

OPINION NO. 76-024**Syllabus:**

When a board of park commissioners adopts a resolution under the second paragraph of R.C. 1545.22, to become the governing board in respect to the deposit of park district funds, the county treasurer and county auditor continue to serve as ex-officio members of the board of park commissioners. As specified in the first paragraph of R.C. 1545.22, the county treasurer continues

to serve as custodian of park district funds and the county auditor continues to serve as fiscal officer.

To: Harry Friberg, Lucas County Pros. Atty., Toledo, Ohio
By: William J. Brown, Attorney General, March 25, 1976

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

"When a Board of Park Commissioners, acting under the provisions of the second paragraph of the Revised Code §1545.22, adopts a resolution to become the governing board of the Park District, does this relieve the County-Treasurer and County Auditor of the responsibilities imposed upon them by the provisions of the first paragraph of said section?"

R.C. 1545.22 specifies depositories for park district funds and the duties of the county treasurer and county auditor in respect to park district funds. Said Section reads as follows:

"All funds under the control of a board of park commissioners shall be kept in depositories selected in the manner provided for the deposit of county funds, insofar as such proceedings are applicable, and such deposits shall be secured as provided in the case of county funds. The county treasurer of the county wherein the park district is located shall be the custodian of the funds of the board and shall be an ex-officio officer of said board. He shall pay said funds out upon the warrant of the county auditor of the county wherein said district is located. The auditor shall be an ex-officio officer of the board and no contract of said board involving the expenditure of money shall become effective until the auditor certifies that there are funds of said board in the county treasury and otherwise unappropriated sufficient to provide therefor. The auditor shall issue warrants to the treasurer to disburse the funds of the board upon order of the board, evidenced by the certificate of the secretary in such manner as the bureau of inspection and supervision of public offices prescribes. The accounts of said board shall also be kept in the manner to be prescribed by said bureau.

"Any board of park commissioners may select a depository for the funds of the district, in the manner provided in sections 135.01 to 135.21, inclusive, of the Revised Code, upon the adoption of a resolution declaring such intent, which resolution shall be certified to the board of county commissioners and to the treasurer in the counties

in which such park is located. In such event such board of park commissioners shall thereupon become the governing board for such district with respect to the deposit of funds of such district." (Emphasis added.)

Under the provisions of the first paragraph, funds of a park district, which is a political subdivision separate and distinct from the county, are to be kept in the manner provided for the deposit of county funds. In the situation described in the first paragraph, under the provisions of the Uniform Depository Act, R.C. 135.01 to 135.21, the board of county commissioners acts as the governing board for the deposit of such funds, as R.C. 135.01, in pertinent part, defines "governing board", in the case of a county as the board of county commissioners. The function of the governing board for deposit of public moneys, under the provisions of R.C. 135.01 to 135.21, is primarily the award of active deposits, inactive deposits and interim deposits to the various qualified financial institutions specified in these sections.

The governing board in respect to deposits does not, however, act as the custodian or fiscal officer in respect to public funds. In the case of county funds generally, the board of county commissioners acts as the governing board for the deposit of county funds, however, the county treasurer is charged with the safekeeping and custody of county moneys. State v. Meyers, 56 Ohio St. 340 (1897). The county auditor, while not the custodian, acts as the fiscal officer of the county. With but a few designated exceptions, no public money can legally be paid into or out of the county treasury without the knowledge and consent of the city auditor. State v. Newton, 26 Ohio St. 265 (1875).

The first paragraph of R.C. 1545.22, therefore, specifies that the board of county commissioners acts as the governing board for park district funds, with the county treasurer serving as custodian and the county auditor acting as fiscal officer.

The second paragraph of R.C. 1545.22 provides that a board of park commissioners may, by adopting a resolution, select a depository for park district funds, thereby becoming the governing board with respect to the deposit of such funds. As noted previously, however, the governing board for deposit, under the provisions of R.C. 135.01 to 135.21, functions primarily in awarding various types of deposits to various financial institutions. The governing board for deposit does not, in the county setting, act as the custodian of or fiscal officer in charge of such funds.

The first paragraph of R.C. 1545.22 specifies that the county treasurer shall be an ex-officio member of the board of park commissioners and shall serve as custodian of park district funds. The county auditor is also to serve as an ex-officio member of the board of park commissioners and is to serve as fiscal officer. While the second paragraph of R.C. 1545.22 provides that a board of park commissioners may, by resolution, become the governing board in respect to awarding deposits of its funds, no provision is made in the second paragraph which alters the duties assigned to the county auditor and county treasurer.

It is, therefore, my opinion, and you are so advised, that when a board of park commissioners adopts a resolution under the second paragraph of R.C. 1545.22, to become the governing board in respect to the deposit of park district funds, the county treasurer and county auditor continue to serve as ex-officio members of the board of park commissioners. As specified in the first paragraph of R.C. 1545.22, the county treasurer continues to serve as custodian of park district funds and the county auditor continues to serve as fiscal officer.