

and transportation furnished thereto. I assume no offer was made to transport the pupils to Loudonville High School, hence no assignment of these pupils to Loudonville School would be effectual even though it had been formally made.

If the Lakeville school is four miles or less from the residence of these pupils, or if more than four miles from such residence and transportation be furnished thereto an effectual assignment of these pupils to Lakeville might be made, and if they thereafter choose to attend some school other than Lakeville the amount of tuition for such attendance chargeable to the local board would be based on the tuition incident to their attendance at Lakeville.

I am of the opinion that the board about which you inquire is liable for the tuition of the pupils in question to the Wooster Board of Education, the amount of which tuition should be computed by the method set out in Section 7747, General Code, provided of course due notice in writing was given to the clerk of the board of education of the name of the school to be attended and the date when such attendance was to begin in accordance with the terms of Section 7750, General Code.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2445.

**BANKRUPTCY—PRIORITY OF PERSONAL PROPERTY TAX OVER
CLAIMS OF GENERAL CREDITORS—SECTION 104, TITLE II, U. S.
CODE, DISCUSSED.**

SYLLABUS:

Under the provisions of Section 104 of Title II of the U. S. Code, personal property tax owing by a bankrupt has priority over the claims of the general creditors and is paid in full in advance of the payment of dividends to creditors.

COLUMBUS, OHIO, August 16, 1928.

HON. HENRY W. HARTER, JR., *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

“I would appreciate an opinion from your office with reference to the priority of personal property taxes. Take for example a case in bankruptcy where there is a large number of preferred claims and a large number of general creditors. Does the personal property tax come ahead of general creditors or are they paid pro rata with the claims of general creditors?”

We seem to have authority pointing both ways in this case and would appreciate your opinion.”

The answer to your question involves the consideration of the sections of the United States Code relating to bankruptcy. Title II of said Code provides for the procedure in bankruptcy. Section 102 of said title provides for the payment by the trustee of the actual and necessary expenses incurred by the officers in the administration of the estate. Section 103 of said title provides what debts may be proved and allowed against the bankrupt. Section 104 provides which claims shall have priority and reads in part as follows:

“(a) The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, State, county, district, or municipality in advance of the payment of dividends to creditors, and upon filing the receipts of the proper public officers for such payment he shall be credited with the amount thereof, and in case any question arises as to the amount or legality of any such tax the same shall be heard and determined by the court.”

It is therefore clear in the foregoing provisions that the personal property tax owing by a bankrupt has priority over the claims of the general creditors and is paid in full in advance of the payment of dividends to creditors.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2446.

CEMETERY—GROUNDS OUTSIDE MUNICIPALITY FORMERLY OWNED
BY RELIGIOUS SOCIETY NOW DEFUNCT—TITLE VESTS IN TOWNSHIP TRUSTEES.

SYLLABUS:

Where a religious society which owned and cared for public burial grounds in a township outside of the limits of any municipal corporation therein becomes wholly dissolved and extinct, such grounds, if the same be still used as a place of public burial, vest in the trustees of the township for burial purposes, under the provisions of Section 3451, General Code; and such trustees are authorized and required to keep such cemetery in repair out of the public funds of the township, as provided by Section 3453, General Code.

COLUMBUS, OHIO, August 16, 1928.

HON. OTTO J. BOESEL, *Prosecuting Attorney, Wapakoneta, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication, which reads in part as follows:

“We have located in the east part of our county, in Pusheta Township, a cemetery or public burial grounds, the title to which is in the name of a church organization. There are still located on said cemetery numerous bodies, and frequently burials are still made there.

The religious society that acquired this cemetery has long gone out of existence, no one now located in the vicinity of said cemetery being a member of said organization. Consequently, the cemetery is unkept and parties from said community have appealed to the prosecuting attorney with a view of having him take some action in the matter, as will insure the proper care of this cemetery.

In view of the fact that none of the members comprising said religious society are alive in this community, and the organization has not functioned for many years, the question arises, under what procedure can the trustees of Pusheta Township take possession of said premises and expend public funds to keep it in repair and free from weeds.”