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CEMETERY TRUSTEES, BOARD—UNION CEMETERY—ELECTED AS PROVIDED IN SECTION 759.36 RC—BOARD CUSTODIAN OF FUNDS RAISED BY TAX LEVY, SECTION 759.34 RC—SUCH FUNDS SHOULD BE PAID DIRECTLY TO BOARD BY COUNTY TREASURER UPON WARRANT OF COUNTY AUDITOR—SECTION 321.31 RC.

SYLLABUS:

Where a board of cemetery trustees for a union cemetery has been elected as provided in Section 759.36, Revised Code, such board is the custodian of the funds raised by the tax levy provided for in Section 759.34, Revised Code, and such funds should be paid directly to such board by the county treasurer upon warrant of the county auditor as provided in Section 321.31, Revised Code.

Columbus, Ohio, December 22, 1955

Hon. Danny D. Johnson, Prosecuting Attorney
Tuscarawas County, New Philadelphia, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“There are several Union Cemetery Boards organized under Section 759.27 et seq of the Revised Code of Ohio and in Tuscarawas County there are several active operating levies. These Union Cemeteries are being supported by a uniform levy throughout the township. The Bureau of Inspection and Supervision take the stand that the funds should be paid and are to be paid from the Auditor directly to the Cemetery Board. The question which has been asked of me, should the County Auditor disburse directly to the Cemetery Board or to the Mill Township Trustees who in turn disburse to the Cemetery Board?”

Because you refer in your inquiry to the “Cemetery Board” I assume that the “board of union cemetery trustees,” constituted as provided in Section 759.31, Revised Code, has acted to elect a “board of cemetery trustees” of three members as authorized in Section 759.36, Revised Code. In such case it would seem that the following provision in the latter section would be applicable:

“The board of cemetery trustees so elected shall have the custody of the funds derived from the tax levy provided by section 759.34 of the Revised Code, and the political subdivisions shall pay such funds to the board of cemetery trustees upon its application therefor. * * *”

As a purely technical matter, this provision suggests the necessity of payment of the funds here in question initially to the “political subdivisions” concerned, but it is plainly made mandatory that the cemetery trustees have “custody” of them and that if payment were made to the subdivisions the offices thereof would be under the immediate duty of thus paying them over. In this connection we may note also the following provision in Section 321.31, Revised Code:

“Immediately after each settlement with the county auditor, on demand, and on presentation of the warrant of the auditor therefor, the county treasurer shall pay to the township clerk, treasurer of a municipal corporation, the clerk of the school district, or the treasurer of any board authorized by law to receive the funds or proceeds of any special tax levy, or other properly designated officers delegated by the boards and subdivisions to receive such funds or proceeds, all moneys in the county treasury belonging to such boards and subdivisions.”

Here we are concerned with (1) the proceeds of a special tax levy and (2) a board authorized by law to receive such proceeds. These provisions, considered in relation to the language above noted in Section 759.36, Revised Code, make it clear that the somewhat ambiguous provisions in the latter section, if interpreted to require a payment to the subdivisions and immediate payment by them to the cemetery trustees, would require the doing of a vain and useless thing. Where such ambiguity exists it is appropriate to apply the maxim that the law does not require the doing of an idle thing and that ambiguous language should be so interpreted as to avoid that result. For these reasons, in specific answer to your inquiry, it is my opinion that where a board of cemetery trustees for a union cemetery has been elected as provided in Section 759.36, Revised Code, such board is the custodian of the funds raised by the tax levy provided for in Section 759.34, Revised Code, and such funds should be paid directly to such board by the county treasurer upon warrant of the county auditor as provided in Section 321.31, Revised Code.

Respectfully,
C. WILLIAM O'NEILL
Attorney General