

OPINION NO. 73-049**Syllabus:**

1. A cemetery association, being a non-profit corporation, may terminate its existence as provided in R.C. 1702.47 through R.C. 1702.51.
2. Where a cemetery association transfers the cemetery to a board of township trustees, the board has a duty, pursuant to R.C. 517.27, to accept the conveyance and to maintain the care for the cemetery.
3. The cemetery association may transfer not only the cemetery property, but also the cash reserves retained, under R.C. 1721.06, for cemetery upkeep.
4. Application should be made to the court of common pleas for an order appointing the board of township trustees as a successor trustee of the cemetery funds.

To: Michael Nolan, Athens County Pros. Atty., Athens, Ohio
By: William J. Brown, Attorney General, May 22, 1973

I have before me your predecessor's request for my opinion, which reads as follows:

Your opinion is requested relative to a question we have about a cemetery association under Chapter 1721 of the Ohio Revised Code.

Some years ago, the Maplewood Cemetery Association was established in Trimble Township here in Athens County. This has been a very successful cemetery and at present, it has a cash reserve of approximately \$18,000.00. The Association desires to terminate its existence as a cemetery association and have the Trimble Township Trustees assume full control of the cemetery and, if possible, to assume the cash reserve to be used for preserving and maintaining this cemetery.

My questions are:

1. What are the steps necessary for the cemetery association to terminate its existence?
2. Can the Trimble Township Trustees assume full control of this cemetery?
3. Can the cash reserve now held by the Association be transferred to the Trustees?
4. What is the procedure for doing so?

I shall deal with your first two questions in reverse order. The transfer of a public cemetery to a board of township trustees is authorized by R.C. 517.25 which provides:

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 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. (Emphasis added.)

This Section has been interpreted by my predecessors to mean that a board of township trustees is required to accept a transfer of a public cemetery from a private cemetery association. Opinion No. 66-163, Opinions of the Attorney General for

1966; Opinion No. 13, Opinions of the Attorney General for 1937; Opinion No. 65-146, Opinions of the Attorney General for 1965. In branch 2 of the syllabus of this last Opinion my predecessor held:

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

Further, the syllabus in Opinion No. 66-163, supra, held that:

2. The board of township trustees is required under the provisions of Section 517.27, Revised Code, to accept a transfer of a public cemetery from a private cemetery association, and Section 517.04, Revised Code, does not require the board of township trustees to submit the question of acceptance to the electors.

Since your question is not concerned with the establishment of a cemetery, but rather with the transfer of one already in existence, there is no requirement that the matter be submitted to the electorate under R.C. 517.04.

I conclude, therefore, that a private cemetery, such as the one you describe, may be transferred to a board of township trustees without the submission of the question to the electorate.

The answer to your first question, i.e. how the association may terminate its existence after transferring the cemetery to the township, is to be found in R.C. Chapter 1702 which deals with non-profit corporations.

A cemetery association is clearly a corporation not for profit, for all its income is to be devoted solely to cemetery purposes under R.C. 1721.06 which provides:

After paying for its land, a cemetery company or association shall apply all its receipts and income, whether from sale of lots, from donations, or otherwise, exclusively to laying out, preserving, protecting, and embellishing the cemetery and avenues within it or leading to it, to the erection of buildings necessary for cemetery purposes, and to paying the necessary expenses of the cemetery association. No debts shall be incurred by such company or association except for purchasing, laying out, inclosing and embellishing the ground, buildings necessary for cemetery purposes, and avenues, for which purposes it may contract debts to be paid out of future receipts.

No part of the funds of a cemetery association, or of the proceeds of land sold by it,

shall ever be divided among its stockholders or lot owners, and all its funds must be used exclusively for the purposes of the company or association as specified in this section, or invested in a fund the income of which shall be used and appropriated.

See also Snyder v. Memorial Park, 135 Ohio St. 632 (1939); Newell v. Cemetery Association, 135 Ohio St. 657 (1935); Opinion No. 817, Opinions of the Attorney General for 1951.

Provision for the voluntary dissolution of non-profit corporations is to be found in R.C. 1702.47-1702.51. These Sections are quite specific in describing the procedure to be followed. See, especially, R.C. 1702.47 (D), (E), (F), (G), and (H).

The answers to your questions as to the disposition of the \$18,000 cash reserve have already been foreshadowed by the quotation of R.C. 1721.06. That Section provides that a cemetery association "shall apply all its receipts and income, whether from sales of lots, from donations, or otherwise, exclusively" to the upkeep of the cemetery. The cash reserve is, therefore, held in trust for cemetery purposes, and it must be transferred, along with the cemetery, to the board of township trustees. See Opinion No. 65-146, *supra*, and Opinion No. 3237, Opinions of the Attorney General for 1934. One of my predecessors, with whom I agree, has held that, in view of the trust relationship involved, application should be made to the court of common pleas to have the board of township trustees appointed as successor trustee of the cemetery funds. Opinion No. 817, Opinions of the Attorney General for 1951.

In specific answer to your questions it is my opinion, and you are so advised, that:

1. A cemetery association, being a non-profit corporation, may terminate its existence as provided in R.C. 1702.47 through R.C. 1702.51.
2. Where a cemetery association transfers the cemetery to a board of township trustees, the board has a duty, pursuant to R.C. 517.27, to accept the conveyance and to maintain and care for the cemetery.
3. The cemetery association may transfer not only the cemetery property, but also the cash reserves retained, under R.C. 1721.06, for cemetery upkeep.
4. Application should be made to the court of common pleas for an order appointing the board of township trustees as a successor trustee of the cemetery funds.