

OPINION NO. 75-004

Syllabus:

A board of township trustees may, pursuant to R.C. 511.32, expend public funds to improve land within its limits which is leased by the State of Ohio to a nonprofit corporation for use as a public park, provided that the township has assurances that the land will remain devoted to public park purposes for a long term.

To: John E. Moyer, Erie County Pros. Atty., Sandusky, Ohio
By: William J. Brown, Attorney General, January 28, 1975

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

"I would appreciate having your opinion regarding the following question:

"Can the board of trustees expend funds pursuant to R.C. Sec. 511.32 for the benefit of property owned by the State of Ohio and leased by the State of Ohio to a non-profit organization, said property to be used for park purposes for the general public?

"By way of background, I would like to relate that a local service organization has obtained a lease from the State of Ohio for the purpose of establishing a public park. The township trustees would like to contribute to the maintenance and improvement of this park; however, I am not sure if the phrase in R.C. Sec. 511.32 '.....having within its limits a public park.....' includes property which is neither owned nor leased by the trustees. For your further information, the particular township in this case has no board of park commissioners."

At the outset, it should be noted that boards of township trustees are creatures of statute and have only such powers as are expressly provided by law or necessarily implied therefrom. Trustees of New London Township v. Miner, et al., 26 Ohio St. at 452, 456 (1874). R.C. 511.32, to which you refer in your letter, reads as follows:

"The board of township trustees of any township having within its limits a public park, public square, or grounds devoted to public uses for park purposes, and which are not under the control of a board of park commissioners may:

"(A) Control, care for, grade, and improve such park, square, or grounds;

"(B) Plant or place therein and care for trees,

shrubby, and plants, and maintain lawns in good condition;

"(C) Construct and maintain fountains;

"(D) Lay out, construct, reconstruct, repair, and maintain in good condition suitable driveways and walks constructed of such materials as are most suitable, and provide and maintain suitable and sufficient lights in any such park, square, or grounds;

"(E) Construct, reconstruct, repair, and maintain therein all necessary sewers, drains, and ditches;

"(F) Protect and preserve to public uses for park purposes all of such property and improvements, and, to that end, adopt bylaws, rules, and regulations for the government and control of any such park, square, or grounds and the driveways and walks therein, and protect them and the trees, shrubby, plants, and improvements from misuse, injury, or destruction, and provide for the enforcement of such rules and regulations by fines and penalties."

Clearly, this Section provides broad authority for a board of township trustees to expend public funds for the benefit of a public park within its limits. Your question relates to the degree of control over the park which the board must exercise, in order for the park to fall within the ambit of this statute. In other words, must the board own or lease the land on which the park is located, or may it improve a park in which the township has no property right?

The statute itself refers to "a public park, public square, or grounds devoted to public uses for park purposes." There is no express requirement that the "public park" be owned by or leased to the township, nor that the "grounds devoted to public uses for park purposes" be dedicated to public ownership.

Enlightening for purposes of your question is R.C. 755.16, as recently amended by Am. Sub. H.B. No. 1100, effective June 29, 1974. This Section reads as follows:

"(A) Any municipal corporation, township, township park district, county, or school district may, jointly with any one or more other municipal corporations, townships, township park districts, counties, or school districts, in any combination, acquire property for and operate and maintain any parks, playgrounds, playfields, gymnasiums, public baths, swimming pools, or indoor recreation centers, and any school district may provide by the erection of any school building or school premises, or the enlargement, addition thereto, or reconstruction or improvement thereof, for the inclusion of any such parks and recreational facilities to be jointly acquired, operated, and maintained. Any municipal corporation, township, township park district, county, or school district may join with any one or more other municipal corporations, townships,

township park districts, counties, or school districts, in any combination, in equipping, operating, and maintaining such parks and recreational facilities, and may appropriate money therefor.

"Any municipal corporation, township, township park district, county, or school district agreeing to jointly acquire, operate or maintain parks and recreational facilities pursuant to this section may contribute such lands, money, other personal property, or services to the joint venture, as may be agreed upon. Any agreement shall specify the rights of the parties in any lands or personal property contributed.

"Any lands acquired by a township park district pursuant to Chapter 511. of the Revised Code and established as a free public park or parks may be contributed to a joint venture authorized by this section, but shall remain free and open for public use, except that fees may be charged in connection with the use of any recreational facilities that may be constructed thereon.

"(B) Any township may, jointly with a private land owner, operate, equip, and maintain free public playgrounds and playfields. Any equipment provided by a township pursuant to this division shall remain township property and shall be used subject to a right of removal by the township."

Note especially subsection (B). While not precisely on point here, this provision speaks to a similar joint venture of township and private party, and provides a safeguard for the township's investment.

While the transaction in question is not expressly authorized by R.C. 755.16, it can fit within the broad language used in R.C. 511.32. Land which is leased from the state by a nonprofit corporation for purposes of establishing a public park is obviously either a "public park" or "grounds devoted to public uses for park purposes," either of which satisfies the requirements of R.C. 511.32. That statute provides ample authority for a board of township trustees to control, improve and maintain a public park.

Nor is this expenditure a grant of the credit of the state to an individual or corporation, in contravention of Article VIII, Section 4, Ohio Constitution. A similar question was considered in Opinion No. 71-044, Opinions of the Attorney General for 1971, which stated that a municipality could provide funds to a zoo operated by a neighboring municipality under certain conditions. As I stated in that Opinion, "State, ex rel. Leaverton v. Kearns, 104 Ohio St. 550 (1922), had held that such provision does not prevent grants being made to corporations or associations not for profit where the purpose of the grant is a public one." See also Bazell v. Cincinnati, 13 Ohio St. 2d 63 (1968), and State, ex rel. v. Defenbacher, 164 Ohio St. 142 (1955).

However, some safeguard should be provided for the township's investment in the property. A requirement such as that contained

in R.C. 755.16(B) could reasonably be read into the statute, providing that any equipment furnished by the township would remain township property, subject to a right of removal by the township. Such a provision would ensure that equipment bought with public funds would be used exclusively for a public purpose, a requirement for any expenditure of public funds. See Opinion No. 73-102, Opinions of the Attorney General for 1973, as well as other precedent cited previously in this Opinion.

As for those substantial improvements which cannot be removed by the township, such as fountains (R.C. 511.32(C)), driveways (R.C. 511.32(D)), and sewers (R.C. 511.32(E)), the township will have to be provided with some assurance that the property will be used for park purposes for a long term. Otherwise, such improvements could pass into private use after a short time, which would violate the fundamental requirement that public funds be applied only to public uses. Analogy is possible with Opinion No. 6909, Opinions of the Attorney General for 1956, page 597, which advised that public funds could be used to improve a leased building only if the lease were long-term, extending or renewable for the expected life of the building. Thus, the board of township trustees would need to obtain assurances from the State of Ohio (the land owner) and the nonprofit corporation that the land would be devoted to park purposes for a long term, before it could construct permanent improvements on the property.

In specific answer to your question, it is my opinion and you are so advised that a board of township trustees may, pursuant to R.C. 511.32, expend public funds to improve land within its limits which is leased by the State of Ohio to a nonprofit corporation for use as a public park, provided that the township has assurances that the land will remain devoted to public park purposes for a long term.