

Therefore, your first question is answered "yes," making it unnecessary to consider the second question.

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**TOWNSHIPS: Parks.**

Moneys collected by a township park commission established pursuant to Act 271, P.A. 1931, as amended, must be transmitted to the township treasurer for deposit in the general fund of the township. The fact that some of the moneys were illegally collected from boat well users and a concession stand lessee would not create a constructive trust for their benefit.

Moneys voluntarily donated by people who launched their boats at the township park must be held in trust by the township park commission as provided by Section 2 of Act 271, P.A. 1931.

No. 4274

July 17, 1964.

Mr. James T. Corden  
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You have advised that the Port Huron Township Park Commission was created under Act 271, P.A. 1931.<sup>1</sup> You further advised that said commission is holding moneys that the Port Huron Township Board thinks should be transmitted to the township treasurer for deposit in the general fund of the township. You informed me that said moneys were obtained from five sources; namely, rental from a concession stand leased out on bids, fees charged users of boat wells, voluntary donations from people who launched boats at the township park, land sold to the state highway commissioner and land condemned by the federal government for highway purposes.

You have requested my opinion as to whether the moneys in question may be retained by the township park commission to be used for the payment of such bills as they incur in the course of their duties, or if it is mandatory for the commission to transmit the moneys to the township treasurer for deposit in the general fund of the township. Immediately the question arises, what authority did the township park commission have to collect the moneys in question? That question will now be answered.

Presumably the township park commission thought it had authority under Section 5a of Act 271 to enter into a lease of a concession stand. Section 5a states:

"Whenever the whole of a lot or parcel of land is, or has been, acquired under this act by a township park commission, such commis-

<sup>1</sup> C.L. 1948 and C.L.S. 1961 § 41.441 et seq. and Act 33, P.A. 1962; M.S.A. 1961 Rev. Vol. and 1963 Cum. Supp. § 5.271 et seq.

sion is hereby authorized, subject to approval of the township board, to sell and convey the portion or portions not needed, on whatever terms the park commission may deem proper."

The words "sell and convey" were construed by the Mississippi Supreme Court in *American Oil Co. v. Marion County*.<sup>2</sup> The court said at p. 298-299:

"We are of the opinion that the power conferred on the board of supervisors to sell and convey the real estate belonging to the county for courthouse purposes did not embrace the power to lease it for a term of years. We think the statute is plain, unequivocal, and, by its terms, is not subject to the construction contended for here by the appellant. Much emphasis is placed upon the word 'convey' in this statute, and the argument is to the effect that in that word is included the word 'lease' as a method of conveyance. It certainly was not the intention of the Legislature to invest the board of supervisors with the power to finally limit the use of the courthouse by the public to the building itself which could be done by a number of leases. The position of counsel, carried to its logical ultimate conclusion, would mean that the statute authorizes the board of supervisors, by its nonuser, to lease all the lands adjacent to and a part of the courthouse lot as it deemed necessary.

\* \* \*

"In this connection, we might say that the power to sell is here so clearly distinguished from the power to lease as not to call for debate; but there is a manifest reason therefor, for if a predecessor board could lease county land, it would prevent its successors from exercising the power to sell and convey, the very thing which the Legislature has granted—the power to sell lands of the county which have ceased to be used or useful for public purposes. \* \* \*"

Now referring again to Section 5a, even if it was determined that the land being leased was not needed and the lease was approved by the township board, the words "sell and convey" do not include the authority to execute a lease for a term of years. Further, a lease being neither a sale nor a conveyance, it is my opinion that the words "sell and convey" do not include the authority to lease for a shorter period than a term of years.

The second source of money was fees charged users of boat wells. The township park commission apparently thought it had authority to charge these fees because Section 2 of Act 271 states in part:

"The township park commission shall have authority to acquire, maintain, manage and control township parks and places of recreation, including bathing beaches, and shall have authority, in the name of the township, to condemn land for such purposes, in accordance with the condemnation laws of this state."

Obviously the word "acquire" does not include the authority to charge fees, rather it means "to become the owner of property" or "to make property

<sup>2</sup> 192 So. 296, 187 Miss. 148.

one's own."<sup>3</sup> Neither does the word "maintain" import the authority to charge fees. Instead, it means "to keep in particular state or condition, especially with reference to efficiency; to support; to sustain; to keep up; not to suffer to fail or decline."<sup>4</sup>

It is a much closer question whether the words "manage" and "control" include the authority to charge fees. "Control" has been defined by the North Dakota Supreme Court to mean having "the authority to manage, direct, superintend, restrict, or regulate."<sup>5</sup> "To manage" has been construed in the case of *Locke, et al v. Davison, et al*<sup>6</sup> by the Illinois Supreme Court. At p. 25 of the opinion, the court stated:

"\* \* \* The county boards of the several counties shall have power \* \* \* Second, to manage the county funds and county business, except as otherwise specifically provided.' (Rev. Stat. 1874 chap. 34, secs. 24, 25.) This last provision came under the consideration of this court in *Cook County v. McCrea*, 93 Ill. 236, where we said in regard to it: 'This can not be understood to give to county boards the absolute and unlimited power of management of county funds, where there is the absence of any specific provision of law to the contrary. It hardly means more, we think, than a power to manage the county funds and county business according to law.'" (Emphasis supplied)

Since "to manage the county funds and county business" means little more than to manage said funds and business according to law, other constitutional or statutory authority would have to be found for charging fees. This is analogous to the situation of the township park commission. It has authority to manage and control but it must be according to law.

Laws concerning townships are to be liberally construed in their favor, and powers granted to them by law shall include those fairly implied and not prohibited by the Constitution.<sup>7</sup> In spite of this, the legislature adopted Act 32, P.A. 1964, amending the title and Sections 1 and 2 of Act 157, P.A. 1905, as amended.<sup>8</sup> Act 32 specifically authorized the township board of commissioners provided for in Act 157 to charge admission fees not in excess of the charge for admission to state parks, even though Act 157 had given "control" of the park to said board. This is some evidence of the fact that the 1964 legislature did not think that having control of the park included the authority to charge an admission fee to it, even when the statute was given a liberal construction. It is my opinion that the Port Huron Park Commission was not authorized by Section 2 of Act 271 to charge fees to boat well users.

The third source of funds was voluntary donations from people who launched boats at the township park. Acceptance of these donations was authorized by the last paragraph of Section 2 of Act 271 which states:

<sup>3</sup> *Weinberg, et al v. Baltimore and Annapolis R. Co.*, 88 A 2d 575, 577; 200 Maryland 160.

<sup>4</sup> *Jensen v. Town of Afton, et al*, 143 P 2d 190, 201; 59 Wyo. 500.

<sup>5</sup> *State v. Ehr*, 204 N.W. 867, 870; 52 N.D. 946.

<sup>6</sup> 111 Ill. 19.

<sup>7</sup> 1963 Constitution, Article VII, § 34.

<sup>8</sup> C.L. 1948 § 41.421, § 41.422; M.S.A. 1958 Rev. Vol. § 5.2441, § 5.2442.

"Such commission shall be authorized to accept, in the name of the township, gifts, grants and devises of land suitable for parks and places of recreation, and gifts and bequests of money, such money to be held in trust and used for the acquisition and improvement of land suitable for park and recreation purposes."

The fourth source of funds was land sold to the state highway commissioner. Such sale was authorized if it complied with Section 5a of Act 271, quoted above. That is, the land must have been acquired under Act 271 by a township park commission, the township board must have approved the sale, and the lands must not have been needed for the park. At this time I am not in possession of sufficient facts to determine if the sale met the requirements of Section 5a.

The fifth source of funds was land condemned by the federal government for highway purposes. No question of the park commission's authority is involved in this proceeding.

Turning now to your question whether the township park commission may retain the moneys collected, I direct your attention to Section 4 of Act 271 which states:

"The township park commission shall submit to the township board at its annual meeting a detailed budget covering the cost of maintenance of the township parks and places of recreation of such township for the ensuing year, such budget not to exceed one and one-half [1-½] mill on the assessed valuation of such township.

"The township board shall examine such budget and shall approve the entire budget, or such part thereof as such board shall deem reasonable and necessary, which sum shall be incorporated into the tax on such township, and when collected shall be deposited by the township treasurer in a fund to be known as the park maintenance fund. Expenditures from this fund shall be on vouchers signed by the members of the township park commission, and it shall be the duty of the township treasurer to allow and pay such vouchers on presentation to him."

That statutory language evidences the intent of the legislature that expenses incurred by the township park commission in the course of their duties be paid from the park maintenance fund provided for therein, with deposits in said fund being made by the township treasurer from taxes collected.

Moneys collected by municipalities go into the general fund of the municipality absent some statute or other authority to the contrary.

A well-known text writer has stated:

"Municipal funds are either general or special. Certain claims are payable out of the general funds, and ordinarily general funds may be appropriated by the council to any municipal object. So when there is no requirement, by statute or otherwise, that money coming into the city treasury shall be kept in a special fund and applied to a particular purpose, it is proper, of course, to place it in the general fund, and to use it for general city purposes. \* \* \*"<sup>9</sup>

<sup>9</sup> McQuillin, Municipal Corporations, 3rd Edition, § 39.45 pp. 134-135.

Other pertinent authorities include the Kentucky and New Jersey Supreme Courts. The Kentucky Supreme Court said at p. 219:

"Taxes and license fees and other revenue collected by a city are primarily for the purpose of paying the general expenses of operation of the city government and constitute primarily what is designated as the 'general fund,' unless otherwise provided by ordinance or statute.  
\* \* \*"<sup>10</sup>

The New Jersey Supreme Court said at p. 141:

"\* \* \* The Legislature has not deemed it [parking meters] a revenue-producing enterprise calling for special classification and a particular application of the income. Dedication is an affirmative legislative act; and it requires something more than the mere receipt of moneys under a police regulation which in quantum are limited to the cost of supervision and enforcement. The ear-marking of municipal income for a special use is a deviation from the normal policy of making appropriations for public purposes in keeping with income and the exigencies of the local economy; and the dedicatory intention is not to be presumed but plainly indicated in the legislative expression."<sup>11</sup>

It is my opinion that the moneys collected from the boat well users, the lessee of the concession stand, the state highway commissioner and the federal government must be transmitted to the township treasurer for deposit in the general fund of the township. The fact that the money was illegally collected from the boat well users and the concession stand lessee does not create a constructive trust for their benefit. The applicable rule is stated at p. 184 of the Restatement of the Law on Restitution, § 45, as follows:

"Except as otherwise stated in §§ 46-55, a person who, induced thereto solely by a mistake of law, has conferred a benefit upon another to satisfy in whole or in part an honest claim of the other to the performance given, is not entitled to restitution."

The exceptions discussed in Sections 46 through 55 do not apply to the factual situations here involved.

However, the moneys voluntarily donated by the people who launched their boats at the township park are to be held in trust by the township park commission since Section 2 of Act 271 provides that gifts and bequest of money to the township park commission shall be held in trust and used for the acquisition and improvement of land suitable for park and recreation purposes.

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<sup>10</sup> *Pure Milk Producers and Distributors Ass'ns. et al v. Morton, et al*, 125 S.W. 2d 216, 276 Ky. 736.

<sup>11</sup> *Board of Commissioners of City of Newark v. Local Government Board of New Jersey, et al*, 45 A 2d 139, 133 N.J.L. 513.