

ecutor during any part of the latter's term was not effective and that no legal liability on the part of the county was thereby incurred.

Respectfully,
EDWARD C. TURNER,
Attorney General.

365.

APPROVAL, BOND FOR FAITHFUL PERFORMANCE OF DUTIES—
G. M. ANDERSON.

COLUMBUS, OHIO, April 21, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works,*
Columbus, Ohio.

DEAR SIR:—You have resubmitted for my consideration an official bond of G. M. Anderson, given in accordance with the requirements of Section 1182 of the General Code, for the faithful performance of his duties as Resident Deputy State Highway Commissioner.

To this bond is attached a certificate of the surety company to the effect that the person who signed said bond in behalf of said company is its attorney in fact, and is authorized to sign an official bond of this nature for the amount therein involved, binding upon said company.

It has been ascertained by this department that the said surety company is authorized to transact its business of fidelity and surety insurance in this state.

Finding said bond in proper legal form and properly executed, I have noted my approval thereon, and am returning the same herewith to you.

Respectfully,
EDWARD C. TURNER,
Attorney General.

366.

DEAD BODY—PAYMENT FOR BURIAL WHEN UNCLAIMED.

SYLLABUS:

When the dead body of a person is found in a township or municipal corporation and such person was not an inmate of a penal, reformatory, benevolent or charitable institution in this state, and the body is not claimed by any person for private interment at the expense of such person, or delivered for the purpose of medical or surgical study or dissection, if the deceased were a legal resident of the county, the proper officers of the township or corporation in which his body was found shall cause it to be buried at the expense of the township or corporation in which he had a legal residence at the time of his death.

COLUMBUS, OHIO, April 21, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your communication of recent date reading as follows:

"You are respectfully requested to furnish this department your written opinion upon the following:

Section 3476 of the General Code provides that the proper officers of a city shall care for the poor who are residents of the city and the proper officers of the township shall care for the poor who are residents of the territory outside of the city and this section is construed to mean that the township trustees are to care for the poor in the entire township including any village in the township but excluding any city.

Section 3495 of the General Code provides for the burial of dead bodies not claimed for private interment as follows: if the person were a legal resident of the county the proper officers of the township or corporation in which his body was found shall cause it to be buried at the expense of the township or corporation in which he had a legal residence at the time of his death. In case the body is that of a resident of a village is expense of the burial to be charged against the village or the township in which the village is situated?"

You further inform me that the village in question is an incorporated village.

The answer to your inquiry is found in Section 3495, General Code, which provides in part as follows:

*"When the dead body of a person is found in a township or municipal corporation, and such person was not an inmate of a penal, reformatory, benevolent or charitable institution, in this state, and whose body is not claimed by any person for private interment at his own expense, or delivered for the purpose of medical or surgical study or dissection in accordance with the provisions of Section 9984, it shall be disposed of as follows: If he were a legal resident of the county, the proper officers of the township or corporation in which his body was found shall cause it to be buried at the expense of the township or corporation in which he had a legal residence at the time of his death; * * *"* (Italics the writer's).

In your letter you mention Section 3476 of the General Code. A discussion of this section is unnecessary to determine the question that you present. I desire to call your attention to the fact that both sections appear in Title XI, Division IV of the General Code under the general title of "Charity" and as part of Chapter I entitled "Poor." Both sections were last amended on April 17, 1917, as part of the same act (108 O. L., Part I, 266).

It will be observed that Section 3476 uses the words "township" and "city" and where the words "municipal corporation" are used, the meaning thereof is restricted by the use of the word "such" and thereby limited to cities. Section 3495 uses the words "township" and "municipal corporation" and "corporation," and it is apparent that the legislature intended the words "municipal corporation" and "corporation" as used in this section to include both cities and villages as provided in Section 3497, General Code, which reads in part as follows:

*"Municipal corporations, which at the last federal census, had a population of five thousand or more, shall be cities. All other municipal corporations shall be villages, * * *"*

and not to limit the meaning of those words to "cities" as provided in Section 3476, General Code.

As stated in Sutherland on Statutory Construction at page 327:

"It is a familiar rule of construction, alike dictated by authority and

common sense, that common words are to be extended to all the objects which, in their usual acceptance, they describe or denote. * * * They should be construed according to the intent of the legislature which passed the act. * * * The words themselves do, in such case, best declare the intention of the legislature."

Section 3497, supra, divides all municipal corporations into cities and villages, and it is needless to cite authorities to the effect that an incorporated village is a municipal corporation. And since it is fundamental that the legislature is presumed to know existing statutes, and the state of law, relating to subjects with which it deals, the conclusion is inescapable that when the legislature used the term "municipal corporation" in Section 3495, supra, it intended such section to include all municipal corporations, both cities and villages. Especially is this true, when it is considered that in passing Section 3476, referred to in your letter, which is above stated was amended in the same act, the legislature specifically limited the provision of that section to "cities" alone.

In connection with your question your attention is directed to a former opinion of this office which appears in the Opinions of the Attorney General for 1921, Vol. I, page 332, the syllabus of which reads:

"Where an indigent person is a legal resident of the county, the expenses of the burial of such person should be paid by the township in which he had a legal residence at the time of his death; but if such person was also a legal resident of a municipal corporation, the expenses of his burial, should be paid by the municipal corporation and not by the township wherein such corporation is situate."

In that opinion Attorney General Price, after quoting Section 3495 of the General Code, used the following language:

"It will be observed that since the above amendment the county is liable for burial expenses only where the person * * * had no legal residence in the state, or his legal residence is unknown."

And "*if he were a legal resident of the county, the proper officers of the township or corporation in which his body was found shall cause it to be buried at the expense of the township or corporation in which he had a legal residence at the time of his death.*"

The question is as to the meaning of the matter in italics, when the indigent buried at public expense is found in a municipal corporation which is situate within a township (the boundaries of the municipal corporation not being co-extensive with the boundaries of the township. See Section 3512).

Two possible constructions present themselves. (1) That the sentence in question gives concurrent power to both the township and the municipal corporation to pay the burial expenses of the indigent. (2) That said sentence has the meaning it would have if phrased thus:

'If he were a legal resident of the county, the proper officers of the township in which his body was found (or, in case the body was found within a municipal corporation, then the proper officers of such corporation), shall cause it to be buried at the expense of the township in which he had a legal residence at the time of his death; but if such person was a legal resident of a municipal corporation, he shall in such case be buried at the expense of such municipal corporation and not of the township wherein such corporation is situate.'

The sentence in question being ambiguous, consideration may properly be given to the effects and consequences which follow from construing it in the one way or in the other, and that construction may be adopted which will best tend to make the same effectual. Black on Interpretation of Laws (2nd ed.), p. 100.

To say that both the township trustees and the officers of the municipal corporation have the *power* to pay the expenses of a pauper burial, falls short of providing effectively for their payment, for in such a matter the important thing is to know whose *duty* it is to pay.

Being impressed that the second of the two possible constructions, above suggested, makes for a more workable method in practice, it is my opinion that the same should be adopted."

While the specific question presented by you was not touched upon in the above opinion and while such opinion related to the *city* of Ashland, it is significant that no distinction was made therein with reference to cities and villages and that throughout the entire opinion, the Attorney General ignores the fact that Ashland was a *city* as distinguished from a *village*, and considers the statute then under construction (Section 3495) as applicable to all municipal corporations. The law in the syllabus and the whole discussion relates to municipal corporations, both cities and villages.

For the reason stated I am of the opinion that when the dead body of a person is found in a township or municipal corporation and such person was not an inmate of a penal, reformatory, benevolent or charitable institution, in this state, and the body is not claimed by any person for private interment at the expense of such person, or delivered for the purpose of medical or surgical study or dissection, if the deceased were a legal resident of the county, the proper officers of the township or corporation in which his body was found shall cause it to be buried at the expense of the township or corporation in which he had a legal residence at the time of his death.

In the specific case that you present I am of the opinion that inasmuch as the dead body was that of a person who was a resident of an incorporated village at the time of his death, the expense of his burial should be charged against such corporation and not against the township in which the corporation is situate.

Respectfully,

EDWARD C. TURNER,
Attorney General.

367.

LAND LEASES—MIAMI & ERIE CANAL, OHIO CANAL, LAKE ST. MARYS, INDIAN LAKE, BUCKEYE LAKE, PORTAGE LAKES "WEST RESERVOIR"—21 APPROVED—4 DISAPPROVED.

COLUMBUS, OHIO, April 21, 1927.

Department of Highways and Public Works, Division of Public Works, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your letter dated February 18, 1927, in which you inclose twenty-five leases hereinafter described, executed in triplicate, for my approval.