

**OPINION NO. 65-146**

**Syllabus:**

1. A mausoleum in which members of the public are interred is a public cemetery or ground used for burial purposes within the meaning of Ohio law. (Informal Opinion No. 79, Informal Opinions of the Attorney General for 1963, approved and followed.)

2. Where the title or control of such a mausoleum located in the township is vested in an association or the trustees thereof, the board of township trustees has a duty pursuant to Section 517.27, Revised Code, to accept a conveyance thereof and to maintain and care for such mausoleum; funds available for cemetery purposes may be used for such care and maintenance.

3. Boards of township trustees are authorized by Sections 9.20 and 505.10, Revised Code, to accept a gift for the benefit of such mausoleum and to use the income or the principal or both as provided in those sections and in the terms of the gift. (Informal Opinion No. 13, Informal Opinions of the Attorney General for 1963, approved and followed.)

4. 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.

5. A board of township trustees has no authority under the law to expend public funds for the care and maintenance of a private mausoleum, but such board may proceed as directed by Section 517.21, Revised Code, in the event that the mausoleum has been abandoned or the board determines in the exercise of its sound discretion that further use for burial purposes will be detrimental to the public welfare or health.

---

**To: Chester W. Goble, Auditor of State, Columbus, Ohio**  
**By: William B. Saxbe, Attorney General, August 11, 1965**

Your request for my opinion reads:

"On July 7, 1962, the York Township Trustees, Athens County accepted conveyance of the Greenlawn Cemetery from the Greenlawn Cemetery Association presumably pursuant to the provisions of Section 517.27, R. C.

"On June 18, 1963, the York Township Trustees passed the following resolution:

"We the York Township Trustees of Athens County, Ohio accept the gift of the Crypt Owners Association of Nelsonville, Ohio of their part of Greenlawn Mausoleum, along with pertinent deeds, papers, bank statements, check books, bonds (negotiable) of \$2,100.00 and a cash balance of \$282.07.

"The monies will be kept in a special account called Perpetual Care Fund, for the Greenlawn Mausoleum and will be used along with monies duly appropriated from the York Township appropriation for the care and upkeep of the Mausoleum.

"The cash balance and the interest from the bonds will be used for the care and upkeep of said Mausoleum.

"The bonds will lie dormant, unless otherwise of necessity and through a regular vote of the York Township Trustees, the bonds (all or part) shall be deemed as needing to be used for the care and upkeep of Greenlawn Mausoleum."

"Your opinion is also requested concerning a second question. Some years ago a private company purchased lots in a township cemetery and constructed a mausoleum thereon. Crypts were sold to private individuals for burial therein. The mausoleum is now in a poor state of repair. Is there any duty either permissive or mandatory, on the part of the township trustees, to expend township funds to make repairs to the mausoleum if the company is still in existence but the funds set up in trust, for repair and maintenance of the mausoleum, have been exhausted.

"Finally, your opinion is requested concerning a third question. If there is situated in a township cemetery a private mausoleum, record of ownership of which cannot be located, may township funds be expended in rebuilding the mausoleum if the mausoleum is in such a poor state of repair that the bodies therein have become offensive, or, are the township trustees only authorized to inter the bodies as provided in Section 517.26, R. C.?"

The pertinent sections of Chapter 517, Revised Code, impose upon boards of township trustees many duties to establish, maintain, and care for cemeteries located within the unincorporated areas of townships. Your inquiry, however, is confined to the question of the right or duty of a board of township trustees to assume the responsibility of maintaining and caring for a mausoleum and to expend public funds for such purpose.

As I pointed out in Informal Opinion No. 79, Informal Opinions of the Attorney General for 1963, I find no express provision in the Ohio law which places upon a board of township trustees a duty to accept and care for a public mausoleum which is no longer under the supervision and care of a corporation formed for that purpose. I mentioned there that the words "cemetery" and "mausoleum" are not synonymous but that I could not say that public mausoleums are not burial grounds within the meaning of Chapter 517, Revised Code.

In that opinion I reached the following conclusion:

"1. A mausoleum in which members of the public have been interred and in which dead bodies remain is a public cemetery or ground used for burial purposes within the meaning of the Ohio law."

Reference was made in Informal Opinion No. 79, supra, to Opinion No. 643, Opinions of the Attorney General for 1959, page 335, in which the writer said this, at page 336:

"\* \* \* 'Burial purposes,' in the light of long continued practice, includes interment in a mausoleum, as well as in the ground."

I shall now examine the pertinent sections of the law relating to township cemeteries, as it is my opinion that such statutory provisions apply equally to public mausoleums.

You have asked whether the board of township trustees has the legal authority to accept the gift of the interest in the mausoleum and the fund for the care and upkeep thereof from the Crypt Owners Association. I shall first discuss the power of the board to accept the fund, and for this purpose I shall assume that the resolution of June 18, 1963, complies in all respects with the terms of the gift from the Association.

Boards of township trustees have express statutory authority to accept gifts in trust to be held in a permanent fund with the income to be used for the care of any burial lot designated by the donor. This is Section 517.15, Revised Code.

In this situation, however, it is possible that the fund may not be held as a permanent one with only the income used. By the terms of the resolution, all or some part of the principal may be expended for the upkeep of the mausoleum.

Both Sections 9.20 and 505.10, Revised Code, grant the authority to boards of township trustees to accept gifts for township use. In Informal Opinion No. 13, Informal Opinions of the Attorney General for 1963, I quoted as follows from Opinion No. 3237, Opinions of the Attorney General for 1934, page 1382:

"Where a gift of money is made to township trustees for a named township cemetery with no conditions attached thereto as to the particular uses for which the fund may be expended, such trustees may legally use the entire amount for the upkeep of the cemetery or for any improvement in connection with such cemetery, in their discretion."

In Informal Opinion No. 13, supra, I said this in conclusion:

"2. Sections 517.15, 505.10, and 9.20, Revised Code, authorize boards of township trustees to accept property by gift, devise, bequest, or otherwise and to use the income or the principal and the income as provided in those sections and in the terms of the gift; therefore the use of a gift made to a board of township trustees must be deter-

mined by the conditions or restrictions attached by the donor at the time of such gift."

In my opinion the board of township trustees clearly is authorized by law to accept the fund from the Crypt Owners Association and to use such fund in accordance with the terms of the gift and the resolution of acceptance.

It is my conclusion that by reason of Section 517.27, Revised Code, the board of township trustees had not only the power, but the duty, to accept the conveyance of the mausoleum formerly owned by the Crypt Owners Association. That section reads:

"When a public cemetery in a township is not under the control of a municipal corporation, and the title or control thereof is vested in an association or the trustees thereof, or is vested in a religious society, whether incorporated or not, or in the trustees thereof, and such cemetery is used exclusively for cemetery purposes, such association, society, or the trustees thereof may convey such grounds to the board of township trustees and its successors in office. Subject to the rights of the original grantor, his heirs or assigns, the board shall accept and take possession of such grounds, and take care of, keep in repair, hold, treat, and manage them in all respects as required by sections 517.01 to 517.32, inclusive, of the Revised Code."

In Opinion No. 1125, Opinions of the Attorney General for 1957, page 519, I referred to Opinion No. 37, Opinions of the Attorney General for 1937, page 17, and said this, as shown by the first paragraph of the syllabus:

"1. A board of township trustees is required under the provisions of Section 517.27, Revised Code, to accept the transfer of a cemetery by the trustees of a church or religious society, \* \* \*."

In Informal Opinion No. 13, supra, I reached this conclusion:

"1. Pursuant to Section 517.27, Revised Code, a board of township trustees is required to accept a conveyance of a public cemetery located in such township and used exclusively for cemetery purposes when the cemetery is not under the control of a municipal corporation and when the title or control of such cemetery is vested in an association or the trustees of an association."

It is my opinion that title to the mausoleum was vested in either the association or the trustees thereof, and it was the duty of the board of township trustees to accept such conveyance. Chapter 517, Revised Code, provides for the ex-

penditure of funds for the care of cemeteries under the control of boards of township trustees, and, to the extent necessary, cemetery funds may be used for the care and maintenance of this mausoleum.

In your second question you have described a situation in which a mausoleum where members of the public are buried is located on lots which are within the boundaries of a township cemetery, but both the lots and the mausoleum are owned by a private company. I must assume that by the designation "private company" you are referring to a corporation or association duly formed for cemetery purposes in accordance with Chapter 1721, Revised Code. You have said that this company is in existence, and I assume that the mausoleum is still technically under the control of such organization. This being true, I am aware of no statute which would authorize the board of township trustees to spend public funds to repair and maintain this mausoleum. The facts you have described do not bring this situation within the provisions of Section 517.10, Revised Code, which places very definite duties upon such boards. That section reads.

"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."

As long as this mausoleum is owned or under the care of an incorporated company or association, the title, right of possession, and control are not vested in the board of township trustees, and there is no authority for the expenditure of public funds for the repair and maintenance of this mausoleum. Such mausoleum is not under the jurisdiction of the board within the meaning of Section 517.11, Revised Code, which reads in part:

"The board of township trustees shall provide for the protection and preservation of cemeteries under its jurisdiction, and shall prohibit interments therein when new grounds have been procured for township cemeteries or burial grounds."

The syllabus of Opinion No. 2978, Opinions of the Attorney General for 1953, page 374, reads in part:

"3. The statutes impose no duty in the trustees of a township to take over or maintain an abandoned private family cemetery."

Although this quotation goes only to the question of the duty of a board of township trustees, in the discussion

at page 380 the writer mentioned the general legal principle that the expenditure of public funds must be confined to those purposes which are public.

In Opinion No. 232, Opinions of the Attorney General for 1959, page 130, it is said that a township may not expend its funds for the care and maintenance of a cemetery belonging to a village, and this statement appears at page 132:

"There is no provision in the law authorizing township trustees to expend township funds for the care of a cemetery owned by a city or village located within its limits; and bearing in mind that a public body such as a township, created by the General Assembly has only such powers as have been granted to it by statute, and such implied powers as are essential to carrying into effect the powers granted, it is evident that your first question must be answered in the negative."

See also Informal Opinion No. 493, Informal Opinions of the Attorney General for 1962.

Section 517.21, Revised Code, directs boards of township trustees as to the procedure to be followed when a public or private cemetery has been abandoned. That section reads in part:

"When any cemetery, public or private, has been abandoned, or when the board of township trustees, or the trustees or directors of a cemetery association, are of the opinion that the further use for burial purposes of any cemetery will be detrimental to the public welfare or health, and a cemetery in the near vicinity thereof is open for public use, such board or trustees or directors may order such cemetery to be discontinued, and provide for the removal of all bodies buried therein, for the removal of all stones and monuments marking the graves thereof, for the reinterment of such bodies, and for the reerection of such stones and monuments in suitable public ground in the near vicinity, all of which shall be paid for from the township treasury."

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

1. A mausoleum in which members of the public are interred is a public cemetery or ground used for burial purposes within the meaning of Ohio law. (Informal Opinion No. 79, Informal Opinions of the Attorney General for 1963, approved and followed.)

2. Where the title or control of such a mausoleum located in the township is vested in an association or the trustees thereof, the board of township trustees has a duty pursuant to Section 517.27, Revised Code, to accept a conveyance

thereof and to maintain and care for such mausoleum; funds available for cemetery purposes may be used for such care and maintenance.

3. Boards of township trustees are authorized by Sections 9.20 and 505.10, Revised Code, to accept a gift for the benefit of such mausoleum and to use the income or the principal or both as provided in those sections and in the terms of the gift. (Informal Opinion No. 13, Informal Opinions of the Attorney General for 1963, approved and followed.)

4. 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.

5. A board of township trustees has no authority under the law to expend public funds for the care and maintenance of a private mausoleum, but such board may proceed as directed by Section 517.21, Revised Code, in the event that the mausoleum has been abandoned or the board determines in the exercise of its sound discretion that further use for burial purposes will be detrimental to the public welfare or health.