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## SYLLABUS:

A township park board created under Section 511.18, Revised Code, and with powers conferred upon it by Section 511.23, Revised Code, is not empowered to contract with the Federal Government to receive a Federal grant of money for the acquisition of lands under Title VII of the Housing Act of 1961 for Open Space Land.

Columbus, Ohio, July 25, 1963

Hon. Paul R. Young  
Prosecuting Attorney  
Montgomery County  
206 Courthouse Annex  
Dayton 2, Ohio

Dear Sir:

I have before me your letter of June 5, 1963, in which you request my opinion as follows:

“The Chairman of the Board of Washington Township Park Board, created by Section 511.18 Revised Code and with powers and duties prescribed by Section 511.23, Revised Code, desires an opinion on the following questions pertaining to receiving a grant from the United States of America for Open-Space Land under title VII of the Housing Act of 1961.

- “1. Is the Board empowered to contract with the Federal Government for this purpose?”
- “2. May the Board receive and expend Federal funds for this purpose?”

Section 511.18, Revised Code, provides for the creation of a township park board as follows:

“When any number of electors in a township, including the electors of all municipal corporations therein, equal to or exceeding one tenth of the total vote cast in such township at the general election next preceding, files a petition with the board of township trustees for proceedings to organize a park district and to establish a free public park within such township, the board shall certify such fact to the court of common pleas of the county, which court, or a judge thereof, shall appoint a board of park commissioners for the township.”

The powers and duties of the township park board are described in Section 511.23, Revised Code. That section is as follows:

“When the vote under section 511.21 of the Revised Code is in favor of establishing a free public park, the board of park commissioners shall constitute a board, to be called the board of park public commissioners of that township park district, and they shall be a body politic and corporate. Their office is not a township office within the meaning of section 703.22 of the Revised Code. The members of the board shall serve without compensation. It may locate, establish, improve, and maintain a free public park within and without the township, and may accept a conveyance of or purchase for cash, by purchase by installment payments with or without a mortgage, by entering into lease-purchase agreements, by lease with option to purchase, or appropriate suitable lands and materials for that purpose. The board shall have careful surveys and plats made of the land acquired for such purposes, and shall establish permanent monuments on the boundaries of the lands. Such plats, when executed according to sections 711.01 to 711.38, inclusive, of the Revised Code, shall be recorded in the office of the county recorder, and such records shall be admissible in evidence for the purpose of locating and ascertaining the true boundaries of the park.

“The board shall devise plans for the improvement of the park, and award all contracts therefor, in the manner provided by the law governing township trustees in

awarding contracts for public improvements. The board may appoint a guardian for the park and it may appoint all other necessary officers and employees, fix their compensation and prescribe their duties, prohibit selling, giving away, or using any intoxicating liquors in such park, pass bylaws, rules and regulations for the government of the park, and protect it from injury and provide for their enforcement by fines and penalties."

It is an elementary proposition of law that township trustees possess only such powers as are expressly conferred upon them by statute, *Hopple vs. Brown Township*, 13 Ohio St., 311, or are by necessary implication requisite to perform the duties so imposed upon them, *i.e.*, the statutes under which they act are in derogation of the common law and are strictly construed. *Johnson vs. Grunkemeyer*, 8 N.P. 274, 110 D.N.P. 412; 52 Ohio Jurisprudence 2d, Townships section 42. Thus, the trustees of a township cannot, in general, do any act foreign to the purposes for which their offices were created. By analogy then, these propositions are applicable when defining the powers of a township park board, for in reality it too is but an arm or agent of the township. 52 Ohio Jurisprudence 2d, Townships section 33, and cases cited therein.

In 1936, my predecessor in office construed former Section 3420, General Code, which is similar to the present Section 511.23, Revised Code. The terms of the statute were:

"The park commissioners \* \* \* may locate, establish, improve and maintain a free public park \* \* \*, and *accept a conveyance* or purchase \* \* \* suitable lands and materials for that purpose." (Emphasis added)

The Attorney General held that the park commissioners of a township park district were not authorized to acquire lands by lease for use as a free public park under the general authority conferred upon them by Section 3420, General Code, *supra*. Opinion No. 6294, Opinions of the Attorney General for 1936. The Attorney General strictly construed the words of the statute, "and accept a conveyance," and held that in the context of the statute these words precluded a lease arrangement. The Attorney General cited the case of *Miller vs. Miller*, 91 Kan., 1, 4, which in construing the words, "conveyances of land" held: "the words conveyances of land, mean, of course, the land itself in fee simple absolute."

It is to be noted that the provision in Section 3420, General Code, was carried over to Section 511.23, Revised Code, which however, was recently amended to allow leasing of land by a township park board.

The powers conferred upon a township park board under Sections 511.18, Revised Code, *et seq.*, and especially under Section 511.23, Revised Code, are limited and not subject to expansion by Section 511.31, Revised Code. That section expressly provides:

“Every township board of park commissioners \* \* \* shall function under and be governed by sections 511.18 to 511.31, inclusive, of the Revised Code.”

It is, therefore, evident that the powers of the park board are to be found within these few statutes. Only one section of the Code confers powers pertinent to the issues involved, and that is Section 511.23, Revised Code, *supra*. As noted above it is similar in nature to the old Section 3420, General Code. The first paragraph expressly provides:

“The members of the board \* \* \* may locate, establish, improve, and maintain a free public park, \* \* \* and may *accept a conveyance* of or purchase for cash, \* \* \* (or enter) into lease-purchase agreements, \* \* \* or appropriate suitable lands and materials for that purpose.”

(Emphasis added)

The reasoning of the *Miller case* is applicable here. Section 511.23, Revised Code, provides that the park board may accept conveyance or interests in real property. This term is free from ambiguity and is not susceptible to expansion by interpretation to include acceptance of grants of money from the Federal government under the Open Space Land provision of Title VII of the Housing Act of 1961. The first paragraph of Section 511.23, Revised Code, provides for receiving a conveyance or interest in land. This precludes contracting with the federal government for a money grant since, of course, it is not an interest in land. It is not within one of the express powers conferred upon the township park board by the legislature.

The second paragraph of Section 511.23, Revised Code, refers to "improving land," or awarding contracts for the improvement of park lands. It states:

"The board shall devise plans for the improvement of the park, and award all contracts therefor, in the manner provided by the law governing township trustees in awarding contracts for public improvements."

This section refers to improving existing park lands. Improvements mean the physical enhancement of the park. This embraces the actual betterment of the original status of areas of the park. It embraces the planting of trees, grass, shrubs, and other betterments. *People vs. Clark*, 296 Ill., 46, 129 NE, 683. It does not embrace contracting with the Federal Government and receiving a grant of money. This is not a physical improvement, it does not benefit the property or enhance its value. *Vandall vs. South San Francisco Dock Co.*, 40 Cal., 83, 85. The case of *State vs. Babcock*, 476, 186 Minn., 242 NW, 474, 132 held that the acquisition of land was not an improvement. It is to be against noted that under the terms of the Federal grant in question, it is hinged upon the condition that it is to be used to acquire title or other permanent interests in land. Title VII of the Housing Act of 1961, section 702(a). This is not an improvement.

The limited provisions of Section 511.23, Revised Code, are to be contrasted with the broader powers that the legislature has conferred upon the township trustees. For example, Section 9.20, Revised Code, confers upon the township trustees the power to receive by gift, devise, or bequest, money, lands, or other properties for their benefit and may hold and apply the same according to the terms and conditions of the gift, devise or bequest. Similar provisions are in Sections 503.01, and 505.10, Revised Code.

It is anomalous that the park board may receive a conveyance of land but not the money with which to purchase it, but such are the terms of the statute.

It is, therefore, my opinion and you are advised that:

A township park board created under Section 511.18, Revised Code, and with powers conferred upon it by Section 511.23, Revised Code, is not empowered to contract with the Federal Govern-

ment to receive a Federal grant of money for the acquisition of lands under Title VII of the Housing Act of 1961 for Open Space Land.

Respectfully,  
WILLIAM B. SAXBE  
Attorney General