

OPINION NO. 1297

Syllabus:

1. The members of a board of park commissioners of a township park district appointed and acting pursuant to Section 511.18, et seq., Revised Code, are not township officers within the meaning of Section 309.09, Revised Code, and the prosecuting attorney does not have a statutory duty to provide legal counsel for such board.

2. Such a board of park commissioners may lawfully employ the legal counsel necessary to assist it in carrying out its statutory duties.

To: Paul H. Young, Montgomery County Pros. Atty., Dayton, Ohio
By: William B. Saxbe, Attorney General, August 14, 1964

Your request for my opinion reads:

"1. Is a County Prosecutor under a duty to provide legal representation to Township Park Commissioners (Section 511.18 et seq.)? Your opinions 1919 OAG Vol. 1, Page 161 and 1927 OAG, Page 489, appear pertinent.

"2. If a Prosecutor is not under such duty, may he provide such representation if he so desires?

"3. May the Township Park Commissioners retain private counsel on a permanent basis or for particular matters or both even if the County Prosecutor is under a duty or is permitted to provide representation?

"4. If under any circumstances the Township Park Commissioners may retain private counsel,

who is the employing authority and are there any restrictions on the terms of the employment?"

Section 309.09, Revised Code, reads in part as follows:

"Such prosecuting attorney shall be the legal adviser for all township officers.* * *"

The language of this section imposing a duty upon the prosecuting attorney to represent all township officers makes it necessary to determine whether boards of park commissioners of township park districts are township officers within the meaning of Section 309.09, Revised Code. Examination of Section 511.18, et seq., Revised Code, shows that the procedure for establishing a park district is initiated by a petition of the electors. After an election in which the vote is in favor of establishing a free public park, the board of park commissioners becomes a board of park commissioners of the township park district and is a body politic and corporate with power to establish and maintain a free public park or parks. Section 511.23, Revised Code, by which these powers are granted, states that the office of such board is not a township office within the meaning of Section 703.22, Revised Code. By this language it is clear that members of such board do not hold offices which would be abolished pursuant to Section 703.22, Revised Code, in the event that the limits of a municipal corporation should become identical with those of the township.

Section 511.23, Revised Code, reads in part as follows:

"The board shall devise plans for the improvement of the park or parks, and award all contracts therefor, in the manner provided by the law governing township trustees in awarding contracts for public improvements. The board may appoint a guardian for the park or parks and it may appoint all other necessary officers and employees, fix their compensation and prescribe their duties, prohibit selling, giving away, or using any intoxicating liquors in such park or parks, pass bylaws, rules and regulations for the government of the park or parks, and protect them from injury and provide for their enforcement by fines and penalties."

Boards of park commissioners of a township park district are authorized by Section 511.27, Revised Code, to levy a tax on all real property within the township, including that in any municipal corporation, for the purpose of acquiring and maintaining a free public park or parks.

In Opinion No. 279, Opinions of the Attorney General for 1927, page 489, this conclusion was reached, as shown by the syllabus:

"1. A board of park commissioners, not being a county board within the purview of Section 2917, General Code, may lawfully employ counsel other than the prosecuting attorney to represent it."

The board referred to in that opinion was a board of park commissioners of a park district which could include all or a part of any county as authorized by Section 2976-1, et seq., General Code, now incorporated in Chapter 1545, Revised Code. As was noted in that opinion, Opinion No. 125, Opinions of the Attorney General for 1919, page 217, held in part as follows:

"The board of park commissioners of the Cleveland Metropolitan Park District is not a county board within the purview of Section 2917 G.C., and the prosecuting attorney of the county is not required to furnish legal advice to such board."

It is my conclusion that the reasoning in Opinions 279 and 125, supra, applies also to boards of park commissioners of township park districts and that the members of such boards are not township officers within the meaning of Section 309.09, Revised Code. It follows that such statute does not impose a duty upon the prosecuting attorney to act as legal adviser for such board.

I am not aware of any statutory provision which would authorize a prosecuting attorney to enlarge the scope of his duties. Then, too, there might be a possibility of conflict of interest arising between a board which is not entitled to call upon the prosecuting attorney as legal counsel and one which the prosecutor has a legal duty to represent. I could not say that a prosecuting attorney may volunteer to represent in his official capacity a board which he has no duty to serve as legal adviser.

Boards of park commissioners of township park districts are bodies politic and corporate with power to employ the officers and employees necessary to carry out their statutory duties. As mentioned hereinbefore, the conclusion was expressed in Opinion No. 279, Opinions of the Attorney General for 1927, page 489, that a board of park commissioners could lawfully employ legal counsel, and I am of the opinion that this conclusion applies with equal force to a board of park commissioners of a township district appointed and acting pursuant to Section 511.18, et seq., Revised Code.

The terms of employment of legal counsel by such board would be a question to be determined by the board in the exercise of its sound discretion, taking into consideration the existing facts which make it advisable to secure the services of an attorney. I could not rule on this question as a matter of law.

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

1. The members of a board of park commissioners of a township park district appointed and acting pursuant to Section 511.18, et seq., Revised Code, are not township officers within the meaning of Section 309.09, Revised Code, and the prosecuting attorney does not have a statutory duty to provide legal counsel for such board.

2. Such a board of park commissioners may lawfully employ the legal counsel necessary to assist it in carrying out its statutory duties.