

2229

SECTION 301.26, R. C., DOES NOT AUTHORIZE A BOARD OF COUNTY COMMISSIONERS TO ESTABLISH A PARK DISTRICT FOR THE COUNTY—§301.26, R.C.

## SYLLABUS:

Section 301.26, Revised Code, does not authorize a board of county commissioners to establish a park district for the county.

Columbus, Ohio, June 7, 1961

Hon. Edwin T. Hofstetter, Prosecuting Attorney  
Geauga County, Chardon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Board of Commissioners of Geauga County has been requested on several occasions to establish a park district for the county. It has been the concensus on the part of some people that O. R. C. 301.26 gives the Board of County Commissioners the right to set up a park district.

“It is the contention of this office that the authority granted under O. R. C. 301.26 does allow the Board of Commissioners any powers and privileges that are authorized under Section 1545. of the Ohio Revised Code, but that this authority applies only to lands in the County under the ownership, lease, option, or control of the Board of County Commissioners.

“This office has prepared an opinion and submitted it to the Geauga County Commissioners for their guidance, but because of the great public interest and differences of opinion that do exist in the area, we would appreciate receiving from you your opinion in the matter. Your helpfulness in making further information available to me as soon as possible will be greatly appreciated.”

The question which requires consideration is this: What are the powers conferred on a board of county commissioners under the provisions of Section 301.26, Revised Code? Said section provides:

“The board of county commissioners of any county may acquire, construct, improve, maintain, operate, and protect parks, parkways, and forests, and provide an agency for their administration. For such purposes the board may acquire real estate in fee or a lesser interest, and may receive and execute the terms of gifts and bequests of money, lands, or other properties. In addition to other powers the board of county commissioners has the same powers with respect to county parks, parkways, and forests as the board of commissioners of a park district, established under section 1545.01 of the Revised Code, would have as to the park district under its jurisdiction.

“This section does not apply to any portion of a county included within a park district established under sections 1545.01 to 1545.28, inclusive, of the Revised Code.”

Section 301.26, *supra*, formerly Section 2994-7, General Code, was enacted in 1935 (116 Ohio Laws, 132, 134). It is to be noted that it gives the board of county commissioners the authority to acquire, construct, improve, maintain, operate, and protect parks, parkways, and forests. The authority to acquire parks apparently means the power to acquire such parks as are already in existence. The further provision giving such board the authority to acquire for such purposes “real estate in fee or a less interest” allows the board to acquire land to be used for park purposes. Nowhere in the section, however, is the board authorized to establish a park district.

As to a “park district,” such may be established under Chapter 1545., Revised Code, to which you refer. The establishment is initiated, however, by an application (by qualified electors, or a resolution of a township or municipal corporation in the proposed area) to the probate judge (Section 1545.02, Revised Code). A hearing is then had and the judge may enter an order creating the district (Sections 1545.03 and 1545.04,

Revised Code). The district may include all or a part of the county (Section 1545.01, Revised Code). *At no time does a board of county commissioners have any authority in the establishment of the park district.*

I might also note that a park district established pursuant to Chapter 1545., *supra*, is a political subdivision of the state, separate and apart from the county (*State, v. Akron Metro Park District*, 120 Ohio St., 464) ; and obviously a county is without authority to create a political subdivision of the state.

As to the language of Section 301.26, *supra*, giving the board of county commissioners certain powers exercised by a board of commissioners of a park district established under Chapter 1545., *supra*. I do not believe that this language may be construed to authorize the board of county commissioners to establish a park district. The language does, however, give the board certain powers as to the operation of those county parks which it has established. Since an explanation of the nature of such powers does not appear necessary to the purposes of this opinion, however, I will not further discuss them.

Thus, a park established by a board of county commissioners under Section 301.26, *supra*, consists only of the area which the board has acquired and designated as a park ; and the board has no authority to designate any other area of the county as a park district. On the other hand, a park district created pursuant to Chapter 1545., *supra*, consists of all the land designated in the application filed pursuant to Section 1545.02, *supra*. (possibly the entire county) even though the park district so created may own only a small part of the land in the county—which part is used for park purposes.

In conclusion, therefore, it is my opinion and you are advised that Section 301.26, Revised Code, does not authorize a board of county commissioners to establish a park district for the county.

Respectfully,

MARK McELROY

Attorney General