

OPINION NO. 76-050**Syllabus:**

1. The board of township trustees may use general revenue funds to purchase additional land for an existing township cemetery without levying the special tax provided in R.C. 517.13;
2. The board of township trustees may use revenue sharing funds to purchase such land without levying the additional tax provided for in R.C. 517.13;
3. The board of township trustees may not purchase a remainder interest in such land;
4. The board of township trustees may not purchase such land pursuant to a "land contract."

To: David A. Cutright, Ross County Pros. Atty., Chillicothe, Ohio
By: William J. Brown, Attorney General, June 30, 1976

I have before me your request for my opinion on several questions arising under the provisions of R.C. Chapter 517 in respect to the duties and authority of a board of township trustees in obtaining additional land adjacent to a currently existing township cemetery. Your questions are as follows:

- (1) May the Trustees pursuant to the provisions of R.C. 5705.16 use general revenue funds to cover the purchase of additional cemetery land without levying the tax referred to in R.C. 517.13?
- (2) May the Board of Trustees of Scioto Township of Ross County, Ohio, use revenue sharing funds to purchase such additional land without having to levy the tax referred to in R.C. 517.13?
- (3) Would it be possible to purchase such additional land adjacent to the cemetery and permit the grantors to retain a life estate in the property?
- (4) Would it be possible for the Board of Trustees to enter into any type of Land Contract for the purchase of such additional land?

R.C. 517.01 provides generally for the acquisition of land for cemetery purposes:

The board of township trustees may accept a conveyance of, or purchase, and enclose, improve, and protect lands in one or more places within the township as it deems

necessary and proper for cemetery purposes.

If suitable lands cannot be procured by contract on reasonable terms, such board may appropriate lands therefore, not to exceed ten acres, by proceedings in accordance with sections 163.01 to 163.22, inclusive, of the Revised Code.

No lands shall be so appropriated within one hundred yards of a dwelling house, or other building. (Emphasis added.)

R.C. 517.13, to which you refer, further provides for the appropriation of up to five acres of land as an addition to an existing cemetery. The terms of R.C. 517.13 make available procedures for the appropriation of such land when suitable lands cannot be procured by contract on reasonable terms.

There are several statutory mechanisms available under the provisions of R.C. Chapter 517 for the purpose of funding the purchase of cemetery lands. R.C. 517.03 authorizes the township trustees to levy a tax to defray the expenses of purchase or appropriation, and the enclosing, care, supervision, repair and improving of lands for cemetery purposes. R.C. 517.08 provides that proceeds from the sale of cemetery lots under R.C. 517.08 shall be used for improving and embellishing cemetery grounds, but may, with the unanimous consent of the township trustees, be used in the purchase or acquisition of land for cemetery purposes in accordance with R.C. 517.01 and R.C. 517.13. R.C. 517.13 further authorizes the board of township trustees to levy a special tax, in a limited amount, for the purpose of acquiring additional cemetery lands.

These various statutory provisions for the funding of such acquisitions set forth alternatives which may be exercised by the board of township trustees. They do not, however, provide the exclusive sources of funds for expenditures under R.C. 517.01, et seq., because expenditures may also be made from unencumbered general township funds.

In 1971 Op. Atty. Gen. No. 71-062, I considered whether moneys from a township general fund could be expended to acquire land to establish a cemetery. Based on R.C. 517.04, which requires a popular vote (unless funds are available under R.C. 517.08) on the question of the establishment of a cemetery, I concluded that general funds may not properly be used to establish a cemetery unless a vote has been taken. However, the requirement of a vote under R.C. 517.04 has no application to the acquisition of additional cemetery grounds. Norton v. Trustees, 8 CC 335 (affirmed, without report; Paine v. Norton, 54 Ohio St. 682, 1896).

In 1974 Op. Atty. Gen. No. 74-083, I had occasion to consider the availability of general funds and federal revenue sharing funds for purposes of R.C. Chapter 517. Relying on the language in R.C. 5705.05 and 5705.06, which authorizes the use of general revenue funds for any current expense for which a special tax could be levied, I concluded that township trustees had implied authority to expend general township funds for the construction of permanent cemetery improvements.

In light of the foregoing, it is my conclusion that township general funds may be expended for the purpose of acquiring additional cemetery lands.

With respect to your question concerning the use of federal revenue sharing funds, I would refer you to Am. Sub. H.B. No. 155, effective June 29, 1975 (the General Appropriations Act for the 1975-77 biennium). Section 10 of that act reads in pertinent part:

"Any revenues received from the federal government for use by any political subdivision of the state are hereby appropriated for distribution to such subdivision, and the legislative authority of each subdivision is authorized to appropriate the revenues so received for the purpose for which allotted."

Therefore, provided revenue sharing funds are directly or indirectly made available for the acquisition of cemetery land, the township trustees are authorized to expend the funds for such a purpose.

31 U.S.C.A. Section 1221, et seq., provides for the allocation and payment of federal revenue sharing funds. 31 U.S.C.A. Section 1222 outlines the purposes for which such funds may be used:

- (a) Funds received by units of local government under this subchapter may be used only for priority expenditures. For purposes of this chapter, the term "priority expenditures" means only --
- (1) Ordinary and necessary maintenance and operating expenses for --
 - (A) public safety (including law enforcement, fire protection, and building code enforcement),
 - (B) environmental protection (including sewage disposal, sanitation, and pollution abatement),
 - (C) public transportation (including transit systems and streets and roads),
 - (D) health,
 - (E) recreation,
 - (F) libraries,
 - (G) social services for the poor or aged, and
 - (H) financial administration; and
 - (2) ordinary and necessary capital expenditures authorized by law.

(Emphasis added.)

The purchase of additional land for an existing township cemetery is a capital expenditure which is authorized by law. It follows then that a board of township trustees may, pursuant to R.C. 517.01, et seq., expend federal revenue sharing funds for the purchase of additional land for a township cemetery.

However, the entire thrust of many of the provisions of Chapter 517 of the Revised Code is the acquisition of title and possession by the board of land to be used for Township cemeteries. R.C. 517.01 states that the board may "purchase, and enclose, improve, and protect" lands to be used for township cemeteries. R.C. 517.03 permits a special levy for "expenses of the purchase . . . , and the enclosing, care, supervision, repair, and improving, of lands for cemetery purposes." See also R.C. 517.08. R.C. 517.10 vests title and possession of all public cemeteries located outside municipalities in the board of township trustees. R.C. 517.11 places affirmative duties on the board to enclose and keep in good repair all cemetery lands within its jurisdiction. The acquisition of additional lands authorized in R.C. 517.13 itself refers back to R.C. 517.01, with the exception of the second paragraph of that section.

The purchase of land subject to the retention of a life estate in the vendor would not permit the board to acquire possession for an indefinite period, and would not permit the fulfillment of the duties placed upon the board by Chapter 517 of the Revised Code. In effect, the board would be purchasing a remainder interest in the land, not land itself.

Similarly, since the purchase of land pursuant to "land contract" would not vest title in the board until final payment, the apparent mandate of the above-cited provisions of Chapter 517 of the Revised Code that title inhere in the board so that it may perform the duties prescribed therein would not be fulfilled. In effect, the board would be postponing absolute "purchase" until final payment under the contract. On this point see R.C. 517.10 which provides that the title to such cemeteries "shall . . . be vested in the board of township trustees." Without such title the board would not be able to sell burial lots as contemplated by R.C. 517.07. As to the nature of such conveyances, I refer you to 1972 Op. Atty. Gen. No. 72-031.

The power to purchase remainder interest in land and to purchase land pursuant to land contract is not expressly within the powers of the board. Nor does it appear that it may be inferred given the tenor of Chapter 517 of the Revised Code with regard to the acquisition of title and possession of cemetery lands so that the board may perform its attendant duties.

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

1. The board of township trustees may use general revenue funds to purchase additional land for an existing township cemetery without levying the additional tax provided for in R.C. 517.13;
2. The board of township trustees may use revenue sharing funds to purchase such land without levying the additional tax provided for in R.C. 517.13;
3. The board of township trustees may not purchase a remainder interest in such land;

4. The board of township trustees may not purchase such land pursuant to a "land contract."