

OPINION NO. 66-160

Syllabus:

1. There is no statutory provision for the transfer of funds, either village or township, to a township board of park commissioners for the purchase of a park site.

2. Although a township or a village may purchase a park site, the township's giving of the site to township board of park commissioners would be contrary to Section 511.32, Revised Code, and the village's gift to the same board would be ultra vires.

3. A township's paying of the park board's expenses would also be a transfer without authority.

4. If the constitutional ten mill limitation has not been exceeded, only the township board of park commissioners, and not the township trustees, may levy a tax of up to one mill pursuant to Section 511.27, Revised Code, for park purposes within the township park district.

5. Either a village or a township may give control or management of park lands to a township park board pursuant to Section 511.232, Revised Code; while retaining title to the land. But neither may contribute to the operation or maintenance of the park after the park board assumes control.

6. Neither 511.232 nor any other code section authorizes a joint acquisition of park sites by a village and a township.

To: Robert O. Stout, Marion County Pros. Atty., Marion, Ohio
By: William B. Saxbe, Attorney General, September 21, 1966

Your letters requesting my opinion read, in pertinent part, as follows:

"Pursuant to R. C. 511.18, a board of park commissioners was appointed for Township X. Township X contains therein Village Y. The board sought suitable locations, incurred expenses and secured an option on suitable land, pursuant to R. C. 511.20. The question was submitted and passed at the election. (R. C. 511.21:22). No tax levy was passed under R. C. 511.27.

"The following taxes are not accurate, but illustrate the point. Village Y has a tax rate of 29.80, of which 8.5 mills is within the 10 mill limitation. The remainder of Township X has a rate of 27.60, of which 8.8 mills is within the 10 mill limitation.

"The park board has no funds and now cannot present a tax levy until the general election in 1966, or the new budgets are submitted.

"Further, assuming a desired park location is situated within Village Y and can be obtained for \$10,000.00.

"R. C. 511.27 provides 'To defray the expenses of purchasing, appropriating * * * lands * * *, and maintaining them * * *'.

"R. C. 511.22 provides generally that if the question of establishing a park board is defeated, the township trustees shall provide and pay for all proper expenses incurred by the park board.

"In view of the above facts and references cited, could you please furnish me with your opinion as to the following:

- "1. Could Township X or Village Y, or both, make a cash contribution to the park board for the purchase of the park site?
- "2. Could either Township X or Village Y purchase the site and then give it to the park board?
- "3. Could Township X pay the expenses already incurred by the park board even though the vote was in favor of establishing the board?
- "4. Can the park board levy a tax of up to 1 mill, without a vote of the people, since the entire 10 mill limitation has not been used, and even though the property 'already is taxed in excess of one percent of its value'?
- "5. If the levy can, within the 10 mills be made without a vote of the people, would the park board or the trustees make such levy?
- "6. Can Village Y acquire the land, pay for the same, and by agreement under R. C. 511.232, give control or management thereof to the township park board?
- "7. If so, can Village Y thereafter contribute to the current expenses for operation, maintenance, etc.?
- "8. Can Township X (trustees) ac-

quire the land, pay for the same, and by agreement under R. C. 511.232, give control or management thereof to the township park board?

"9. If so, can the Township X trustees contribute to the current expenses for operation, maintenance, etc.?"

"10. Can Village Y and Township X trustees, by agreement under R. C. 511.232, or other sections of the Code, jointly acquire the site?"

"11. If so, can they both then under R. C. 511.232 give control or management thereof to the township park board?"

"12. If so, can either or both thereafter contribute to the current expenses of operation and maintenance?"

1. Your request for my opinion, in its first question, refers to "a cash contribution to the park board for the purchase of the park site." A transfer of funds, by any other name, such as "cash contribution" is still, in effect, a transfer of funds. Opinion No. 1187, Opinions of the Attorney General for 1964, page 248, approved and followed Opinion No. 271, Opinions of the Attorney General for 1945, page 274, with regard to a transfer of township funds by township trustees for the purpose of maintaining public parks under the control of the park commissioners of township park districts, established under Sections 511.18 et seq., Revised Code. The authorities and criteria stated in both those opinions are as applicable to the transfer of such funds for the purchase of park sites as they are to maintaining such parks, without further elaboration thereon. They also are equally applicable to a transfer of funds by a village as by a board of township trustees. See, particularly, paragraph 5 of Opinion No. 271, supra, in this regard. Therefore, the answer to your first question is in the negative.

2. Your second question is whether either Township X, or Village Y, or both, could purchase the site then give it to board of township park commissioners, i.e., could the transfer be made in kind, specifically in realty? This approach appears to be a strained attempt to evade the proscriptions discussed above, against transfers of "funds."

It is clear that the board of township trustees has authority to purchase land to be used for a township park, under Section 505.26, Revised Code, which states:

"The board of township trustees may purchase, appropriate, construct, enlarge,

improve, rebuild, repair, furnish, and equip a township hall, a township park, and bridges and viaducts over streets, streams, railroads, or other places where an overhead roadway or footway is necessary, and such board may acquire sites for any of such improvements.

"* * * * *
* * * * *
* * * * *"
(Emphasis added)

There appears to be no question that a municipal corporation (in this instance a village) may acquire real estate by purchase for use as a park, and may make improvements thereon. Sections 715.21, 717.01 (N) and (Z), 755.05, and 755.06, Revised Code. But for the village to use village funds to purchase a site to be donated to the township park board to be used as a township park, would be ultra vires for the municipal corporation. See Markley v. Village of Mineral City, 58 Ohio St. 430 (1898).

3. The answer to this question seems to be a logical sequitur to that of the previous questions. Paying expenses would certainly be analogous to making a "cash contribution." It would be a transfer of funds from one taxing unit to another for which there is no statutory provision, and also would be contrary to the wording of Section 511.32, Revised Code.

4. Assuming the 10 mill limitation has not been used, as in your illustration, which is a highly unusual situation, the park board would have the power to levy a tax up to one mill without a vote of the people according to the provisions of Section 511.27, Revised Code, which states:

"To defray the expenses of purchasing, appropriating, and improving lands for park purposes, and maintaining them as a free public park or parks, the township board of park commissioners may, each year, levy a sufficient tax, not to exceed one mill on each dollar of valuation on all real and personal property, including property within any municipal corporation within the township, over and above all other taxes and limitations thereon authorized by law, unless the question of increasing such levy is submitted to and approved by a vote of the electors of such township at a general election. Such vote shall be taken on the order of the board, which order shall specify the additional levy the board desires to make and the purpose for which it is desired."

So long as there is one mill or more available within the 10 mill limitation prescribed by Article 12, Section 2, Ohio Constitution, a one mill levy would not usurp the millage beyond ten for which a vote of the people is required. See Opinion No. 231, Opinions of the Attorney General for 1965. Your concern about the property already

being taxed in excess of one percent of its value would only be warranted if there were no millage available within the original ten, for this Constitutional Limitation (Article 12, supra.) only involves millage which has not been voted upon by the people. In accordance with the facts of your situation the problem is never reached, since your request states that there is millage available, and thus the property has not been taxed in excess of one percent of its true value within the meaning of Article 12.

5. A township park district is a "taxing unit" as such term is used in Section 5705.01, Revised Code:

" * * * * *

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

Section 511.27, Revised Code, supra. gives the board of park commissioners of the township park district authority to make this levy in behalf of the park district. Its language is clear in this respect. Thus the park board would make the levy as prescribed by Section 511.27.

6, 7. Having determined in response to Question No. 2 that Village Y could acquire the land and pay for the same, the problem now arises as to whether it can give subsequent control or management to the township park board under Section 511.232, Revised Code. This statute, which became effective November 5, 1965, states:

"The board of park commissioners of a township park district may by agreement with the legislative or other public authority in control of parks or park lands either within or without the park district, assume control of all or a portion of any existing parks or park lands or otherwise contract or cooperate with such public authority in connection with the use, development, improvement, and protection of parks or park lands. In such event, such parks or park lands may be developed, improved, and protected as in case of lands otherwise acquired by said board. This section does not authorize said board to acquire or control any park, park lands, parkways, playgrounds, other lands, or boulevards owned or controlled by any other public authority except by agreement as provided in this section."

There is no reason why Village Y and the park board, pursuant to this statute, could not make an agreement giving the park board control or management, with the village retaining title over the land. This would pre-

vent it from being a "transfer" or "gift". The park board's authority over the land would end with the termination of the agreement.

But Village Y funds could not be contributed for operation or maintenance, for this would be a "transfer" as noted in response to Question No. 1, supra.

8, 9. Your eighth question asks in essence whether Township X can, after purchasing the park land (as established in No. 2, supra), give control or management to the park board under Section 511.232, Revised Code. This procedure seems to be within the scope of the statute, as the township trustees would be a "public authority". My recent opinion, Opinion No. 007, Opinions of the Attorney General for 1966, p. 74, was concerned with the interpretation of Section 1545.14, Revised Code, a section identical in substance to Section 511.232, except that it deals with the powers of the county board of park commissioners. I noted:

"Pursuant to this authority [Section 1545.14, Revised Code] it is apparent that a township could legally, by agreement with a county board of park commissioners contract and cooperate with such county so that either may assume control of parks or park lands as agreed."

There is no reason why a township could not make a similar agreement with its own park board, with the township retaining title to the land.

But if the township (trustees) contributed to the operation and maintenance after the park board had assumed control, this would be an illegal "transfer" of township funds, as noted in answer to Question No. 1, supra.

10, 11, 12. You inquire as to whether Village Y and Township X can jointly acquire the park site, under Section 511.232 or other code sections. Section 511.232 makes provision only for acts of the township board of park commissioners, not the board of township trustees, who are the only vested authority for acquiring land in behalf of Township X. As I noted in Opinion No. 007, p. 15, supra, neither code sections 511.32 nor 755.16 authorize a township to join with a municipality for joint acquisition of park land. Thus, I can find no statutory authority for such a joint purchase. Questions #11 and #12, are as a result, not appropriate.

In summation, it is my opinion and you are advised:

1. There is no statutory provision for the transfer of funds, either village or township, to a township board of park commissioners for the purchase of a park site.

2. Although a township or a village may purchase a park site, the township's giving of the site to township board of park commissioners would be contrary to Section

511.32, Revised Code, and the village's gift to the same board would be ultra vires.

3. A township's paying of the park board's expenses would also be a transfer without authority.

4. If the constitutional ten mill limitation has not been exceeded, only the township board of park commissioners, and not the township trustees, may levy a tax of up to one mill pursuant to Section 511.27, Revised Code, for park purposes within the township park district.

5. Either a village or a township may give control or management of park lands to a township park board pursuant to Section 511.232, Revised Code; while retaining title to the land. But neither may contribute to the operation or maintenance of the park after the park board assumes control.

6. Neither 511.232 nor any other code section authorizes a joint acquisition of park sites by a village and a township.