

1474.

APPROVAL, BONDS OF MANTUA VILLAGE SCHOOL DISTRICT, PORT-
AGE COUNTY—\$90,000.00.

COLUMBUS, OHIO, January 31, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1475.

CITY CEMETERY—AUTHORITY OF MUNICIPALITY TO CREATE
TRUST FUND FOR MAINTAINING CEMETERY AND REQUIRE
THAT PORTION OF MONEY FROM LOT SALES BE DEPOSITED
IN SUCH FUND—ORDINANCE PERMITTING SERVICE DIRECTOR
TO INVEST FUNDS ILLEGAL.

SYLLABUS:

1. *Council of a municipality may, by ordinance, create a trust fund for the permanent maintenance and upkeep of a municipal cemetery and provide that a portion of the funds received from the sale of lots in such cemetery shall be deposited in such fund.*

2. *A city may not, by ordinance, provide that the director of public service may invest trust funds for the permanent maintenance and upkeep of a city cemetery in view of the express provision of Section 4169, General Code, that such funds shall be invested by council.*

COLUMBUS, OHIO, January 31, 1930.

HON. ISAAC E. STUBBS, *Prosecuting Attorney, Cambridge, Ohio.*

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

“I am enclosing herewith papers handed me by the mayor of the city of Cambridge, on which I have been requested to render an opinion or secure an opinion from your office as to the legality of the enclosed ordinance. The solicitor of said city at the time of the passing of this was incapacitated by sickness from attending to his duties.”

Enclosed with your letter is the following ordinance:

“ORDINANCE NO. 1885.

An ordinance to create a trust fund for the permanent maintenance and upkeep of Northwood Cemetery of the city of Cambridge, Ohio—

BE IT ORDAINED by the council of the city of Cambridge, Ohio:

SECTION 1. That it is deemed necessary to create a trust fund for the permanent maintenance and upkeep of Northwood Cemetery, of the city of Cambridge, Ohio.

SECTION 2. That for the purpose of creating such trust fund for the permanent maintenance and upkeep of Northwood Cemetery, the director

of public service of the city of Cambridge, Ohio, each year shall set aside and place in a separate fund ten per cent of the sale price of each and every cemetery lot hereafter sold in Northwood Cemetery and which said fund shall be designated as "The Northwood Cemetery Permanent Maintenance and Upkeep Fund" and such fund so created and any interest therefrom shall be used for the sole purpose of the permanent maintenance and upkeep of said cemetery and for no other purpose.

SECTION 3. That out of the funds derived from lots heretofore sold in said cemetery, there be and hereby is set aside for said trust fund the sum of one thousand dollars (\$1,000.00) in lieu of the percentage of the sale price of such lots heretofore sold.

SECTION 4. Said fund so created and interest therefrom shall be paid out by the director of public service, only when and as there are no other funds derived from other sources available for the proper maintenance and upkeep of said cemetery. The director of public service may, from time to time, invest any such funds in his hands in bonds or notes of the city of Cambridge, Ohio, or any other security which may be allowed by law and approved by the council of the city of Cambridge, Ohio.

SECTION 5. That any ordinance or part of ordinance in conflict herewith be and the same hereby is repealed.

SECTION 6. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed in council this 7th day of October, 1929."

Section 4166, General Code, in reference to the sale of lots in a city cemetery, is as follows:

"No more shall be charged for lots than is necessary to reimburse the corporation for the expense of lands purchased or appropriated for cemetery purposes, and to keep in order and embellish the grounds, and provision shall be made for the interment in such cemetery of persons buried at the expense of the corporation."

The proceeds from the sale of cemetery lots are, under this section, to be used not only to reimburse the corporation for the cost of the acquisition thereof, but to keep such lots in order and to embellish the grounds. In Opinion No. 1167, rendered under date of November 8, 1929, to the Bureau of Inspection and Supervision of Public Offices, copy of which is enclosed, after quoting Sections 4166 and 4167, General Code, it is stated:

"It is evident that, although there may be considerable latitude as to how funds received from the sale of cemetery lots may be expended, nevertheless it is clearly contemplated that such expenditures shall be for the general maintenance and embellishment of the cemetery grounds."

Section 4168, General Code, provides that the director of public service shall in the by-laws and regulations "declare the amount of money he will accept by agreement, gift, devise, bequest or otherwise and hold as a permanent fund of the cemetery." Section 4169, General Code, provides that the director shall turn over to council such money as may thereafter come to him for a permanent fund.

Upon a consideration of these statutes, I have no difficulty in reaching the conclusion that the council of a municipality may, by ordinance, create a trust fund

for the permanent maintenance and upkeep of a municipal cemetery and provide that a portion of the funds received from the sale of lots in such cemetery shall be deposited in such fund.

Section 4 of the ordinance submitted contains the provision that the director of public service shall, under certain circumstances as therein set forth, pay out these trust funds. In this connection, your attention is directed to Section 5625-33, General Code, providing that no subdivision shall "make any expenditure of money unless appropriated as provided in this act", the reference being, of course, to the Budget Law.

Section 4 of the ordinance contains the further provision that the director of public service may invest the trust fund under consideration. In this connection, your attention is directed to Section 4169, General Code, which provides in part as follows:

" * * * * * The council and its successors shall invest and keep invested such funds in interest bearing debts of the city, if any, and if no such debts are owing by the city, in safe interest bearing bonds, or stocks for the benefit of such cemetery funds, that will bear as great an income as possible, and all such money and the income thereof shall be exempt from taxation, the same as other cemetery property."

I am of the opinion that a city may not, by ordinance, provide that the director of public service may invest trust funds for the permanent maintenance and upkeep of a city cemetery in view of the express provision of Section 4169, General Code, that such funds shall be invested by council.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1476.

COUNTY COMMISSIONERS—UNAUTHORIZED TO CANCEL ASSESSMENTS LEVIED TO PAY PART OF COST OF STATE HIGHWAY WHEN BONDS ISSUED.

SYLLABUS:

After a board of county commissioners has levied assessments against abutting property to pay a part of the cost of a state highway and has issued bonds in anticipation of the collection of such assessments, such board of county commissioners has no authority to cancel and set aside such assessments.

COLUMBUS, OHIO, February 1, 1930.

HON. EMERSON C. WAGNER, *Prosecuting Attorney, New Lexington, Ohio.*

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

"Would you please give me your opinion upon the following question:
Can the board of county commissioners cancel and set aside special assessments heretofore made against abutting property owners on an inter-county highway, when bonds have been issued?"