

said six months' period should be continuous and the absence must be for six months in succession.

Respectfully,
GILBERT BETTMAN,
Attorney General.

812.

JOINT CEMETERY—MAINTAINED BY TRUSTEES OF TOWNSHIPS
PROPORTIONATELY THROUGH TAXATION—DUTIES ENFORCED
BY MANDAMUS.

SYLLABUS:

1. *In the event two or more townships are operating a joint cemetery under the provisions of Section 3456, General Code, proceeds held by any one of such townships arising from the sale of cemetery lots therein, shall be used by such township for the purpose of paying its proportionate share of improving and embellishing such grounds.*
2. *The trustees of each of such townships shall contribute their proportionate share of the cost of maintaining and keeping in good repair such grounds by taxation.*
3. *The above duties may be enjoined by a proceeding in mandamus brought by any one or more of such townships against the township trustees of any such township failing to perform such duties.*

COLUMBUS, OHIO, August 29, 1929.

HON. MICHAEL B. UNDERWOOD, *Prosecuting Attorney, Kenton, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“We beg to submit the following for your opinion:

For some years past, Marion, Cessna and Washington Townships, Hardin County, Ohio, have maintained, under Section 3456, G. C. of Ohio, and by virtue of a contract entered into by and between the trustees of said townships, a joint, or union cemetery, which cemetery is located in Cessna Township on or near the line between Marion and Cessna Townships.

The trustees of each of said townships have paid a proportionate part of the expenses of keeping up and maintaining said cemetery. All lots in said cemetery have been sold, and the money arising from said sales has been turned over in equal portions to the trustees of said townships.

In June of this year the trustees of Marion Township refused to pay anything, or do anything, further towards keeping up or maintaining said cemetery in the future, though the trustees of said Marion Township still hold said money so turned over to them, and the people of Marion Township still use said cemetery for burial purposes.

QUESTION: Can the trustees of Cessna Township compel the trustees of Marion Township to contribute anything towards keeping up and maintaining said cemetery?

What are the rights and remedies of the trustees of Cessna Township in the above matter?”

Section 3456, General Code, to which you refer, is as follows:

“Where a public burial ground located on or near a township line, is used

by the people of two or more townships for burying purposes, the trustees of such townships shall jointly take possession thereof, and take care of and keep it in repair, as in case of burial grounds belonging to a township. The trustees of each township shall levy needful taxes therefor, not to exceed in any year more than one-fourth of one per cent. Two or more townships may join in establishing and maintaining a cemetery, and for such purpose the trustees shall have the same powers, be governed by the same rules, and proceed in the same manner, as provided for municipal corporations and townships uniting for that purpose."

This section was considered in Opinion No. 462, under date of May 29, 1929, directed to the Bureau of Inspection and Supervision of Public Offices, copy of which is enclosed. As pointed out therein, the first part of Section 3456 provides for two or more townships jointly taking possession of a burial ground, whereas the last sentence thereof provides for the establishment of a joint cemetery as provided in Sections 4183, et seq., General Code. Your letter does not state whether or not the cemetery in question was a public burial ground jointly taken possession of by the three townships or whether such cemetery was established under the latter provisions of the section. As will be hereinafter discussed, however, the results appear to be the same in either case as far as the question submitted is concerned.

If the cemetery was a public burial ground, it is expressly provided that where the trustees of the townships have jointly taken possession thereof, they shall "take care of and keep it in repair, as in the case of burial grounds belonging to a township." Section 3449, General Code, makes provision for use of funds arising from the sale of lots of a burial ground belonging to a township. That section is as follows:

"The proceeds arising from the sale of such lots shall be used in improving and embellishing such grounds, and the trustees shall build and maintain proper and secure fences around all such cemeteries, to be paid for from the township funds."

The terms of this section are clear and unambiguous, and in my opinion, mandatory. Section 3453, General Code, provides as follows:

"The trustees shall inclose such burying grounds with a substantial fence or hedge, and keep them in good repair, and levy a tax for that purpose, not to exceed one-half of one mill in any one year, upon all the taxable property of the township."

It is manifest that ordinary maintenance which would be included within the keeping in good repair shall be paid for by taxation.

In the event the cemetery in question was established pursuant to the provisions of Sections 4183, et seq., General Code, being the sections referred to in the last sentence of Section 3456, consideration must be given to Section 4189, General Code, which is as follows:

"The cemetery so owned in common, shall be under the control and management of the trustees of the township or townships and the council of the municipal corporation or corporations and their authority over it and their duties in relation thereto shall be the same as where the cemetery is the exclusive property of a single corporation."

There can be no question but that the duties of the township trustees of each

township shall, under this section, be the same as when a cemetery is the exclusive property of a single township. These duties, as hereinabove indicated, are clearly defined in Sections 3449 and 3453, *supra*. Your attention is further directed to Section 3454, providing for the penalty for the failure to perform the duties imposed upon trustees under Section 3453, *supra*.

In the event the trustees of one of the townships operating and maintaining a joint cemetery under the provisions of Section 3456, *supra*, should refuse to contribute their proportionate share of funds received from the sale of lots therein for the purpose of improving and embellishing such grounds, or in the event such trustees should refuse to levy a tax for maintaining and keeping such grounds in good repair, I am of the view that an action in mandamus may be maintained to compel the appropriation of such funds as provided in Section 3449, *supra*, or to compel such trustees to levy a tax for the purposes set forth in Section 3453, *supra*. I am further of the view that, under authority of the case of *Wilson vs. Trustees of No. 16*, 8 Ohio, 175, wherein it was held that "Suits by quasi corporations, such as township trustees, are to be brought in the name of the corporation", such proceedings in mandamus may be brought in the name of one or more of such townships.

Specifically answering your question, I am of the opinion that in the event two or more townships are operating a joint cemetery under the provisions of Section 3456, General Code, proceeds held by any one of such townships arising from the sale of cemetery lots therein, shall be used by such township for the purpose of paying its proportionate share of improving and embellishing such grounds.

I am further of the opinion that the trustees of each of such townships shall contribute their proportionate share of the cost of maintaining and keeping in good repair such grounds by taxation, and that the above duties may be enjoined by a proceeding in mandamus brought by any one or more of such townships against the township trustees of any such township failing to perform such duties.

Respectfully,

GILBERT BETTMAN,
Attorney General.

813.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF JOHN HUBBARD IN
THE CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, August 29, 1929.

HON. CARL E. STEEB, *Business Manager, Ohio State University, Columbus, Ohio.*

DEAR SIR:—There have been submitted for my examination and approval, an abstract of title, warranty deed form and encumbrance estimate No. 5627, relating to the proposed purchase by the State of Ohio, of a certain parcel of land in the city of Columbus, Franklin County, Ohio, and more particularly described as being lot No. 12, of Critchfield & Warden subdivision of the south half of the north half of lot No. 278, of R. P. Woodruff's Agricultural College Addition as the same is numbered and delineated upon the recorded plat thereof of record in plat book No. 4, pages 234 and 235, Recorder's office, Franklin County, Ohio.

An examination of the abstract of title submitted shows that under date of June 30, 1911, one John Hubbard obtained a fee simple title to the above described premises, free and clear of all encumbrances by and through a deed executed to him by Albert E. Sartain, as sheriff of Franklin County, pursuant to an order of the Common Pleas Court of Franklin County in certain foreclosure proceedings there pending. Thereafter, on April 20, 1917, said John Hubbard entered into a certain land contract in