposes as owned by Madison Township and real estate leased to the township for park purposes.

"The Township Board of Trustees have ample funds to provide for the operation and mainten-

ance of township parks and would like to appropriate a lump sum to the Board of Park Commissioners to assist them in the operation and maintenance of the township parks.

"1. Are the Trustees of the township permitted under law to provide the Board of Park Commissioners with funds to operate and maintain a park located on real estate owned in fee in the name of the Township?

"2. Are the Trustees of the Township permitted under law to provide the Board of Park Commissioners with funds to operate and maintain a park located on real estate leased to the township?

"I note in a review of the issue, a decision of the Attorney General, 1945 OAG 271.

"3. Is this decision cited herein your present opinion as to this matter, or is there a distinction to be made depending upon who holds title to the real estate?"

Let us review a portion of the Opinion No. 271 issued in 1945:

"The law is well settled in this state that township trustees possess only such powers as are expressly conferred upon them by statute, or are by necessary implication requisite to perform the duties so imposed upon them. 39 O. Jur., p. 306, Sec. 46; Opinions of the Attorney General for 1939, No. 1545. And the Ohio Constitution expressly provides in Section 2 of Article X, that 'No money shall be drawn from any township treasury except by authority of law.'"

"An examination of the statutes relating to the powers and duties of township trustees generally, and also those relating specifically to township park districts and parks, particularly Section 3415, et seq., General Code, (now Section 511.18, Revised Code), discloses that the only authority conferred upon township trustees to use township funds for park purposes, is contained in and limited by Sections 3427-1 General Code, (now Section 511.32, Revised Code), and 3427-2, General Code, (now Section 511.33, Revised Code). The two sections last mentioned, according to their own terms, extend only to public parks which are not under the control of park commissioners', and therefore have no application to the park specifically mentioned in your letter."

Of the basic constitutional requirements and statutory provisions governing your problem and its solution I have been able to find only two significant changes in the law since 1945. Section 511.18, Revised Code, now permits one or more free public

parcs to be established, while Section 3415, General Code, then in effect permitted the establishment of only one. Section 511.23, Revised Code, empowers the board of park commissioners to lease land in various ways for park purposes while its counterpart of 1945, Section 3420, General Code, made no mention of leasing land for public parks.

It is then apparent that under the present statutes the leased land as well as that which is owned in fee by Madison Township, is under the control of the board of park commissioners and as such does not fall within the requirements of Section 511.32, Revised Code, permitting the board of township trustees to assume the cost of operation and maintenance of the same.

It is therefore my opinion and you are advised that:

Funds for maintaining a public park under the control of the park commissioners of a township park district established under Section 511.18, Revised Code, may be secured by tax levies made by the park commissioners under the authority of Section 511.27, Revised Code.

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 511.18, et seq., Revised Code. (Opinion No. 271, Opinions of the Attorney General for 1945 is hereby approved and followed.)