

OPINION 11

OFFICIAL OPINION NO. 11

June 3, 1971

Hon. Wayne Townsend
Indiana State Senator
Rural Route 2
Hartford City, Indiana 47348

Dear Senator Townsend:

This is in response to your request for my Official Opinion on the following question:

“Do Township Trustees and Advisory Boards have the legal right and authority to execute a lease, binding upon the township, to a private junior college or other commercial enterprise for a term of years, on any building located on township property, acquired and established for park purposes?”

ANALYSIS

The information accompanying your request states that the park in question was established and is being maintained pursuant to the provisions of IC 1971, 17-4-43-1 through 7, as found in Burns' (1961 Repl.), Section 65-408 to 65-414. The Act generally authorizes the Township Trustee and the Township Advisory Board of any township in this State within the classification therein provided, or on petition of not less than 51% of the taxpayers and legal voters residing within the limits of the township, to establish a park for park purposes.

Other sections of this statute provide authority to issue tax assessment in support of its maintenance and, on proper proceedings, the issuance of bonds for the improvements of said land.

Burns' 65-413, *supra*, provides:

“Parks open to the public—Rules and regulations of trustee.—Any park established under the provisions of this act [Sections 65-408 to 65-414] shall be open to, and for the comfort of the public, in accordance

with the rules as prescribed by the trustee of said township.”

Burns' 65-414, *supra*, provides the procedure for sale of park property when a petition signed by not less than 51% of the taxpayers is presented to the township trustee praying that park property shall be disposed of and no longer maintained as such.

From the foregoing provision it is evident that when such a park is established, the same must be maintained, within prescribed financial limitation, for the general public; and the only procedure authorized by the Legislature for the disposition of such property is by “sale” pursuant to statute.

A lease of any part of the property in question and its buildings for private use would interfere with its use as a park open to the public for park purposes. The execution of the lease is not only not authorized but any disposition must be by sale.

The powers and duties of Township Trustees are statutory. The execution of a lease as herein contemplated is not authorized. “A township trustee is purely a statutory officer with only such power and authority as the statute vests in him, which is very limited.” *Mitchelltree School Township v. Hall* (1904), 163 Ind. 667, 72 N.E. 641; *Lee v. York School Township* (1904), 163 Ind. 339, 340; *State v. Citizens National Bank of South Bend* (1935), 100 Ind. App. 501, 193 N.E. 389.

CONCLUSION

It is my official opinion that without any other specific statutory authority, the Township Trustees and the Advisory Boards do not have the legal right or authority to execute a lease binding on the township to a private junior college or other commercial enterprise for a term of years, for any building or buildings located on township property which were acquired and established for park purposes.