

OPINION NO. 91-009**Syllabus:**

1. The establishment of a park district under R.C. 1545.01 does not preclude the later establishment of a smaller, coexisting R.C. Chapter 1545 park district in an area already wholly included in the earlier established park district.
2. The Sylvania Township Park District, created by order of the probate court, pursuant to R.C. 1545.04, is properly constituted as a park district under R.C. Chapter 1545, notwithstanding that a township park district with identical geographical boundaries could also have been created pursuant to the provisions of R.C. 511.18 through R.C. 511.23.
3. The board of park commissioners of a township park district created by a valid court order pursuant to R.C. 1545.04 is authorized under R.C. 1545.07 and R.C. 1545.22 to appoint its own treasurer who serves as fiscal officer.
4. When a board of park commissioners appoints its own treasurer, pursuant to R.C. 1545.07 and R.C. 1545.22, the county is required to transfer the funds under the control of the board of park commissioners and which were previously in the custody of the county treasurer to the custody of the newly appointed treasurer. The amount of the funds so transferred includes both the principal and any interest previously earned on such principal pursuant to the provisions of R.C. 135.351(A) and R.C. 1545.22(B)(1) and the provisions of R.C. 135.351(B) and (C).
5. After the initial transfer of park district funds to a treasurer appointed pursuant to R.C. 1545.07 and R.C. 1545.22, when tax monies are collected by the county for distribution to an R.C. Chapter 1545 park district, the provisions R.C. 135.351(B) and (C) apply. If timely payment and distribution is not made under R.C. 135.351(B), interest must be paid to the park district under R.C. 135.351(C). (1985 Op. Att'y Gen. No. 85-067 approved and followed.)

To: Anthony G. Pizza, Lucas County Prosecuting Attorney, Toledo, Ohio
By: Lee Fisher, Attorney General, March 11, 1991

I have before me your request for an opinion from my predecessor regarding a township park district. Your request arises from the following facts. In 1928, the Toledo Metropolitan Park District was created by a decree of the Lucas County Probate Court issued pursuant to G.C. 2976-1 (now R.C. 1545.01). This park district consisted of all the land in Lucas County. In 1958, the Sylvania Township Park District was similarly created by a decree of the Lucas County Probate Court. Both the application of the township trustees and the court's journal entry specify that they were made pursuant to the relevant provisions of R.C. Chapter 1545. This latter park district consists of all the land in Sylvania Township, all of which is located in Lucas County and, which, therefore, was already part of the metropolitan park district created in 1928.

A dispute arose between the township park district and the county in 1990 because the township park district wished to appoint its own fiscal officer and maintain its own accounts rather than have its funds in the custody of the county treasurer. The township park district additionally requested that the interest earned

by the county on the township park district funds in the custody of the county treasurer be credited to the township park district. The county commissioners, who question the validity of the establishment of the township park district, in part on the theory that it should have been established pursuant to R.C. Chapter 511, are uncertain of their authority to release the funds in question.

Your specific questions are as follows:

1. Under the facts and circumstances, as I have indicated above, did the establishment of the Toledo Metropolitan Park District in 1928 under General Code 2976-1 preclude the establishment in 1958, of the Sylvania Township Park District under Chapter 1545 of the Revised Code?
2. Is the Sylvania Township Park District properly constituted as a park district under 1545 of the Revised Code?
3. May the existing Sylvania Township Park District appoint its own fiscal officer and should any interest on accounts under the custody of the county treasurer be credited to said park district?
4. If the Sylvania Township Park District is found not to be properly constituted under Chapter 1545 of the Revised Code, what steps must be taken to rectify the current status quo?

I note as a preliminary matter that I must address your question in the context of the authority and duties of the county officers involved. It is the duty of the attorney general to advise county prosecutors with respect to their official duties. R.C. 109.14. Pursuant to R.C. 309.09, the county prosecutor has a duty to advise county and township officers. Park districts under either R.C. Chapter 1545 or 511, however, are independent bodies politic and corporate, *see* R.C. 511.23(A); R.C. 1545.07, and board members are not officers of the political subdivisions in which the district is located. *See generally* 1964 Op. Att'y Gen. No. 1297 (syllabus, paragraph 1) (R.C. Chapter 511 park districts); 1927 Op. Att'y Gen. No. 279, vol. I, p. 489 (syllabus, paragraph 1) and 1919 Op. Att'y Gen. No. 125, vol. I, p. 217 (syllabus) (considering the General Code provisions now codified at R.C. Chapter 1545). Accordingly, a county prosecutor has no duty to advise the board members of such park districts. By extension, I have no authority to issue an opinion on their behalf. *See generally* 1988 Op. Att'y Gen. No. 88-008 at 2-25 (attorney general may advise statutory clients only to the extent of their duties). The authority and duties of county officers with respect to the funds of the park district, however, are directly related to your questions asking whether the park district may acquire custody of its own funds and whether it has a right to the interest accrued on such funds while in the custody of the county. These questions are in turn dependent upon the validity of the establishment of the park district and the statutory source of the district's authority. Since a county prosecutor has a duty to advise county officers, I am, therefore, able to address these issues to the extent necessary to determine the obligations of the county.

It is also helpful at this point to describe the differing provisions for formation of a park district under the two statutory schemes which are pertinent to a discussion of your questions. R.C. 1545.01 provides that "[p]ark districts may be created which include all or part of a territory within a county, and the boundary lines of such district shall be so drawn as not to divide any existing township or municipal corporation within such county." Application for creation of such a park district is made to the probate judge of the county where the proposed district is located and may be signed by a majority of the electors in the proposed district or may be authorized by resolution of, *inter alia*, a board of township trustees in the proposed district. R.C. 1545.02. If, after notice, R.C. 1545.03, and a hearing, R.C. 1545.04, the probate judge "finds that such application is signed or authorized as provided in section 1545.02 of the Revised Code, and that the creation of such district will be conducive to the general welfare, he shall enter an order creating the district under the name specified in the application." R.C. 1545.04. The judge may alter the boundaries of the park district from those described in the application, but not increase its size. *Id.*

As your request indicates, however, there are also provisions for the creation of park districts in R.C. Chapter 511. R.C. 511.18 provides for the creation of park districts expressly referred to as township park districts. The statute provides that when the required number of electors submit a petition for such a park district, the board of township trustees "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." R.C. 511.18.¹ The boundaries of a township park district must be coterminous with those of the township. *Id.* The board of park commissioners must then choose sites for one or more public parks. R.C. 511.20. If the establishment of such parks is rejected at the next general election, the board of park commissioners is abolished. R.C. 511.21; R.C. 511.22. If the vote is favorable, the board of park commissioners becomes a body corporate and politic, independent of the township itself. R.C. 511.23.

With this in mind, I turn to an examination of your specific questions. Questions 1, 2, and 4 all involve the issue of the validity of the establishment of the township park district in 1958 and the issue of whether the park is an R.C. Chapter 1545 park or whether it is, or should have been, an R.C. Chapter 511 park. For ease of discussion I shall consider these three questions together.

The procedures for creation of a park district under R.C. Chapters 1545 and 511 in 1958 were substantively identical to those outlined above.² It is apparent that the township park district you describe was created pursuant to the procedures set out in R.C. Chapter 1545 rather than R.C. Chapter 511. The district was created by order of the Probate Court, subsequent to notice and hearing as required by R.C. 1545.03 and R.C. 1545.04. Further, both the application and journal entry expressly refer to the provisions of R.C. Chapter 1545. It is long settled law of this state that "[i]f a court have jurisdiction over the subject matter, its solemn acts and adjudications, although erroneous, are not void. They are valid until reversed." *Lessee of LeGrange v. Ward*, 11 Ohio 258, 261 (1842); accord *State ex rel. Schneider v. Brewer*, 155 Ohio St. 203, 205, 98 N.E.2d 2, 4 (1951); *Union Savings Bank & Trust Co. v. Western Union Telegraph Co.*, 79 Ohio St. 89, 86 N.E. 478 (1908) (syllabus, paragraph 2); *Moore v. Robison*, 6 Ohio St. 302 (1856) (syllabus, paragraph 1). The materials you have provided do not indicate that the 1958 probate court order has ever been reversed. Accordingly, unless it is void for lack of jurisdiction, the order validly creates an R.C. Chapter 1545 park district whose title and geographic boundaries are as designated in the order. I must, therefore, examine whether the issues you have raised regarding the 1958 order of the probate court are jurisdictional in nature.

The issue inherent in your second question is whether a township park district can only be created pursuant to R.C. Chapter 511. This question is jurisdictional in nature, since R.C. Chapter 511 grants no authority to a probate court to conduct a hearing or enter an order regarding the creation of an R.C. Chapter 511 park district. Rather, R.C. 511.18 provides for automatic appointment of a park board of trustees upon certification to the court of common pleas of the fact of a valid petition for organization of a park district. It is true that, pursuant to the provisions of R.C. Chapter 511, a park district identical in title and geographic boundaries to the district you have described could have been created. The plain language of R.C. 1545.01 through 1545.04, however, demonstrates that R.C. Chapter 511 is not the exclusive mechanism for creation of such a park

¹ R.C. 511.18 also provides that when the entire park district is contained within the unincorporated area of the township, the board of township trustees may appoint the board of park commissioners themselves or elect to have the court of common pleas do so.

² The provisions of R.C. 1545.01-.04, R.C. 511.18-.21 and R.C. 511.23 which were in effect in 1958 are published in the Revised Code of Ohio (Bureau of Code Revision, 1953) as enacted by the 100th General Assembly at 1953-1954 Ohio Laws 7 (Am. H.B. 1, eff. Oct. 1, 1953) (recodification of General Code). R.C. 511.22, as in effect in 1958, appears at 1953-1954 Ohio Laws 713, 726 (Am. S.B. 242, eff. Jan. 1, 1954).

district. R.C. 1545.02 expressly authorizes "any board of township trustees" to apply for the formation of a park district under R.C. Chapter 1545. Further, while R.C. 1545.01 does not require the boundaries of a park district to be coterminous with those of a township as does R.C. 511.18, it is clearly possible for such a coterminous district to meet the requirements set out in R.C. 1545.01. Pursuant to R.C. 1545.04, therefore, the probate court has jurisdiction to conduct a hearing on such a petition and to grant or deny it. Thus, once a petition has been filed by the board of township trustees pursuant to R.C. 1545.02, the determination that the boundaries meet the requirements of R.C. 1545.01 and that the creation of the proposed park district "will be conducive to the general welfare" is within the jurisdiction of the probate court. See generally *Sheldon's Lessee v. Newton*, 3 Ohio St. 494, 499 (1854) ("[t]he power to hear and determine a cause is jurisdiction"). I conclude, therefore, that the existence of provisions for achieving a similar result under R.C. Chapter 511 did not deprive the probate court of jurisdiction.

This brings me to an examination of the question of whether the establishment of the metropolitan park district in 1928 under G.C. 2976-1 (now R.C. 1545.01) precluded the establishment of the township park district under R.C. Chapter 1545 in 1958. As can be seen from the preceding discussion, this issue goes not to the jurisdiction of the probate court to hear the petition of the township trustees, but rather to the correctness of the court's order creating the township park district. If the court, after notice and hearing, determines that the proposed boundaries of the park district do not meet the requirements of R.C. 1545.01 or are not conducive to the public welfare, the court may reject the petition or alter the boundaries in such a way as to meet these requirements. Thus, if the court has jurisdiction to hear the petition, but errs in the establishment of proper boundaries, the validity of this order may be determined by direct appeal but may not be collaterally attacked. See generally *Sheldon's Lessee*, 3 Ohio St. at 499 (once jurisdiction has attached "the decision of every question thereafter arising...whether determined rightfully or wrongfully, correctly or erroneously, is alike immaterial to the validity, force, and effect of the final judgment, when brought collaterally into question"). The materials you have provided do not indicate that any direct appeal was taken of the probate court's 1958 order. Since the court had jurisdiction to rule on the petition filed by the board of township trustees pursuant to R.C. 1545.02-.04, I conclude, in the absence of any evidence of reversal of the court's determination thereon, that the probate court's order of 1958 validly created a township park district under R.C. Chapter 1545 and that the order remains in full force and effect.

I note further, that even if I assume at this late date that it would be possible to directly attack or vacate the 1958 order of the probate court, a reversal or vacation of the order would dissolve the park district created thereby only as of the date of reversal. See generally *Lessee of LeGrange*, 11 Ohio at 261 (adjudications of a court acting within its jurisdiction "although erroneous, are not void. They are valid until reversed"). A reversal would not, therefore, affect the county's obligations with respect to the township park district as currently established under R.C. Chapter 1545. Your fourth question, however, evinces a concern with rectifying the status of the park district. In order to lay this issue to rest, even though I have determined that the order has validly established the current district as an R.C. Chapter 1545 park district, I will examine whether the court erred in doing so, thereby creating a situation subject to rectification.

R.C. 1545.01 provides that park district boundaries may encompass all or part of a county so long as the boundaries do not divide any existing township or municipality. The materials provided do not indicate that the boundaries established in 1958 divided any then existing municipality. I find nothing in R.C. 1545.01 which precludes a park district from overlapping or being entirely inside another existing park district. Nor is there anything in the statutory framework of R.C. Chapter 1545 which precludes districts from coexisting in the same territory. The existence of a larger county-wide district does not foreclose the possibility that township residents may also benefit from parks devoted to their particular needs. It is true that the residents of a township in such a situation are subject to property taxes levied by each park district of which they are a part. If, however, they are dissatisfied, they may vote not to support additional taxes by either or both districts, R.C. 1545.21, or they may seek the dissolution of one or both districts, R.C. 1545.35-.38. The statutory framework established by R.C. Chapter 1545, thus,

neither expressly nor impliedly precludes the establishment of a smaller township park district within the boundaries of a preexisting county-wide district. Accordingly, it is well within the discretion of the court to find that the public welfare will be served by the creation of an additional, smaller district devoted to the particular needs of the township. I conclude, therefore, that the 1958 order of the probate court was not only valid, as within its jurisdiction, but also not erroneous.

Based upon the above, I conclude, in response to your first and second questions that a township park district created by order of the probate court, pursuant to R.C. 1545.04, is properly constituted as a park district under R.C. Chapter 1545, notwithstanding that a township park district with identical geographical boundaries could also have been created pursuant to the provisions of R.C. 511.18 through R.C. 511.23. Under the provisions of R.C. Chapter 1545, the prior establishment of a county-wide metropolitan park district does not preclude the establishment of a township park district, the area of which is already included in the metropolitan park district. Thus, a valid order of a probate court entered pursuant to R.C. 1545.04 which establishes such a township park district is not vulnerable to direct attack on such grounds. Accordingly, it is unnecessary to address your fourth question.

I turn now to your third question, which asks: "May the existing Sylvania Township Park District appoint its own fiscal officer and should any interest on accounts under the custody of the county treasurer be credited to such park district?" As I have previously determined that, pursuant to the 1958 order of the probate court, the Sylvania Township Park District is constituted as an R.C. Chapter 1545 park district, the answer to your question is controlled by the relevant provisions of that chapter.

R.C. 1545.07 provides that "[t]he board [of park commissioners] may appoint a treasurer to act as custodian of the board's funds and as fiscal officer for the park district." R.C. 1545.22 further provides:

(A) If a treasurer is appointed by a board of park commissioners pursuant to section 1545.07 of the Revised Code, the accounts of the board shall be kept by that treasurer. The treasurer shall be an ex officio officer of the board. No contract of the board shall become effective until the treasurer certifies that there are funds of the board sufficient to provide for that contract.

(B) If no treasurer is appointed by the board pursuant to section 1545.07 of the Revised Code:

(1) ...The county treasurer of the county in which the park district is located shall be the custodian of the funds of the board and shall be an ex officio officer of the board. He shall pay the funds out upon the warrant of the county auditor of the county in which the district is located. Interest earned on all funds under the control of the board of park commissioners shall be credited to such funds.

It is thus clear that the Sylvania Township Park District may appoint its own treasurer who serves as fiscal officer. R.C. 1545.07. Accordingly, any funds under the control of the board of park commissioners which were in the custody of the county treasurer in his capacity as custodian of such funds must be transferred to the custody of the park district treasurer, when one is appointed.

You ask further whether any interest on accounts in the custody of the county treasurer should be credited to the park district. This question must be considered in two parts. The first involves the initial transfer of funds at the time a park district treasurer is appointed pursuant to R.C. 1545.07. The second relates to the county's obligation with respect to interest earned on park district funds after such initial transfer.

The disposition of interest earned on funds in the county treasury is governed generally by R.C. 135.351. Subject to specified exceptions, the general rule established by R.C. 135.351(A) is that "all interest earned on money included in the county treasury shall be credited to the general fund of the county." My predecessor considered the relationship between the interest provisions of R.C. 135.351 and R.C.

1545.22 in 1985 Op. Att'y Gen. No. 85-067.³ As explained in detail in that opinion, the county government serves as a collection agency for many other taxing authorities and districts, including R.C. Chapter 1545 park districts. *See generally* R.C. 5705.03 ("taxes levied on property...shall be collected by the county treasurer"). Pursuant to R.C. 135.351(B) and other applicable statutes, time limitations are established for calculation of the principal amount due each taxing entity and for distribution of that sum to the entity for which it was collected. The interest provision of R.C. 1545.22, incorporated by reference in R.C. 135.351(A), requires that any interest earned on the principal after its distribution to the county treasurer in his capacity as custodian of park district funds must be credited to the park district. Op. No. 85-067 at 2-265. With respect to park district monies held by the county prior to distribution, however, the provisions of R.C. 135.351(B)-(C) apply. Op. No. 85-067 at 2-265 through 2-266. Accordingly, "[i]f timely payment and distribution is not made under R.C. 135.351(B), interest must be paid to the park district under R.C. 135.351(C). Op. No. 85-067 (syllabus, paragraph 5). It is clear from this analysis that the funds which are in the custody of a county treasurer in his capacity as custodian of park district funds under R.C. 1545.22 include not only the principal, but also any interest previously earned thereon pursuant to the provisions of R.C. 1545.22 and R.C. 135.351(A) and the provisions of R.C. 135.351(B)-(C). I conclude, therefore, that when the park district funds are initially transferred from the custody of a county treasurer to a park district treasurer, the amount transferred must include such interest as well as the principal.

I turn now to the issue of the disposition of interest earned on park district funds after the initial transfer of funds to the custody of the park district treasurer. R.C. 135.351 provides that "[e]xcept as provided in...[section] 1545.22 of the Revised Code, all interest earned on money included within the county treasury shall be credited to the general fund of the county." By its terms, the exception provided in R.C. 1545.22(B)(1), which requires that interest be credited to park district funds, applies only if no treasurer is appointed by the board pursuant to R.C. 1545.07. When such a treasurer is appointed, however, the exception in R.C. 1545.22 becomes superfluous. As explained above, the interest provision of R.C. 1545.22 applies to park district monies only after they have been distributed to the park district fund. Upon the appointment of a park district treasurer, these monies are distributed directly into the custody of that treasurer. The park district funds are, therefore, no longer held in the county treasury in the custody of the county treasurer. While the interest provision of R.C. 1545.22(B)(1) is no longer applicable, neither are the park district funds "money included in the county treasury" within the meaning of R.C. 135.351(A). Accordingly, the interest earned on monies after their distribution to the park district fund in the custody of a park district treasurer is credited directly to that fund and never passes through the county treasury.

Even when a park district treasurer has been appointed, however, the county treasurer remains responsible for the collection and distribution of tax monies to the park district. Thus, prior to distribution of the taxes collected on behalf of the park district, these monies are included in the county treasury. It follows that the provisions of R.C. 135.351(B)-(C) continue to govern the disposition of interest earned on these monies. I conclude, therefore, when tax monies are collected by the county for distribution to an R.C. Chapter 1545 park district whose funds are in the custody of a treasurer appointed under R.C. 1545.07, the provisions of R.C.

³ I note that at the time my predecessor considered the relationship between the interest provisions of R.C. 1545.22 and R.C. 135.351, the board of park commissioners of an R.C. Chapter 1545 park district had no authority to appoint its own treasurer. *See* 1987-88 Ohio Laws, Part II, 2635, 2677-79 (Sub. H.B. 231, eff. Oct. 5, 1987) (enacting the provisions of R.C. 1545.07 and R.C. 1545.22 relative to the appointment of a park board treasurer other than the county treasurer). Thus, the opinion does not discuss the effect of such an appointment on the operation of R.C. 135.351. I do not find, however, that the issue of who has custody of the funds has any bearing on the result reached in 1985 Op. Att'y Gen. No. 85-067. The analysis utilized therein remains applicable.

135.351(B) and (C) apply. If timely payment and distribution is not made under R.C. 135.351(B), interest must be paid to the park district under R.C. 135.351(C).

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

1. The establishment of a park district under R.C. 1545.01 does not preclude the later establishment of a smaller, coexisting R.C. Chapter 1545 park district in an area already wholly included in the earlier established park district.
2. The Sylvania Township Park District, created by order of the probate court, pursuant to R.C. 1545.04, is properly constituted as a park district under R.C. Chapter 1545, notwithstanding that a township park district with identical geographical boundaries could also have been created pursuant to the provisions of R.C. 511.18 through R.C. 511.23.
3. The board of park commissioners of a township park district created by a valid court order pursuant to R.C. 1545.04 is authorized under R.C. 1545.07 and R.C. 1545.22 to appoint its own treasurer who serves as fiscal officer.
4. When a board of park commissioners appoints its own treasurer, pursuant to R.C. 1545.07 and R.C. 1545.22, the county is required to transfer the funds under the control of the board of park commissioners and which were previously in the custody of the county treasurer to the custody of the newly appointed treasurer. The amount of the funds so transferred includes both the principal and any interest previously earned on such principal pursuant to the provisions of R.C. 135.351(A) and R.C. 1545.22(B)(1) and the provisions of R.C. 135.351(B) and (C).
5. After the initial transfer of park district funds to a treasurer appointed pursuant to R.C. 1545.07 and R.C. 1545.22, when tax monies are collected by the county for distribution to an R.C. Chapter 1545 park district, the provisions R.C. 135.351(B) and (C) apply. If timely payment and distribution is not made under R.C. 135.351(B), interest must be paid to the park district under R.C. 135.351(C). (1985 Op. Att'y Gen. No. 85-067 approved and followed.)