

February 1, 2007

The Honorable Martin P. Votel  
Preble County Prosecuting Attorney  
101 East Main Street  
Courthouse, 1st Floor  
Eaton, Ohio 45320

SYLLABUS:

2007-001

1. R.C. 517.14 does not authorize an Ohio township and an Indiana township to jointly take possession of, and care for, a public cemetery that has land in each township.
2. No statute authorizes a board of township trustees to provide for the care and maintenance of the Indiana portion of a public cemetery that has land in Ohio and Indiana.
3. R.C. 517.06 authorizes a board of township trustees to have a survey made of the Ohio portion of a public cemetery that has land in Ohio and Indiana so as to enable the board of township trustees to sell lots for burial purposes in accordance with R.C. 517.07 when the Ohio portion is located outside of a municipal corporation and is not owned by, or under the care of, a municipal corporation, a religious or benevolent society, or an incorporated company or association.



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OPINION NO. 2007-001

The Honorable Martin P. Votel  
Preble County Prosecuting Attorney  
101 East Main Street  
Courthouse, 1st Floor  
Eaton, Ohio 45320

Dear Prosecutor Votel:

You have requested an opinion concerning the authority of a board of township trustees to manage and care for a public cemetery that has land in Ohio and Indiana. According to your letter:

“State Line Cemetery” is a township cemetery partly located in Jackson Township, Preble County, Ohio. The portion of the cemetery located in Preble County is .893 acres. The cemetery is bifurcated by State Line Road, which as the name suggests, marks the boundary line between the State of Ohio and the State of Indiana. State Line Road also bifurcates State Line Cemetery, with approximately four (4) acres of the cemetery lying in Boston Township, Indiana.

A record search indicates that portions of the Indiana cemetery were conveyed over the years to the “trustees” of the cemetery; presumably, these were trustees of a “cemetery association” formed under Indiana law. There are no documents verifying the formation, nature, or authority of this association, nor are there any documents identifying any of the current association trustees. As explained by Jackson Township, the “cemetery association” has paid Jackson Township \$100.00 per year to maintain the Indiana portion of State Line Cemetery. The payments were made directly by Mr. Bob Campbell who was the last [surviving] and identified trustee of the association. Mr. Campbell recently passed away, leaving no identified trustees. It is important to note that it was the association, not the Jackson Township trustees, who handled matters such as the sale and recording of burial plots. Jackson Township has no paperwork

whatsoever documenting the sale of lots or placement of bodies on either the Ohio or Indiana side of State Line Cemetery.

With the passing of Mr. Campbell, the yearly maintenance fees have ceased. While there is some indication that Mr. Campbell's grandson may be in possession of certain association paperwork, this cannot be confirmed. Over the years, many family members of current Jackson Township residents have been buried on the Indiana portion of State Line Cemetery. There are also decedents of Boston Township residents buried in the same cemetery. Jackson Township desires for the Indiana portion of State Line Cemetery to be maintained. The trustee of Boston Township, Indiana has indicated that Boston Township has never maintained the Indiana portion, does not own the Indiana portion, and has no interest or intention of assuming any obligation to care or maintain [the cemetery].

In light of these circumstances, you wish to know the following:

1. Does R.C. 517.14 authorize an Ohio township and an Indiana township to jointly take possession of, and care for, a public cemetery that has land in each township?
2. Does a statute authorize a board of township trustees to provide for the care and maintenance of the Indiana portion of a public cemetery that has land in Ohio and Indiana?
3. Does R.C. 517.06 authorize a board of township trustees to have a survey made of the Ohio portion of a public cemetery that has land in Ohio and Indiana so as to enable the board of township trustees to sell lots for burial purposes in accordance with R.C. 517.07 when the Ohio portion is located outside of a municipal corporation and is not owned by, or under the care of, a municipal corporation, a religious or benevolent society, or an incorporated company or association?

For the reasons discussed below, we conclude that R.C. 517.14 does not authorize an Ohio township and an Indiana township to jointly take possession of, and care for, a public cemetery that has land in each township. We conclude, further, that no statute authorizes a board of township trustees to provide for the care and maintenance of the Indiana portion of a public cemetery that has land in Ohio and Indiana. Finally, we conclude that R.C. 517.06 authorizes a board of township trustees to have a survey made of the Ohio portion of a public cemetery that has land in Ohio and Indiana so as to enable the board of township trustees to sell lots for burial purposes in accordance with R.C. 517.07 when the Ohio portion is located outside of a municipal corporation and is not owned by, or under the care of, a municipal corporation, a religious or benevolent society, or an incorporated company or association.

### **A Board of Township Trustees May Provide for the Care and Maintenance of Public Cemeteries**

To answer your questions, we must look first at the various statutory methods by which a board of township trustees may acquire control and management of a public cemetery.<sup>1</sup> Under R.C. 517.10, the board of township trustees has “[t]he title to, right of possession, and control of all public cemeteries located outside any municipal corporation,” except cemeteries that are owned by, or under the care of, a municipal corporation, a religious or benevolent society, or an incorporated company or association. *See* 1999 Op. Att’y Gen. No. 99-047 at 2-295. Thus, if a public cemetery located outside of a municipal corporation is not owned by, or under the care of, a municipal corporation, a religious or benevolent society, or an incorporated company or association, the cemetery becomes the property of the township. *See id.*; 1954 Op. Att’y Gen. No. 4163, p. 423; 1930 Op. Att’y Gen. No. 1967, vol. II, p. 898; 1929 Op. Att’y Gen. No. 864, vol. II, p. 1341; 1928 Op. Att’y Gen. No. 2446, vol. III, p. 1929.

In addition, a board of township trustees may acquire a public cemetery by accepting a conveyance of cemetery land or making a purchase or appropriation. 1999 Op. Att’y Gen. No. 99-047 at 2-295 n.2; *see* 1994 Op. Att’y Gen. No. 94-049; 1966 Op. Att’y Gen. No. 66-163; 1959 Op. Att’y Gen. No. 232, p. 130; *see, e.g.*, R.C. 517.01; R.C. 517.04-.05; R.C. 517.08; R.C. 517.13; R.C. 517.27; R.C. 759.19. A board of township trustees may also join with one or more townships to jointly establish or take possession of a public cemetery. R.C. 517.14. Finally, a board of township trustees may assume control and management of a public cemetery with one or more municipal corporations and one or more boards of township trustees under R.C. 759.27-.43. *See* R.C. 759.27; R.C. 759.31; R.C. 759.38; R.C. 759.41; 1991 Op. Att’y Gen. No. 91-062; 1962 Op. Att’y Gen. No. 3170, p. 601; 1951 Op. Att’y Gen. No. 817, p. 606.

When a board of township trustees assumes sole or joint control and management of a public cemetery, the board has a duty to provide for the care and maintenance of the cemetery. *See* R.C. 517.06; R.C. 517.08; R.C. 517.11; R.C. 517.14; R.C. 517.15; R.C. 517.32; R.C. 759.31; R.C. 759.341; 1999 Op. Att’y Gen. No. 99-047 at 2-295; 1989 Op. Att’y Gen. No. 89-058; 1964 Op. Att’y Gen. No. 991, p. 2-164; 1959 Op. Att’y Gen. No. 232, p. 130; 1954 Op. Att’y Gen. No. 4163, p. 423; 1928 Op. Att’y Gen. No. 2446, vol. III, p. 1929.

#### **R.C. 517.14 Does Not Apply When One of the Townships Is Located in Another State**

Let us now turn to your first question, which asks whether R.C. 517.14 authorizes an Ohio township and an Indiana township to jointly take possession of, and care for, a public cemetery that has land in each township. R.C. 517.14 provides:

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<sup>1</sup> Except as provided in R.C. 4767.02(C), public cemeteries must be registered under R.C. 4767.03. R.C. 4767.02(A).

When a public cemetery, located on or near a township line, is used by the people of two or more townships for burying purposes, the boards of township trustees of such townships shall jointly take possession thereof, and care for and keep it in repair, as in the case of cemeteries belonging to a township. The board of each township shall levy taxes needed for such cemetery, not to exceed one-fourth per cent in any year. Two or more townships may join in establishing and maintaining a cemetery, and for such purpose the boards shall have the same powers, be governed by the same rules, and proceed in the same manner as provided for municipal corporations and townships uniting for that purpose under [R.C. 759.27-.48].

R.C. 517.14 does not directly state that the townships or entire territory of the public cemetery must be located in Ohio before two or more townships may jointly take possession of, and care for, a public cemetery. It is, however, a well-established principle that “legislative enactments can only operate, *proprio vigore*, upon persons and things within the jurisdiction of the law-making power. And it is also true, generally, that such jurisdiction can only be coextensive with the territorial limits of the state, or sovereignty.” *Lehman v. McBride*, 15 Ohio St. 573, 608 (1863); *see Minnesota v. Karp*, 84 Ohio App. 51, 56-57, 84 N.E.2d 76 (Hamilton County 1948) (“jurisdictions of all governments are geographical or territorial. Any attempt to exercise extraterritorial jurisdiction constitutes an invasion of another sovereignty.... The jurisdiction of a state ... must be confined to persons, property and activities within its boundaries”). *See generally* Ohio Const. art. II, § 26 (“[a]ll laws, of a general nature, shall have a uniform operation throughout the state”); 1997 Op. Att’y Gen. No. 97-025 at 2-147 (“the tort immunity provided in R.C. 2744.02 to counties and townships does not, as a general matter, apply in civil actions brought in a court sitting in Indiana for injury, death, or loss to person or property allegedly caused by an act or omission of an Ohio county or township in connection with the provision of fire, police, or emergency medical services”).

Under this principle, the phrases “public cemetery” and “township,” as used in R.C. 517.14, must be construed in accordance with the territorial limit placed upon the legislative power of the General Assembly. *See Woodard v. Michigan S. & N. Indiana R.R. Co.*, 10 Ohio St. 121, 122 (1859) (“[g]eneral words in statutes must always be construed in view of the territorial limit to the powers of the legislature”); 1995 Op. Att’y Gen. No. 95-006 at 2-29 (“[i]t is not appropriate ... to construe the statutory authority vested in the State Library Board to define the term ‘metropolitan area’ as also conferring authority to create and recognize a library system that extends beyond the boundaries of the state of Ohio”). This means that R.C. 517.14 may not be interpreted as empowering governmental officials of another state to take possession of, and care for, the Ohio portion of a public cemetery that has land in Ohio and Indiana.<sup>2</sup> *See*

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<sup>2</sup> The territorial limit placed upon the legislative power of the General Assembly does not prevent the General Assembly from permitting governmental officials of another state to provide services or operate within Ohio when those officials have been empowered by the laws of their

*generally* 2000 Op. Att’y Gen. No. 2000-026 at 2-175 (“the General Assembly possesses no authority to impose duties upon public officers or subdivisions of another state”). Nor may this statute be construed as authorizing a board of township trustees to take possession of, and care for, the Indiana portion of a public cemetery that has land in Ohio and Indiana. *See generally* 2000 Op. Att’y Gen. No. 2000-026 (syllabus) (“R.C. 339.01(C)(1) does not authorize a board of county commissioners, board of county hospital trustees, or hospital commission to purchase, acquire, lease, appropriate, or construct an outpatient health facility in a county outside the state of Ohio”); 1995 Op. Att’y Gen. No. 95-006 at 2-29 (the authority of a state agency is restricted to the geographic territory of the state itself). The territorial limit placed upon the legislative power of the General Assembly thus mandates that R.C. 517.14 be construed as authorizing two or more Ohio boards of township trustees to jointly take possession of, and care for, public cemetery land located in Ohio. *See generally* 2000 Op. Att’y Gen. No. 2000-026 at 2-175 (“[t]he statutory scheme governing the establishment and operation of county hospitals thus indicates that R.C. 339.01(C)(1) authorizes a board of county commissioners, a board of county hospital trustees, or a county hospital commission to ‘purchase, acquire, lease, appropriate, or construct an outpatient health facility in another county,’ but only in another county within the state of Ohio”); 1939 Op. Att’y Gen. No. 1311, vol. III, p. 1941 (the General Assembly’s reference in

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state with extraterritorial jurisdiction. *See, e.g.,* R.C. 9.60(C) (a municipal corporation or township in this state may contract with a municipal corporation or township of “another jurisdiction to obtain fire protection or emergency medical services, as appropriate, whether on a regular basis or only in times of emergency, upon the approval of the governing boards or administrative heads of the entities that are parties to the contract”); R.C. 306.80 (“[o]ne or more contiguous counties of this state, or one or more municipal corporations which are in the same county or in contiguous counties, any one of which is adjacent to another state, may enter into an agreement, to the extent and in the manner authorized by the laws of the United States, with entities or instrumentalities of government of other states or of the United States, to provide for the creation of a regional transit commission which will provide services and facilities for a service area within this state and within one or more states adjacent to this state, for the transportation of persons in a manner that will be in the best public interest in view of the geographic, economic, population, and other factors influencing the needs and development of such service area”); R.C. 3375.83 (“[b]ecause the desire for the services provided by libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the states party to [the Interstate Library Compact] to cooperate and share their responsibilities; to authorize cooperation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a cooperative basis; and to authorize cooperation and sharing among localities, states, and others in providing joint or cooperative library services in areas where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service”).

G.C. 3138-1 to a charitable hospital “in any county” referred to only those charitable hospitals located within Ohio).

This construction of R.C. 517.14 also comports with the traditional understanding that, in those instances in which the General Assembly has intended to empower a township to operate or provide services outside of Ohio, the General Assembly has expressly so provided. Similarly, when the General Assembly intends to allow a governmental entity of another state to operate or provide services within Ohio, the General Assembly confers such permission by statute. *See* 2000 Op. Att’y Gen. No. 2000-026 at 2-176 (“in those instances in which the General Assembly has intended that governmental entities have authority to operate beyond the boundaries of the state, it has expressly so provided”); *see, e.g.*, R.C. 9.60(B) (any township “may contract with any governmental entity in this state or another jurisdiction to provide fire protection or emergency medical services, as appropriate, whether on a regular basis or only in times of emergency, upon the approval of the governing boards or administrative heads of the entities that are parties to the contract”); R.C. 9.60(C) (any township in this state may contract with any township or municipal corporation “of this state or another jurisdiction to obtain fire protection or emergency medical services, as appropriate, whether on a regular basis or only in times of emergency, upon the approval of the governing boards or administrative heads of the entities that are parties to the contract”); R.C. 505.43 (“[i]n order to obtain police protection, or to obtain additional police protection, any township may enter into a contract with one or more townships, municipal corporations, ... or with a governmental entity of an adjoining state upon any terms that are agreed to by them, for services of police departments ... or the interchange of the service of police departments ... within the several territories of the contracting subdivisions”); R.C. 505.431 (authorizing a township police department to provide police protection to a governmental entity of an adjoining state); R.C. 505.44 (similar to R.C. 9.60(B) and (C)).

Because R.C. 517.14 does not expressly authorize an Ohio township to operate or provide services outside of Ohio or permit a township of another state to operate or provide services within Ohio, it follows that R.C. 517.14 does not confer such authority upon an Ohio township or a township of another state. *See generally* 2000 Op. Att’y Gen. No. 2000-026 at 2-177 (“[b]ecause R.C. 339.01(C)(1) does not mention the establishment of a county hospital branch outside the state of Ohio, we conclude that the General Assembly does not intend that a county hospital branch be so established”); 1995 Op. Att’y Gen. No. 95-006 (syllabus) (“[a] library located in a state other than Ohio may not be a full voting member of a metropolitan library system chartered by the State Library Board pursuant to R.C. 3375.90-.93”); 1986 Op. Att’y Gen. No. 86-044 at 2-237 (“[s]ince there is no language which authorizes the county to provide services outside the state, either directly or pursuant to contract, I must conclude that a county may not provide emergency medical services outside the State of Ohio”). As a consequence, R.C. 517.14 may not be interpreted as authorizing an Ohio township and an Indiana township to jointly take possession of, and care for, a public cemetery that has land in each township.

### **A Board of Township Trustees Is Not Responsible for the Care and Maintenance of Public Cemetery Land Located in Indiana**

Your second question asks whether a statute authorizes a board of township trustees to provide for the care and maintenance of the Indiana portion of a public cemetery that has land in Ohio and Indiana. As explained above, a board of township trustees may not operate or provide services outside of Ohio unless the General Assembly has expressly authorized the board to do so. *See* 2000 Op. Att’y Gen. No. 2000-026 at 2-176. Accordingly, absent express statutory authority, a board of township trustees may not provide for the care and maintenance of the Indiana portion of a public cemetery that has land in Ohio and Indiana. *See* 1947 Op. Att’y Gen. No. 2386, p. 561 (syllabus) (“[t]he authority of township trustees with respect to ... cemeteries and burial grounds is prescribed and limited by statute”); *cf.* 1994 Op. Att’y Gen. No. 94-053 (syllabus) (“[w]hen the electors of a township that includes a city and a village approve a levy under R.C. 5705.19(T) for cemetery purposes, the proceeds of such levy accrue only to the township and may not be used to maintain a cemetery that is owned by, and located within, the city or village”); 1989 Op. Att’y Gen. No. 89-058 (syllabus, paragraph two) (“a board of township trustees which has withdrawn from a union cemetery under R.C. 759.39 has no authority to continue to expend public funds on the cemetery”); 1983 Op. Att’y Gen. No. 83-039 (syllabus) (“[a] board of township trustees lacks authority to expend funds for the maintenance of a cemetery which is owned by a religious society”); 1965 Op. Att’y Gen. No. 65-146 (syllabus, paragraph four) (“[a] board of township trustees has neither the authority nor duty to expend public funds to repair a public mausoleum which is located in the unincorporated area of the township where such mausoleum is owned by or is under the care of an incorporated company or association”); 1959 Op. Att’y Gen. No. 232, p. 130 (syllabus, paragraph one) (“[a] township may not legally expend its funds for the care and maintenance of a cemetery belonging to a village located within the township”); 1959 Op. Att’y Gen. No. 232, p. 130 (syllabus, paragraph two) (“[t]he township trustees are without authority to pay over to a village located within the limits of the township funds to enable the village to operate a cemetery belonging to it”); 1931 Op. Att’y Gen. No. 3570, vol. II, p. 1158 (syllabus) (“[t]ownship trustees have no authority to grant temporary financial aid to church organizations for the care and maintenance of cemeteries belonging to such church organizations”).

Various statutes authorize a board of township trustees to provide for the care and maintenance of land within a public cemetery. *See, e.g.,* R.C. 517.01 (a board of township trustees may “improve and protect lands in one or more places within the township as it deems necessary and proper for cemetery purposes”); R.C. 517.03 (“[t]o defray the expenses of the purchase or appropriation, and the enclosing, care, supervision, repair, and improving of lands for cemetery purposes, the board of township trustees may levy a tax sufficient for that purpose”); R.C. 517.06 (a board of township trustees “shall make and enforce all needful rules and regulations for the ... care, supervision, and improvement of the lots”); R.C. 517.08 (proceeds arising from the sale of cemetery lots by a board of township trustees may be used in improving and embellishing such grounds; “and the board of township trustees may build and maintain proper and secure fences around all such cemeteries, to be paid for from the township funds”); R.C. 517.11 (“[t]he board of township trustees shall provide for the protection and

preservation of cemeteries under its jurisdiction”); R.C. 517.15 (“[a] board of township trustees may create a permanent cemetery endowment fund for the purpose of maintaining, improving, and beautifying township cemeteries and burial lots in township cemeteries”); R.C. 517.19 (“[w]here the township owns a burial place within the grounds of a cemetery association, the board of township trustees may levy a tax, not exceeding five mills on the dollar of the tax duplicate of the township, for the purpose of erecting permanent buildings upon such cemetery grounds”); R.C. 517.27 (the board of township trustees is required to “take care of, keep in repair, hold, treat, and manage” public cemeteries transferred to the board); R.C. 517.32 (when a board of county commissioners has enclosed an abandoned public cemetery “from which the remains of the dead have not been removed, the board of township trustees shall keep the fence in good repair, remove the undergrowth and weeds from such cemetery at least once a year, and pay the expense thereof from township funds”); R.C. 759.31 (“[a] cemetery owned in common as provided by [R.C. 759.27] shall be under the control and management of the board of township trustees and the legislative authorities of the municipal corporations, and their authority over it and duties in relation thereto shall be the same as where the cemetery is the exclusive property of a single municipal corporation”);<sup>3</sup> R.C. 5705.19(T) (a board of township trustees may levy a tax in excess of the ten-mill limitation “[f]or maintaining and operating cemeteries”); R.C. 5901.17 (“[o]n and after the interment of the remains of one or more deceased veterans in a veterans plot, the reasonable expenses of the care of the grave shall be annually provided for by the municipal corporation or township in which the remains are buried, and shall be paid annually to the cemetery association in which the remains may be interred, removed, or reinterred”). *See generally* 1964 Op. Att’y Gen. No. 991, p. 2-164 (syllabus) (“[a] board of township trustees may contract with an independent contractor, when reasonably necessary, to maintain and care for a township cemetery under its jurisdiction”); 1959 Op. Att’y Gen. No. 232, p. 130 (syllabus, paragraph three) (“[t]he trustees of a township have authority under [R.C. 759.19] to accept from a village conveyance of a cemetery located within such township and belonging to such village, and may upon such conveyance and acceptance, care for and maintain such cemetery as a township cemetery”).

None of these statutes, however, explicitly authorizes a board of township trustees to provide for the care and maintenance of public cemetery land that is located outside of Ohio.<sup>4</sup>

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<sup>3</sup> A municipal corporation is responsible for the maintenance and care of a public cemetery owned by the municipal corporation. *See* R.C. 759.03; R.C. 759.09; R.C. 759.11; R.C. 759.12; R.C. 759.14; R.C. 759.15; R.C. 5705.19(T); 1994 Op. Att’y Gen. No. 94-049; 1991 Op. Att’y Gen. No. 91-062; *see also* R.C. 759.23 (a board of cemetery trustees appointed by a village mayor “shall have the powers and perform the duties prescribed by [R.C. 759.09-.18] for the director of public service in cities”).

<sup>4</sup> R.C. 9.20 authorizes a board of township trustees to “receive by gift, devise, or bequest moneys, lands, or other properties, for their benefit ... and ... [to] hold and apply the moneys, lands, or properties according to the terms of the gift, devise, or bequest.” This general authority

Accordingly, in response to your second question we conclude that no statute authorizes a board of township trustees to provide for the care and maintenance of the Indiana portion of a public cemetery that has land in Ohio and Indiana.<sup>5</sup>

### **Authority of a Board of Township Trustees to Survey Public Cemetery Land in Ohio**

Your final question asks whether R.C. 517.06 authorizes a board of township trustees to have a survey made of the Ohio portion of a public cemetery that has land in Ohio and Indiana so as to enable the board of township trustees to sell lots for burial purposes in accordance with R.C. 517.07<sup>6</sup> when the Ohio portion is located outside of a municipal corporation and is not

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does not, however, authorize a board of township trustees to accept a gift, devise, or bequest of the Indiana portion of a public cemetery that has land in Ohio and Indiana, or money for the care and maintenance thereof, insofar as an Ohio township does not have express statutory authority to assume control and management of, or maintain and care for, public cemetery land located outside of Ohio. *See Woodard v. Michigan S. & N. Indiana R.R. Co.*, 10 Ohio St. 121, 122 (1859) (“[g]eneral words in statutes must always be construed in view of the territorial limit to the powers of the legislature”). *See generally* R.C. 517.01 (“[t]he board of township trustees may accept a conveyance of ... lands in one or more places *within the township* as it deems necessary and proper for cemetery purposes” (emphasis added)); R.C. 517.15 (“[a] board of township trustees may create a permanent cemetery endowment fund for the purpose of maintaining, improving, and beautifying *township* cemeteries and burial lots in *township* cemeteries. The fund shall consist of money arising from the following sources: ... [g]ifts, devises, or bequests received for the purpose of maintaining, improving, or beautifying *township* cemeteries ... [and] [i]ndividual gifts, devises, or bequests made for the maintenance, improvement, and beautification of any burial lot designated and named by the person making the gift, devise, or bequest” (emphasis added)).

<sup>5</sup> We are aware that in this instance the board of township trustees wishes to provide for the care and maintenance of public cemetery land located in Indiana because deceased family members of current township residents are interred therein. The current statutory scheme for the care and maintenance of public cemeteries, however, compels us to advise you that the board of township trustees is not permitted to take such action. Should the legislatures of Ohio and Indiana determine that Ohio township trustees should have such authority, they may enact legislation to accomplish that purpose.

<sup>6</sup> R.C. 517.07 authorizes a board of township trustees to sell or otherwise deliver deeds to burial lots in public cemeteries under the jurisdiction of the board, as follows:

Upon application, the board of township trustees shall sell at a reasonable price the number of lots as public wants demand for burial purposes. Purchasers of lots, upon complying with the terms of sale, may receive deeds for the lots

owned by, or under the care of, a municipal corporation, a religious or benevolent society, or an incorporated company or association.<sup>7</sup> Pursuant to R.C. 517.10, a public cemetery located outside of a municipal corporation may become the property of a board of township trustees:

The title to, right of possession, and control of all public cemeteries located outside any municipal corporation, which have been set apart and dedicated as public cemeteries, and any grounds which have been used as such by the public, but not expressly dedicated as a cemetery, except such as are owned or under the care of a religious or benevolent society, or an incorporated company or association, or under the control of the authorities of any municipal corporation, shall severally be vested in the board of township trustees.

Accordingly, when a cemetery association ceases to exist, the “cemetery becomes the property of the township without action on the part of either party.” 1999 Op. Att’y Gen. No. 99-047 at 2-295; *see* R.C. 517.10; 1954 Op. Att’y Gen. No. 4163, p. 423; 1930 Op. Att’y Gen. No. 1967, vol. II, p. 898; 1929 Op. Att’y Gen. No. 864, vol. II, p. 1341; 1928 Op. Att’y Gen. No. 2446, vol. III, p. 1929.

There is, however, at least one situation in which a board of township trustees may not take possession of public cemetery land under R.C. 517.10. If a public cemetery has land in Ohio and another state, the board of township trustees may not take possession of, and care for, the portion of land located outside of Ohio under R.C. 517.10 since R.C. 517.10, like R.C. 517.14 above, must be construed in accordance with the territorial limit placed upon the legislative power of the General Assembly. *See Woodard v. Michigan S. & N. Indiana R.R. Co.*, 10 Ohio St. at 122 (“[g]eneral words in statutes must always be construed in view of the territorial limit to the powers of the legislature”). As a result, when a cemetery association that has public cemetery land in Ohio and Indiana ceases to exist, only the Ohio portion of the cemetery becomes the property of a board of township trustees under R.C. 517.10.

With respect to the Ohio portion of a public cemetery that becomes the property of a board of township trustees, the board is given the following authority:

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which the board shall execute and which shall be recorded by the township fiscal officer in a book for that purpose. The expense of recording shall be paid by the person receiving the deed. Upon the application of a head of a family living in the township, the board shall, without charge, make and deliver to the applicant a deed for a suitable lot for the burial of the applicant’s family, if, in the opinion of the board and by reason of the circumstances of the family, the payment would be oppressive.

<sup>7</sup> In your letter you state that the cemetery association that owns the public cemetery has ceased to exist and, as such, no longer manages or maintains the cemetery.

*The board of township trustees shall have the cemetery laid out in lots, avenues, and paths, shall number the lots, and shall have a suitable plat of the lots made, which plat shall be carefully kept by the township fiscal officer. The board shall make and enforce all needful rules and regulations for the division of the cemetery into lots, for the allotment of lots to families or individuals, and for the care, supervision, and improvement of the lots. The board shall require the grass and weeds in the cemetery to be cut and destroyed at least twice each year. Suitable provision shall be made in the cemetery for persons whose burial is at the expense of the township. (Emphasis added.)*

R.C. 517.06.

R.C. 517.06 thus requires a board of township trustees to lay out lots, avenues, and paths in the public cemeteries under its jurisdiction and to maintain a suitable plat of the lots located in those cemeteries. In order to perform these duties, a board of township trustees has the authority to do the necessary incidental acts to accomplish these duties. *See generally Fed. Gas & Fuel Co. v. City of Columbus*, 96 Ohio St. 530, 541, 118 N.E. 103 (1917) (a public officer or body “is naturally and necessarily vested with a wide discretion to do such incidental things as are reasonably and manifestly” in the public’s interests to perform the act, provided such things are not prohibited by statute), *appeal dismissed*, 248 U.S. 547 (1919); *State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 47, 117 N.E. 6 (1917) (concerning legislative grants of power to political subdivisions and their officers, boards, and commissions, a “grant of power, by virtue of a statute, may be either express or implied, but the limitation put upon the implied power is that it is only such as may be reasonably necessary to make the express power effective”); *State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 112 N.E. 138 (1915) (syllabus, paragraph four) (“[w]here an officer is directed by the constitution or a statute of the state to do a particular thing, in the absence of specific directions covering in detail the manner and method of doing it, the command carries with it the implied power and authority necessary to the performance of the duty imposed”), *aff’d sub nom. Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565 (1916); 2003 Op. Att’y Gen. No. 2003-022 at 2-171 (intrinsic to a township’s authority to provide for zoning “is the power of township officials to prepare and adopt plans for land use”); 1973 Op. Att’y Gen. No. 73-057 at 2-218 (“each specific detail of the carrying out of an express purpose need not be expressly stated before the board may exercise its authority with respect to such detail, for an express authority to do an act carries with it the authority to do the necessary incidental acts to accomplish the purpose for which the express authority was given as fully as though each such incidental detail were expressly authorized in separate and distinct terms”); 1928 Op. Att’y Gen. No. 2955, vol. IV, p. 2736, at 2740 (“[t]he delegation of a power to accomplish a certain end, necessarily carries with it the power to do all things necessary to consummate that purpose”).

It follows, therefore, that, if a board of township trustees determines that it is necessary to have a survey made of a public cemetery under its jurisdiction to enable the board to lay out lots, avenues, and paths in the cemetery and to maintain a suitable plat of the lots located in the cemetery, the board may have the cemetery surveyed. *Cf.* 1974 Op. Att’y Gen. No. 74-083 (syllabus) (“[a] board of township trustees has implied power under R.C. 517.03 to construct a

permanent building upon cemetery grounds when necessary for the care, supervision and improvement of the cemetery”); 1964 Op. Att’y Gen. No. 991, p. 2-164 (syllabus) (“[a] board of township trustees may contract with an independent contractor, when reasonably necessary, to maintain and care for a township cemetery under its jurisdiction”). Accordingly, we conclude that R.C. 517.06 authorizes a board of township trustees to have a survey made of the Ohio portion of a public cemetery that has land in Ohio and Indiana so as to enable the board of township trustees to sell lots for burial purposes in accordance with R.C. 517.07 when the Ohio portion is located outside of a municipal corporation and is not owned by, or under the care of, a municipal corporation, a religious or benevolent society, or an incorporated company or association.

### **Conclusions**

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. R.C. 517.14 does not authorize an Ohio township and an Indiana township to jointly take possession of, and care for, a public cemetery that has land in each township.
2. No statute authorizes a board of township trustees to provide for the care and maintenance of the Indiana portion of a public cemetery that has land in Ohio and Indiana.
3. R.C. 517.06 authorizes a board of township trustees to have a survey made of the Ohio portion of a public cemetery that has land in Ohio and Indiana so as to enable the board of township trustees to sell lots for burial purposes in accordance with R.C. 517.07 when the Ohio portion is located outside of a municipal corporation and is not owned by, or under the care of, a municipal corporation, a religious or benevolent society, or an incorporated company or association.

Respectfully,

A handwritten signature in black ink, appearing to read "Marc Dann", written in a cursive style.

MARC DANN  
Attorney General