

1967.

CEMETERY—LOCATED OUTSIDE MUNICIPALITY AND WITHOUT ANY OWNERSHIP—TITLE VESTED IN TOWNSHIP TRUSTEES.

SYLLABUS:

The title to a public burial ground located without the corporate limits of any city or village not 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 city or village, which has been used by the public as a burial ground, is vested in the trustees of the township where located.

COLUMBUS, OHIO, June 11, 1930.

HON. C. G. L. YEARICK, *Prosecuting Attorney, Newark, Ohio.*

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

“The following question has arisen in this county as to a public cemetery located near Hebron, Ohio. The property, ownership of which is unknown, is now in charge of trustees who are acting voluntarily with the consent of the township trustees and the village council. The council of the village desires that the ownership of the cemetery be definitely settled. The records in the county recorder’s office have been thoroughly searched, but no deed can be found showing any transfer to a cemetery association or church. Under these circumstances our question is whether or not the title to this cemetery would automatically vest in the township trustees.

We wish to know if, in your opinion, Section 3451 of the General Code automatically vests title and control in the township trustees.”

Section 3451, General Code, to which you refer, provides:

“The title, right of possession and control to and in all public graveyards and burial grounds located without the corporate limits of any city, or village, which have been set apart and dedicated as public graveyards or burial grounds, and grounds which have been used as such by the public, but not expressly dedicated, 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 city, or village, shall, severally be vested in the trustees of the township where located.”

You advise that the cemetery in question is located near Hebron, Ohio, and I, therefore, assume it is located without the corporate limits of the municipality. It is observed that one of the conditions precedent to the title vesting in the township trustees under Section 3451, *supra*, is that the cemetery or burial ground be not under the control of the authorities of any city or village. In your letter you state that the cemetery in question is in charge of trustees who are acting with the consent of the township trustees and the village council. From this statement of facts, there is nothing to indicate the cemetery is under the control of the authorities of the village.

Under these circumstances, it is my opinion that the foregoing section is dispositive of your inquiry and that the title to the cemetery in question is vested in the township trustees.

Respectfully,

GILBERT BETTMAN,
Attorney General.