

qualified elector of Oscoda Township. Whether they have in fact done so presents a question to be determined by the township clerk subject to judicial review in an appropriate case. This is discussed in the first excerpt above quoted from O.A.G. No. 2807.

Inasmuch as your second question is, as evidenced by Secretary Zuckert's letter, based upon an erroneous assumption of fact, no answer thereto is required. It should, however, be observed, that for the reasons set forth in O.A.G. No. 2807, neither military nor civilian personnel who reside upon property over which the federal government has acquired and exercises exclusive jurisdiction may by reason thereof qualify as a resident either of the State of Michigan or of Oscoda Township.

Your third question is construed as inquiring whether Armed Forces personnel who do not reside upon property over which the federal government has acquired and exercises exclusive jurisdiction may become residents and qualified electors of the State and the city or township within which their current place of residence is situated. This issue is discussed and the question answered above.

FRANK J. KELLEY,  
*Attorney General.*

630325.2

**CONTRACTS:** Installment.  
**TOWNSHIPS:** Parks.

A township board is without statutory authority to purchase real estate for use as a township park on an installment contract payable from general funds.

No. 4138

March 25, 1963.

Mr. Meyer Warshawsky  
Prosecuting Attorney  
Van Buren County  
Paw Paw, Michigan

You have asked my opinion on the following question:

"Can a township board without an election purchase real estate for use a township park on the installment plan from general funds?"

The law is well settled that a township has no power or authority except as provided by the legislature in pursuance of constitutional grant.<sup>1</sup> Therefore, unless there is statutory authority for a township board to purchase real estate for use as a township park on the installment plan from general funds, the answer to your question must be "No." An examination of the relevant statutes follows:

Section 1 of Act 99, P.A. 1933, as amended,<sup>2</sup> provides:

"Any contract or agreement *heretofore* entered into by the legis-

<sup>1</sup> *Netzel v. Township Board of Waterford Township*, 267 Mich. 220, (1934) citing 1908 Michigan Constitution, Article VIII, §§16 and 17.

<sup>2</sup> C.L. 1948 § 123.721; M.S.A. 1958 Rev. Vol. § 5.3461.

lative body of any incorporated village and/or township and/or city in this state for the purchase of lands and/or property or equipment for public purposes, either upon an installment plan, or by the acquisition of the deed and/or bill of sale of such property, to be paid for in installments, are hereby authorized and validated and made legal for all purposes: Provided, \* \* \*." (Emphasis added)

Said act as originally adopted referred to incorporated villages only. However, a 1937 amendment<sup>3</sup> extended its scope to include townships and cities as well. The act is remedial<sup>4</sup> though, and applies only to contracts and agreements entered into prior to its effective date. Therefore, it could not be relied on as authorizing installment contracts to be entered into at this time.

I find no authority for the purchase of a park on an installment basis in Act 156, P.A. 1917,<sup>5</sup> which authorizes a township to acquire a system of public recreation and playgrounds.

My predecessors have ruled that rural agricultural school districts<sup>6</sup> and counties<sup>7</sup> do not have authority to purchase buildings on installment contracts; and that counties<sup>8</sup> do not have authority to purchase land for county parks on installment contracts not to be performed within one year. Each of these three opinions rely on the *McLintock* case<sup>9</sup> which held that a primary school district had no authority to purchase a building site on installment contracts. The following language of the lower court was quoted with approval by the Supreme Court:

"To purchase the land by such land contracts is to incur an indebtedness. To incur indebtedness is to borrow money. It is not possible to find, or at least it has not been pointed out in the argument where there can be found any provision authorizing a school district to borrow money other than by the issuance of bonds or by the temporary borrowing in anticipation of the collection of a tax already levied. Clearly, the incurring of an indebtedness by way of land contract is not a borrowing in anticipation of a tax already levied. Equally clearly, it is not the issuance of bonds. Under the provisions of the general school laws, therefore, the incurring of an indebtedness in this manner is not authorized by the school laws.'"<sup>10</sup>

Because of the holding of the Court in the *McLintock* case, and because of the absence of statutory authority for a township board to purchase real estate without a general election for use as a township park on an installment contract from general funds, it is my opinion that the answer to your question is "No."

FRANK J. KELLEY,  
*Attorney General.*

<sup>3</sup> Act 242, P.A. 1937.

<sup>4</sup> *Utica State Savings Bank v. Village of Oak Park*, 279 Mich. 568, 575 (1937).

<sup>5</sup> C.L. 1948 § 123.51 et seq.; M.S.A. 1958 Rev. Vol. § 5.2421 et seq.

<sup>6</sup> O.A.G. 1955 No. 2313, p. 595.

<sup>7</sup> O.A.G. 1955 No. 2273, p. 599.

<sup>8</sup> O.A.G. 1956 No. 2542, p. 260.

<sup>9</sup> *School District No. 9 v. McIntock*, 255 Mich. 197 (1931).

<sup>10</sup> *Ibid.*, p. 201.