

OPINION NO. 85-032**Syllabus:**

In any township in which there is a cemetery owned or partly owned by such township, if, in the opinion of the board of township trustees, it is desirable to add to the area of such cemetery by the purchase of additional grounds, the board of township trustees may procure by contract, on reasonable terms, such quantity of land as it deems appropriate for such expansion, and the board is subject to no limitation on the quantity of land which may be so procured. If suitable lands for the expansion of an existing cemetery cannot be procured by contract on reasonable terms, the board may, pursuant to R.C. 517.13, appropriate lands for such purpose by proceedings in accordance with R.C. 163.01-22, but the board may not, by such proceedings, appropriate more than ten acres.

To: Ronald C. Carey, Clinton County Prosecuting Attorney, Wilmington, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, June 19, 1985

You have asked for an opinion concerning the authority of a board of township trustees to purchase additional grounds for a cemetery which is under its jurisdiction and control. Your request concerns R.C. 517.13, which states, in relevant part:

In any township in which there is a cemetery owned or partly owned by such township, if in the opinion of the board of township trustees, it is desirable to add to the area of such cemetery by the purchase of additional grounds, and if suitable lands cannot be procured by contract on reasonable terms, the board may appropriate lands, not exceeding ten acres, by proceedings in accordance with sections 163.01 to 163.22 of the Revised Code, for the expansion of an existing cemetery if the township zoning ordinances do not prohibit such use. Lands appropriated for the expansion of a cemetery shall not be appropriated within fifty feet of a dwelling house or other building and shall be considered a part of the original cemetery even though separated therefrom by a road or highway. (Emphasis added.)

You have indicated that a particular board of township trustees has approximately twenty-eight acres available for purchase by contract for the expansion of a cemetery. Your question is whether the board of township trustees may, by contract, acquire that twenty-eight acres, or whether the board is, by R.C. 517.13, limited to a purchase of only ten acres for the purpose of expansion of a cemetery. You have not asked about zoning restrictions or requirements as to location of the property to be acquired, and I am not considering any such restrictions or requirements. See generally R.C. 517.13.

It is firmly established in Ohio that a board of township trustees is a creature of statute and that, as such, it possesses only such powers as are conferred upon it by statute, either expressly or by necessary implication. See, e.g., Hople v. Trustees of Brown Township, 13 Ohio St. 311 (1862); 1983 Op. Att'y Gen. No. 83-039. The powers of a board of township trustees with respect to local cemeteries are set forth in R.C. Chapter 517.

The portion of R.C. 517.13 which is quoted above provides that a board of township trustees may, "if in the opinion of the board of township trustees, it is desirable to add to the area of [a township] cemetery by the purchase of additional

grounds," acquire additional grounds. While R.C. 517.13 does not directly state that the board may purchase additional grounds by contract, the words "if suitable lands cannot be procured by contract on reasonable terms" clearly indicate that the board has authority to attempt to acquire suitable lands by entering into a contract, with reasonable terms, for such purchase. See R.C. 517.01. If efforts to enter into such a contract fail, then "the board may appropriate lands" by proceedings in accordance with R.C. 163.01-.22, the Ohio Uniform Eminent Domain Act. See generally 1976 Op. Att'y Gen. No. 76-050; 1972 Op. Att'y Gen. No. 72-031.

Your question relates to the words "not exceeding ten acres," which appear in R.C. 517.13. You have asked whether those words of limitation apply only to the appropriation of land pursuant to R.C. 517.13, or whether they apply also to the purchase of land by contract for the purpose of expansion of a township cemetery. I believe that the placement of the words "not exceeding ten acres" indicates that they apply only to the appropriation of lands pursuant to R.C. 517.13. The plain language of R.C. 517.13 states: "if suitable lands cannot be procured by contract on reasonable terms, the board may appropriate lands, not exceeding ten acres, by proceedings in accordance with [R.C. 163.01-.22], for the expansion of an existing cemetery." Reading this language in context and construing it according to the rules of grammar and common usage, see R.C. 1.42; see generally State ex rel. Avon Convalescent Center, Inc. v. Bates, 45 Ohio St. 2d 53, 341 N.E.2d 296 (1976), I find that it limits proceedings for the appropriation of lands for cemetery expansion to ten acres, but that it imposes no limitation upon the quantity of land which may be acquired by contract for the expansion of a cemetery. See generally 1960 Op. Att'y Gen. No. 1903, p. 727 (discussing fact pattern which indicates that township acquired eleven acres for the purpose of cemetery expansion). Thus, I conclude that a board of township trustees may, by contract, acquire twenty-eight acres for the purpose of expanding a cemetery.

I note that a similar construction has been given to the language of R.C. 517.01, which authorizes a board of township trustees to acquire property for establishing a cemetery. See generally 1971 Op. Att'y Gen. No. 71-062. R.C. 517.01 states, in part:

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 therefor, not to exceed ten acres, by proceedings in accordance with sections 163.01 to 163.22, inclusive, of the Revised Code. (Emphasis added.)

This language has been found to limit the authority of a board of township trustees to appropriate lands to the number of acres specified therein, but to attach no similar limitation to the quantity of land which may be procured by contract. See 1971 Op. Att'y Gen. No. 71-038. See generally Henry v. Trustees, 48 Ohio St. 671, 679, 30 N.E. 1122, 1125 (1891) (Williams, C.J., dissenting).

It is, therefore, my opinion, and you are hereby advised, that, in any township in which there is a cemetery owned or partly owned by such township, if, in the opinion of the board of township trustees, it is desirable to add to the area of such cemetery by the purchase of additional grounds, the board of township trustees may procure by contract, on reasonable terms, such quantity of land as it deems appropriate for such expansion, and the board is subject to no limitation on the quantity of land which may be so procured. If suitable lands for the expansion of an existing cemetery cannot be procured by contract on reasonable terms, the board may, pursuant to R.C. 517.13, appropriate lands for such purpose by proceedings in accordance with R.C. 163.01-.22, but the board may not, by such proceedings, appropriate more than ten acres.