

April 14, 2015

Margaret W. Comey
Anderson Township Law Director
221 East Fourth Street, Suite 2900
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SYLLABUS:

2015-014

A board of township trustees is not required to approve a proposal of a board of park commissioners to levy a tax under R.C. 511.27 before the levy is submitted to the county board of elections for placement on the ballot when the township park district includes territory outside the township that is within the boundaries of two villages.



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OPINION NO. 2015-014

Margaret W. Comey
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221 East Fourth Street, Suite 2900
Cincinnati, Ohio 45202

Dear Law Director Comey:

You have requested an opinion whether a board of township trustees is required to approve a proposal of a board of park commissioners to levy a tax under R.C. 511.27 before the levy is submitted to the county board of elections for placement on the ballot when a township park district includes territory outside the township that is within the boundaries of two villages. You have provided us the following facts. Anderson Park District is a township park district formed under R.C. 511.18 and located within Anderson Township and Hamilton County. The park district's board is composed of five park commissioners who are appointed by the Anderson Township Board of Trustees pursuant to R.C. 511.18(A) and R.C. 511.19(B). The majority of real property owned by the township park district is located within the unincorporated territory of Anderson Township. The board of park commissioners of Anderson Park District has acquired some real property that is located outside of Anderson Township and within the corporate limits of two villages. *See generally* R.C. 511.23(B) (a board of park commissioners “may lease, accept a conveyance of, or purchase suitable lands ... may acquire suitable lands through an exchange ..., or may appropriate suitable lands and materials for park district purposes” and “[a]ny township park district that contains only unincorporated territory and that operated a public park or parks outside the township immediately prior to July 18, 1990, may continue to improve, maintain, and operate these parks outside the township, but further acquisitions of land shall not affect the boundaries of the park district itself or the appointing authority for the board of park commissioners”).

The board of park commissioners is considering placing a tax levy in excess of the ten-mill limitation on the ballot this year pursuant to its authority under R.C. 511.27. R.C. 511.27(C) requires approval by the board of township trustees when certain conditions are present before a tax levy can be certified to the board of elections. Specifically, the board of township trustees

must approve the levy for any township park district that contains only unincorporated territory. The question whether R.C. 511.27(C) applies to Anderson Park District came up when the board of park commissioners approached the board of township trustees to seek approval of the proposed levy.

The Meaning of R.C. 511.27(C)

We begin by examining the relevant statute. R.C. 511.27 provides, in pertinent part:

(B) Except as otherwise provided in division (C) of this section, the board of park commissioners, not less than ninety days before the day of the election, may declare by resolution that the amount of taxes that may be raised within the ten-mill limitation will be insufficient to provide an adequate amount for the necessary requirements of the district and that it is necessary to levy a tax in excess of that limitation for the use of the district. The resolution shall specify the purpose for which the taxes shall be used, the annual rate proposed, and the number of consecutive years the levy will be in effect. Upon the adoption of the resolution, the question of levying the taxes shall be submitted to the electors of the township and the electors of any municipal corporation that is within the township, that was within the township at the time that the park district was established, or the boundaries of which are coterminous with or include the township,

The rate submitted to the electors at any one election shall not exceed two mills annually upon each dollar of valuation. If a majority of the electors voting upon the question of the levy vote in favor of the levy, the tax shall be levied on all real and personal property within the township and on all real and personal property within any municipal corporation that is within the township, that was within the township at the time that the park district was established, or the boundaries of which are coterminous with or include the township, and the levy shall be over and above all other taxes and limitations on such property authorized by law.

(C) *In any township park district that contains only unincorporated territory, if the township board of park commissioners is appointed by the board of township trustees, before a tax can be levied and certified to the county auditor pursuant to [R.C. 5705.34] or before a resolution for a tax levy can be certified to the board of elections pursuant to [R.C. 511.28], the board of park commissioners shall receive approval for its levy request from the board of township trustees. The board of park commissioners shall adopt a resolution requesting the board of township trustees to approve the levy request, stating the annual rate of the proposed levy and the reason for the levy request. On receiving this request, the board of township trustees shall vote on whether to approve the request and, if a majority votes to approve it, shall issue a resolution approving the levy at the requested rate. (Emphasis added.)*

You have informed us that the board of park commissioners is contemplating a tax levy in excess of the ten-mill limitation, pursuant to R.C. 511.27(B). You wish to know whether the above-italicized language in R.C. 511.27(C) applies to require the board of township trustees to approve the proposed levy before the board of park commissioners certifies the levy to the board of elections.

A board of township trustees is a creature of statute and therefore possesses only those powers expressly conferred by statute or necessarily inferred therefrom. *Trs. of New London Twp. v. Miner*, 26 Ohio St. 452, 456 (1875) (“[township] trustees can exercise only those powers conferred by statute, or such others as are necessarily to be implied from those granted”); 1982 Op. Att’y Gen. No. 82-012, at 2-42 (“[s]ince townships are creatures of statute, township trustees may exercise only those powers conferred by statute or such others as are necessarily to be implied from those granted, in order to enable them to perform their duties”); *see, e.g., In re Petition for Incorp. of the Vill. of Holiday City*, 70 Ohio St. 3d 365, 370, 639 N.E.2d 42 (1994) (recognizing that “absent a specific directive from the General Assembly, township trustees are powerless to” act).

To discern the meaning of R.C. 511.27(C), we begin with its plain language. *See State v. Coburn*, 121 Ohio St. 3d 310, 2009-Ohio-834, 903 N.E.2d 1204, at ¶8 (“[w]hen interpreting statutes, we must first examine the plain language and apply the statute as written when its meaning is clear and unambiguous”); *Family Med. Found., Inc. v. Bright*, 96 Ohio St. 3d 183, 2002-Ohio-4034, 772 N.E.2d 1177, at ¶8 (recognizing that a court must adhere to the statute’s plain language in interpreting an unambiguous statute). R.C. 511.27(C) declares that, “before a resolution for a tax levy can be certified to the board of elections,” “the board of park commissioners shall receive approval for its levy request from the board of township trustees.” This requirement, however, is limited by the qualifying phrase “[i]n any township park district that contains *only* unincorporated territory[.]” R.C. 511.27(C) (emphasis added). That is, the board of park commissioners of a township park district is required to seek the approval of its levy from the board of township trustees when the township park district contains only unincorporated territory. If the township park district contains territory that is incorporated, meaning that the territory is located within a city or a village, then the language of R.C. 511.27(C) does not apply to that particular township park district.

You have informed us that the board of park commissioners of Anderson Park District has acquired real property that is located outside of Anderson Township, some of which is located within the Village of Fairfax and the Village of Newtown.¹ Thus, as Anderson Park

¹ While the Village of Newtown is surrounded by Anderson Township, the boundaries of Anderson Township and the Village of Newtown were conformed before Anderson Park District was created in 1975, so that the Village of Newtown was no longer part of Anderson Township at the time Anderson Park District was formed. *See* R.C. 503.07 (the legislative authority of a municipal corporation, by majority vote, “may petition the board of county commissioners for a

District contains incorporated territory, the provisions of R.C. 511.27(C) do not apply, and a board of township trustees is not required to approve the proposal to levy a tax under R.C. 511.27 before the levy is submitted to the county board of elections.

The Meaning of R.C. 511.18(A)

You have explained in your letter that there is some disagreement about the application of a portion of R.C. 511.18(A). R.C. 511.18 sets forth the process to organize a park district and provides that, when electors in a township file a petition with the board of township trustees to organize a park district and establish public parks within the township, the board of trustees certifies that fact to the county court of common pleas. Either the common pleas court or a judge of the court then appoints a board of park commissioners for the township. R.C. 511.18(A) continues:

However, if an entire park district is contained within the unincorporated area of the township, the board of township trustees, instead of the court of common pleas of the county, shall, regardless of when the park district was established, appoint the board of park commissioners, unless the board of township trustees, by unanimous vote, adopts a resolution authorizing the court of common pleas to appoint the board of park commissioners. *For purposes of this division, an entire park district shall be considered to be contained within the unincorporated area of the township if the electors of the unincorporated area would be the only persons entitled to vote on a tax levy submitted under [R.C. 511.27(B)], regardless of where real property owned by the district is located.* (Emphasis added.)

You have asked about the above-italicized portion of division (A) of R.C. 511.18. We again consider the plain language of the statute. *See State v. Coburn*, 121 Ohio St. 3d 310, 2009-Ohio-834, 903 N.E.2d 1204, at ¶8; *Family Med. Found., Inc. v. Bright*, 96 Ohio St. 3d 183, 2002-Ohio-4034, 772 N.E.2d 1177, at ¶8. R.C. 511.18(A) establishes the process for organizing

change of township lines in order to make them identical, in whole or in part, with the limits of the municipal corporation, or to erect a new township out of the portion of such township included within the limits of such municipal corporation. The board, ... may upon the petition of a village change the boundaries of the township or erect such new township"); 1990 Op. Att'y Gen. No. 90-048 (syllabus, paragraph 3) ("[w]hen a portion of the territory of a township is included within a municipal corporation, steps may be taken under R.C. 503.07 or R.C. 503.09 to modify the township boundaries so that such portion of territory is no longer part of the township"); 1988 Op. Att'y Gen. No. 88-036, at 2-177 (discussing R.C. Chapter 503 and the methods for "alteration of township boundaries to remove a municipal corporation from the township in which it has been located"); *see also* 2005 Op. Att'y Gen. No. 2005-043; 2005 Op. Att'y Gen. No. 2005-024.

a township park district and appointing a board of park commissioners. A board of park commissioners is appointed by either the county court of common pleas or a judge of that court. R.C. 511.18(A). If an entire park district is contained within the unincorporated area of the township, the board of township trustees, rather than the court of common pleas, appoints the board of park commissioners. *Id.* The sentence you ask about begins with the limiting phrase, “[f]or purposes of this division,” referring to division (A) of R.C. 511.18. The sentence continues by stating that an entire park district shall be considered to be contained within the unincorporated area of the township if the electors of the unincorporated area are the only persons entitled to vote on a tax levy submitted under R.C. 511.27(B). The final phrase of the sentence indicates that this qualification applies regardless of where real property owned by the park district is located.

Based on its introductory phrase, “[f]or purposes of this division,” it is plain that the sentence only applies to R.C. 511.18(A) and its requirements for how a board of park commissioners is appointed. The sentence does not apply to the language of R.C. 511.27(B) or (C) setting forth the process for a board of park commissioners of a township park district to levy a tax in excess of the ten-mill limitation.

The presence of the above-italicized language in R.C. 511.18(A) does, however, support our conclusion concerning R.C. 511.27(C). The initial phrase of R.C. 511.27(C), “[i]n any township park district that contains only unincorporated territory,” operates to exclude the application of R.C. 511.27(C) to Anderson Park District because Anderson Park District contains incorporated territory. Had the General Assembly intended for the terms of R.C. 511.27(C) to apply to township park districts even when they own real property outside of the unincorporated area of the township, it could have included language similar or identical to that used in R.C. 511.18(A). *See generally NACCO Indus., Inc. v. Tracy*, 79 Ohio St. 3d 314, 316, 681 N.E.2d 900 (1997), *cert. denied*, 522 U.S. 1091 (1998) (“Congress is generally presumed to act intentionally and purposely when it includes particular language in one section of a statute but omits it in another”); *Lake Shore Elec. Ry. Co. v. Pub. Utils. Comm’n of Ohio*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (if the General Assembly intended a particular meaning, “it would not have been difficult to find language which would express that purpose” having used that language in other statutes); *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 69, 110 N.E. 627 (1915) (if the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result).

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that a board of township trustees is not required to approve a proposal of a board of park commissioners to levy a tax under R.C. 511.27 before the levy is submitted to the county board of elections for placement on the ballot when the township park district includes territory outside the township that is within the boundaries of two villages.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive style with a long, sweeping tail on the "e" at the end.

MICHAEL DEWINE
Ohio Attorney General