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1. CEMETERY—BOARD OF TRUSTEES—SECTION 759.36, R. C.—NOT A TAXING AUTHORITY—UNION CEMETERY—FORMED PURSUANT TO SECTION 759.27, ET SEQ., R. C.—NOT A TAXING UNIT WITHIN SECTION 5705.01, R. C.
2. UNION CEMETERY—PROVIDED BY MUNICIPAL CORPORATION AND TOWNSHIP—SECTION 759.27, ET SEQ., R. C.—LEGISLATIVE AUTHORITIES MAY LEVY TAXES WITHIN THEIR SUBDIVISIONS FOR MAINTENANCE AND OPERATION—LEVY AS PROVIDED IN CHAPTER 5705., R. C.

SYLLABUS:

1. A board of trustees of a cemetery formed pursuant to Section 759.36, Revised Code, is not a taxing authority, and the union cemetery created pursuant to Section 759.27, et seq., Revised Code, is not a taxing unit as defined in the tax levy law, Section 5705.01, Revised Code.

2. The legislative authorities of municipal corporations and boards of township trustees which have joined to provide a union cemetery pursuant to Section 759.27, et seq., Revised Code, have authority to levy taxes within their respective subdivisions for maintenance and operation of such cemetery, and the levy shall be made as provided in the tax levy law, Chapter 5705., Revised Code.

Columbus, Ohio, July 24, 1956

Hon. Harold D. Roth, Prosecuting Attorney
Wyandot County, Upper Sandusky, Ohio

Dear Sir:

I have before me your request for my opinion in regard to the authority of a union cemetery or a board of trustees formed pursuant to Section 759.27, et seq., Revised Code, to levy taxes for its operation. The request presents the following specific questions:

“1. Does the joint Board of Trustees of a Union Cemetery Association consisting of two townships and one municipality, fall within the definition of a subdivision or taxing authority so as to enable the Joint Board to pass a resolution to levy a tax outside the ten mill limitation?”

"2. In the event your answer to this question is negative, then how does each of the political subdivisions involved in a Union Cemetery arrange to provide for the necessary funds to operate the Union Cemetery and in what proportion should they pay?

"3. In the event you hold that each political subdivision must pass its own levy to secure the necessary funds for the Union Cemetery Assessment and the question of such a levy is defeated in one of the subdivisions, what action can a Joint Board take with reference to the non-contributing member?"

The basic question inherent in the problem here presented is the entity created or character of the association created by Section 759.27, et seq., Revised Code, for the purpose of organizing and maintaining a union cemetery. Section 759.27, Revised Code, reads:

"The legislative authorities of two or more municipal corporations, or of one or more municipal corporations and the boards of township trustees of one or more townships, when conveniently located for that purpose, may unite in the establishment and management of a cemetery, by the purchase or appropriation of land therefor not exceeding one hundred acres, to be paid for as provided by section 759.30 of the Revised Code."

Section 759.31, Revised Code, provides for the control and management of such a cemetery and reads in pertinent part:

"A cemetery owned in common as provided by section 759.27 of the Revised Code, 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. * * *."

Section 759.36, Revised Code, provides for the appointment of a board of cemetery trustees.

A consideration of this enabling legislation for the formation of a union cemetery requires the conclusion that these sections do not create a statutory district or political subdivision, or public corporation of any legal significance. These sections omit any conferment of corporate or governmental powers on the union cemetery board of trustees as such. It is the apparant purpose of these sections to create the authority in the cooperating municipal corporations and townships to acquire property

for such purpose, and delegate to a board of trustees of the cemetery certain ministerial duties required in the operation and maintenance of the cemetery. The ultimate authorities exercising any power or having any duties in regard to the operation of a union cemetery are the participating municipal corporations and townships.

The precise question presented relates to the authority and the procedure for the assessment and levy of taxes for the support of a union cemetery. Section 759.34, Revised Code, reads in so far as pertinent, as follows:

“In case of a union for cemetery purposes between a municipal corporation and a township as provided by section 759.27 of the Revised Code, the legislative authority of the municipal corporation and the board of township trustees shall have a joint meeting at the council-chamber of the municipal corporation, on the day of the first regular meeting of the legislative authority in the month of May each year, for the purpose of determining the rate of tax to be levied upon the taxable property of the municipal corporation and the township for such purposes. Upon the passage of a joint resolution by a majority of the members of the legislative authority and the board of township trustees, fixing the rate of taxation, the clerk of the municipal corporation shall certify such rate to the county auditor for assessment and collection. * * *.”

The sections relating to the formation of a union cemetery were enacted originally by the Fifty-eighth General Assembly, 66 Ohio Laws, 210, 213, and Section 759.34, *supra*, is in substantially the same form as originally enacted. It is apparent from this section that the authority to levy taxes is vested in the municipal corporations and townships which joined together to provide a union cemetery.

The Eighty-seventh General Assembly, 112 Ohio Laws, 391, enacted the tax levy law to provide a uniform procedure for the levy of taxes upon real and personal property by the political subdivisions therein named. Chapter 5705., Revised Code. Section 5705.01 (A), Revised Code, defines subdivisions in so far as pertinent to include municipal corporations and townships and, it is well to note, omits cemetery boards of trustees or union cemeteries. Section 5705.03, Revised Code, provides authorization for the levy of taxes by the taxing authority of each subdivision, and Section 5705.27, *et seq.*, Revised Code, set out the procedure by which the levy is accomplished. The issue thus presented is a matter of statutory construction required by the apparent conflict

between Chapter 5705., Revised Code, the tax levy law, and Section 759.34, Revised Code, *supra*, as to the levy of taxes for the maintenance of a union cemetery.

The rule is well accepted that a repeal by implication is not favored, and further such a construction will not be indulged if there is any other reasonable construction. As in other rules of construction, the purpose of the rule is to determine the intent of the legislature; thus where the statutes are in irreconcilable conflict, and it was the obvious intent of the legislature to enact a new law to replace the former enactment, the former statute will be considered repealed by implication.

In the instant situation I am of the opinion that the tax levy law does not affect the authority created in a municipal corporation or township to levy a tax for the maintenance of a union cemetery. The conflict which is presented by the two enactments relates to the *procedure* for the levy of the tax, and to this extent I am of the opinion that the tax levy law and the procedures there provided must be followed. It was the purpose of the legislature to provide a uniform procedure for the levy of taxes and budget procedure and, thus, Section 759.34, *supra*, in so far as a specific levy may be adopted and certified for collection to the auditor, is in irreconcilable conflict with the tax levy law and must be considered repealed.

There remains in Section 759.34, *supra*, the authority to levy a tax for such purpose and the requirement that the legislative authority of the participating municipal corporation and the trustees of a township meet for the purpose of adopting a tax levy. Although there is no authority to adopt such levy in the manner there provided, I am of the opinion that these subdivisions have authority to determine the amounts of money required to maintain the cemetery and the proportion of contribution by each subdivision. Such amount is thereupon reflected as an item of current expense in the tax budget of each subdivision prepared pursuant to Section 5705.28, Revised Code. The procedure for the approval of the budget by the budget commission and the ultimate levy of the tax is that provided in Section 5705.27, *et seq.*, Revised Code. By like token, if either subdivision cannot meet this obligation within the ten-mill limitation provided in Section 5705.02, Revised Code, the subdivision may proceed as provided in Section 5705.19, Revised Code, for the submission of the question as to a levy in excess of the ten-mill limitation.

The request suggests a possible situation in which one of the subdivisions would fail to secure sufficient funds to fulfill the obligation created pursuant to the joint action of the participating subdivision in determining the amount of money needed to maintain the union cemetery. The control and management of a union cemetery is firmly vested in the legislative authorities of the participating municipal corporations and the boards of trustees of the townships. Section 759.31, *supra*. Authority is vested in these participating bodies to make rules and regulations for the government of the cemetery, and provide for the application of all moneys, Section 759.35, Revised Code. I am, therefore, of the opinion that the solution of the problem presented by such a situation is within the discretion of these agencies and should be a matter of agreement between the agencies.

For these reasons I am of the opinion, and you are advised, that:

1. A board of trustees of a cemetery formed pursuant to Section 759.36, Revised Code, is not a taxing authority, and the union cemetery created pursuant to Section 759.27, *et seq.*, Revised Code, is not a taxing unit as defined in the tax levy law, Section 5705.01, Revised Code.

2. The legislative authorities of municipal corporations and boards of township trustees which have joined to provide a union cemetery pursuant to Section 759.27, *et seq.*, Revised Code, have authority to levy taxes within their respective subdivisions for maintenance and operation of such cemetery, and the levy shall be made as provided in the tax levy law, Chapter 5705., Revised Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General