

**OPINION NO. 79-083****Syllabus:**

1. A board of park commissioners of a park district created pursuant to R.C. 1545.01 is authorized by R.C. 1545.07 to contract with a private firm to provide temporary help during vacation periods of regular employees or to temporarily augment the regular work staff.
2. When a board of park commissioners of a park district created pursuant to R.C. 1545.01 contracts with a private firm to provide temporary help, the board of park commissioners must, pursuant to R.C. 1545.09, follow the contract procedures established by the bylaws of such board.

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**To: Anthony G. Pizza, Lucas County Pros. Atty., Toledo, Ohio**  
**By: William J. Brown, Attorney General, November 13, 1979**

I have before me your request for my opinion regarding the following question:

Does the Board of Park Commissioners of a park district created pursuant to ORC §1545.01 et seq. have the authority to contract with a private firm to provide casual labor during the vacation periods of regular employees or to augment the regular work crews during periods of heavy work?

R.C. 1545.01 et seq. provides for the existence and organization of park districts. R.C. 1545.07 establishes a board of park commissioners as "a body politic

and corporate, . . ." and describes the employment powers of such a board. R.C. 1545.07 states as follows:

The commissioners appointed in accordance with section 1545.05 of the Revised Code shall constitute the board of park commissioners of the park district. Such board shall be a body politic and corporate, and may sue and be sued as provided in sections 1545.01 to 1545.28, inclusive, of the Revised Code. Such board may employ a secretary and such other employees as are necessary in the performance of the powers conferred in such sections. For the purposes of acquiring, planning, developing, protecting, maintaining, or improving lands and facilities thereon under section 1545.11 of the Revised Code, and for other types of assistance which it finds necessary in carrying out its duties under Chapter 1545. of the Revised Code, the board may hire and contract for professional, technical, consulting, and other special services, and may purchase goods. In procuring any goods, the board shall contract as a contracting authority under sections 307.86 to 307.91, inclusive, of the Revised Code, to the same extent and with the same limitations as a board of county commissioners. In procuring services, the board shall contract in the manner and under procedures established by the bylaws of the board as required in section 1545.09 of the Revised Code. (Emphasis added.)

The general principle of law setting forth the powers of public officers and public boards is as follows:

As a general rule, therefore, and apart from the powers which are delegated to public officers by the Constitution or a municipal charter, public officers have only such powers as are expressly delegated to them by statute and such as are necessarily implied from those so delegated. Schultz v. Erie County Met. Park Dist. Bd., 55 O. Op. 2d 179, 180 (C.P. Erie County 1971), quoting 44 Ohio Jur. 2d 546 §60.

With respect to implied powers, an officer or board has by implication "such additional powers as are necessary for the due and efficient exercise of the power expressly granted or as may be fairly implied from the statute granting the express powers." Schultz v. Erie County Met. Park Dist. Bd., *supra*.

R.C. 1545.07 authorizes a board of park commissioners to "employ a secretary and such other employees as are necessary in the performance of the powers conferred" by R.C. 1545.01 to R.C. 1545.28, inclusive. The express powers of a board of park commissioners include, among others, the power to sue and be sued (R.C. 1545.07), to appropriate lands (R.C. 1545.11), to levy taxes (R.C. 1545.20), and to issue bonds (R.C. 1545.21).

Your question regarding the authority of the park commissioners to contract with a private firm to provide casual labor necessitates an analysis of R.C. 1545.07 to determine whether the language contained therein regarding "special services" authorizes the board to contract with a private firm to provide employees during vacation times or periods of heavy work, rather than hiring necessary temporary help on an individual basis.

I shall assume for the purpose of this opinion that by "casual labor" you mean "temporary" or "occasional" labor hired to obviate the need for additional permanent employees.<sup>1</sup>

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<sup>1</sup> Webster's New World Dictionary (2d college ed. 1978) includes a definition of "casual" as follows: "n. 1. one who does something only occasionally or temporarily, esp. a casual worker . . . ."

R.C. 1545.07 provides that "[f]or the purposes of acquiring, planning, developing, protecting, maintaining, or improving lands and facilities thereon under section 1545.11 of the Revised Code, and for other types of assistance which it finds necessary in carrying out its duties under Chapter 1545 . . . , the board may hire and contract for professional, technical, consulting and other special services . . . ." (Emphasis added.)

To obtain, by contract with a private firm, temporary help, or as in your description, "casual labor," to temporarily replace vacationing employees or to temporarily augment the staff of regular park employees, may be considered as one of the "types of assistance" under R.C. 1545.07 which the board "finds necessary in carrying out its duties under Chapter 1545." The fact that the private company provides the necessary employees when needed enables the board to replace vacationing employees or to increase the staff for a short term.

The question then arises as to the meaning of the term "other special services" as it appears in R.C. 1545.07. Although the listing which precedes "other special services" is composed of the words "professional, technical, consulting," which connote a power to contract for a service which involves an area of expertise, the purposes set forth in R.C. 1545.07 for which the board may enter into a contract—e.g., to develop, protect, and maintain the park lands and facilities—indicate that the board may wish to enter into contracts for "special services" which do not involve services of persons with particular expertise. In light of the purposes indicated in R.C. 1545.07 for which the board of park commissioners may contract, "special services" may include services of any variety needed by the board to develop, protect and maintain the park lands and facilities, including temporary, occasional, or one-time services.

It is my understanding that the employees whom the private firm provides perform work that vacationing regular employees would normally perform or provide extra help when the workload of the regular park employees is extremely heavy. Although the labor these employees perform is not in itself different from that of the regular employees, the labor is provided in response to a temporary need, and therefore, can be construed as a "special service" in that it is of an irregular, occasional nature. Therefore, I conclude that a board of park commissioners of a park district, created pursuant to R.C. 1545.01, has the authority under R.C. 1545.07 to contract with a private firm to provide temporary help during vacation periods of regular employees or to temporarily augment the regular work staff.

You might note, also, that R.C. 1545.07 mandates that a board of park commissioners, in procuring services, "shall contract in the manner and under procedures established by the bylaws of the board as required in section 1545.09 of the Revised Code." R.C. 1545.09 provides in pertinent part as follows: "The board shall . . . adopt bylaws, rules, or regulations establishing a procedure for contracting for professional, technical, consulting, and other special services." (Emphasis added.) It follows, then, that in a situation in which the board of park commissioners contracts with a private firm to provide temporary help, the board of park commissioners must, pursuant to R.C. 1545.09, follow the contract procedures established by the bylaws of such board.

You inquire about the applicability of 1968 Op. Att'y Gen. No. 68-171 to the situation you describe concerning the authority of a board of park commissioners to contract with a private firm for temporary help. 1968 Op. Att'y Gen. No. 68-171 concerns the lack of authority on the part of county commissioners to contract with a private firm to provide clerical services when said services fall directly within a job category of the classified civil service. The situation which you describe, however, involves the authority of a board of park commissioners of a park district created pursuant to R.C. 1545.01, which is a separate entity from the county commissioners. Although limited in authority by R.C. 1545.07 to the same extent as county commissioners in regard to procuring goods, such board of park commissioners is, pursuant to R.C. 1545.07, to contract for services under the procedures established by the board's bylaws as required in R.C. 1545.09.

Furthermore, R.C. 124.01(A) provides that: " 'Civil service' includes all offices and positions of trust of employment in the service of the state and the counties, cities, city health districts, general health districts, and city school districts thereof." The employees of a park district created pursuant to R.C. 1545.01 do not come within the above definition of "civil service." See 1934 Op. Att'y Gen. No. 2882, p. 971.

It is, therefore, my opinion, and you are advised, that:

1. A board of park commissioners of a park district created pursuant to R.C. 1545.01 is authorized by R.C. 1545.07 to contract with a private firm to provide temporary help during vacation periods of regular employees or to temporarily augment the regular work staff.
2. When a board of park commissioners of a park district created pursuant to R.C. 1545.01 contracts with a private firm to provide temporary help, the board of park commissioners must, pursuant to R.C. 1545.09, follow the contract procedures established by the bylaws of such board.