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TOWNSHIP PARKS—TOWNSHIP TRUSTEES AUTHORIZED TO CONTROL, CARE FOR, GRADE AND IMPROVE EXISTING TOWNSHIP PARKS WHERE THERE IS NO BOARD OF PARK COMMISSIONERS—TRUSTEES MAY ERECT SPEAKERS' STAND.

Sections 3427-1 and 3427-2 G. C. authorize township trustees to control, care for, grade and improve existing township parks where no board of park commissioners for such parks exists, and said township trustees may improve such parks by erecting a speakers' stand or dais for the benefit and enjoyment of the public who are the patrons and users of the park.

COLUMBUS, OHIO, November 10, 1920.

HON. R. A. BASKIN, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter of recent date, which reads as follows:

“The township trustees of one of the townships in this county have requested advice as to their authority to expend funds in the erection of a speakers' stand upon the township park, and your opinion is respectfully requested as to their authority to expend funds for this purpose.”

Assuming that the park you speak of is not under control of a board of park commissioners for the township, but is managed by the township trustees, the statute applicable to your query and perhaps the only such statute is:

“Sec. 3427-1 G. C. That the 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 park commissioners, are authorized and empowered to control, care for, grade and improve any such public park, public square or public grounds; to plant or place therein and care for trees, shrubbery and plants, and to maintain lawns in good condition; to construct and maintain fountains; to lay out, construct, reconstruct, repair and maintain in good condition suitable driveways and walks, constructing the same of such materials as are deemed most suitable, and to provide and maintain suitable and sufficient lights in any such public park, public square or public grounds; to construct, reconstruct, repair and maintain therein all necessary sewers, drains and ditches; and to protect and preserve to public uses for park purposes all of said property and improvements, and, to that end, to adopt by-laws, rules and regulations for the government and control of any such public park, public square or public grounds and driveways and walks therein, and to protect them and the trees, shrubbery, plants and improvements from misuse, injury or destruction, and to provide for the due enforcement of such rules and regulations by fines and penalties, but such by-laws, rules and regulations shall not conflict with the constitution or laws of the state of Ohio.”

You have no doubt observed from the law just quoted that the trustees “are authorized and empowered to control, care for, grade and *improve* any such park devoted to public uses for park purposes.

“Park purposes,” as used in the statute, must be construed to mean any ordinary and usual purpose, such as rest and recreation, games and entertainments,

and out-door sports, etc., tending to promote the public welfare, health and enjoyment for which a park is suitable and for which it is usually used and maintained. Thus it may be improved by adding seats, grading a baseball field and providing a back-stop for the same, etc., and it usually is so improved, such improvement being incidental to the maintenance and enjoyment of a park set aside for the public for such uses.

It is therefore believed that "improved" as used in the statute above quoted is a term broad enough to permit the construction of a speakers' stand or dais where a program or other out-door entertainment may comfortably be had at a place in such park chosen for its convenience for such an affair. That is to say, any incidental improvement is permitted under the law above quoted that will make the park better suited to accomplish what is intended or expressed as "public uses for park purposes."

However, it must not be neglected to call your attention to an opinion of this department which is found in the Annual Report of the Attorney-General, 1911-1912, Vol. II, at page 1350. The second part of the syllabus of that opinion is as follows:

"Since, however, Article X, section 4 of the constitution provides that 'township officers shall be elected by the electors of each township,' and since the board of park commissioners are given the exercise of continuing powers, highly governmental in their nature, with respect to the whole township, including the right of eminent domain and the power to levy taxes, they are clearly included within the class of 'township officers,' and therefore the statutes making their office appointive is clearly unconstitutional."

This opinion holds that sections 3415-3427 G. C., inclusive, are unconstitutional.

After diligent search no action of a court of record has been found which has expressed an opinion on or under any of the sections so held to be unconstitutional.

The section above quoted and section 3427-2 G. C. are statutes passed at a later session of the legislature and filed in the office of the secretary of state May 12, 1915. So, more than three years had elapsed at the passing of these two sections of the statute after the opinion just quoted had been written. Doubtless, it was the intention of the legislature to provide for the management of existing township parks, and it placed the management, where a board of park commissioners was not functioning, in the hands of the township trustees. And so it is believed that the two sections of the law herein referred to are operative and must control such matters as you inquire about.

Therefore, in view of the facts just stated it is the opinion of the Attorney-General that your question must be answered in the affirmative.

Respectfully,
JOHN G. PRICE,
Attorney-General.