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CEMETERY — VILLAGE OWNING CEMETERY NOT CONNECTED WITH TOWNSHIP OR OTHER CEMETERY ASSOCIATION — MAY LEVY TAX ON PROPERTY OF SUCH VILLAGE FOR CEMETERY PURPOSES — WHERE PROPOSAL SUBMITTED TO VOTE OF ELECTORS — MUST BE AT NOVEMBER GENERAL ELECTION — SECTION 5625-17 G. C. — SPECIAL OR PRIMARY ELECTION — ANY TIME IN YEAR 1944 — AMENDED SENATE BILL 69, 95 GENERAL ASSEMBLY.

SYLLABUS:

A village owning a cemetery not connected in any way with the township or other cemetery association may levy a tax on the property of such village for cemetery purposes, and in case a proposal to levy such tax is submitted to a vote of the electors the same must pursuant to Section 5625-17, General Code, be submitted at the general election held in November. Provided, that at any time during the year 1944 such submission may be made at a special or primary election as provided in Amended Senate Bill No. 69 passed by the 95th General Assembly.

Columbus, Ohio, March 1, 1944

Hon. Leo E. Carter, Prosecuting Attorney
Caldwell, Ohio

Dear Sir:

I acknowledge receipt of your communication requesting my opinion reading as follows:

“I have been requested by the village officials to ask your opinion as to whether villages may levy a tax on the property owners of a village for cemetery purposes by a vote of the people, in cases where the entire legal title to the cemetery belongs to the village alone and is not connected in any way with a township or any other cemetery association.

Also, if you find that a levy can be made, can the vote be taken at any election other than at a general election in November?”

Among the general powers of municipalities as found in the General Code is the power to establish cemeteries and crematories. This power is

set forth in Section 3622, General Code, which reads as follows:

“To provide public cemeteries and crematories for the burial or incineration of the dead and to regulate public and private cemeteries and crematories.”

Section 3677, General Code authorizes municipal corporations to appropriate real estate for the establishment of such cemeteries and crematories.

Section 3678, General Code makes certain restrictions as to the location of property which may be appropriated or purchased for cemeteries, with respect to its proximity to residence property.

Sections 4154 to 4159, General Code apply generally to cemeteries established either within or without the corporation by cities and villages.

Section 4179, General Code provides in effect that property in a village in which there is a village owned cemetery shall be exempt from taxation for the maintenance of cemeteries or for the purchase of a hearse or vault which are under the superintendence of the township trustees and for the use of the township exclusive of the village.

Section 4180, General Code makes special provision for the levy of a tax by a village for the purchase of a hearse or the construction of a vault for the dead, such tax to be levied only pursuant to a vote of the electors of the corporation at a general election.

Coming then to the power of a municipality to levy a tax for the acquisition and maintenance of a cemetery, we find in Section 5625-3, General Code general authority for the levy of taxes for the acquisition of permanent improvements generally, as well as for the current operating expenses of the municipality. This section reads in part as follows:

“The taxing authority of each subdivision is hereby authorized to levy taxes annually, subject to the limitation and restrictions of this act (G. C. Secs. 5625-1 to 5625-39), on the real and personal property within the subdivision for the purpose of paying the current operating expenses of the subdivision and the acquisition or construction of permanent improvements. * * *”

There is no doubt but that a cemetery is one of the “permanent improvements” which a municipality is authorized to acquire and which is contemplated by the section last above quoted. There is further explicit recognition of the right to levy a tax for cemetery purposes in Section

5625-12, General Code which relates to the creation of special funds arising from the levy of taxes, and provides:

“Without prejudice to the generality of the authority to create other special funds with the approval of the bureau, a municipality may establish in the manner provided by law, a firemen’s pension fund, a firemen’s indemnity fund, a police relief fund, a sanitary police pension fund, or a cemetery fund; and a township may establish by law a cemetery fund.”

Taxes for the purpose of acquiring and maintaining cemeteries may be levied by the council of a village without submitting the matter to a vote of the people so long as the village is able to keep the total of all levies within the ten mill limitation imposed by Article XII, Section 2 of the Constitution and Section 5625-2 of the General Code. If it is necessary to exceed that limitation, authority is found in Section 5625-15, General Code for the submission to the electors of a proposition to levy taxes for certain purposes. The purposes listed in the section include among others:

“1. Current expenses of the subdivision. * * *

6. For the construction or acquisition of any specific permanent improvement or class of improvements which the taxing authority of said subdivision may include in a single bond issue.”

Section 5625-17, General Code provides in part as follows:

“A copy of any resolution adopted as provided in section 5625-15 of the General Code shall be certified by the taxing authority to the board of deputy state supervisors and inspectors of election for the proper county or counties prior to September 15th in any year, and said board shall submit the proposal to the electors of the subdivision at the succeeding election. * * *”

It will be noted that there is no provision here for submission at any other time than at the November election, which would include either the election for state and county officers held in the even numbered years or the election for municipal and township officers held in the odd numbered years.

Section 5625-18, General Code provides in part as follows:

“If the majority of the electors voting on a levy for the current expenses of schools or of municipal universities or sixty-five per centum of the electors voting upon a levy for any other purpose, at such election vote in favor thereof, the taxing authority of said subdivision may levy a tax within such subdivision at the additional rate outside of the ten mill limitation during the period

and for the purposes stated in the resolution, or at any less rate, or for any of said years or purposes; * * *”

As a temporary emergency measure, however, the 95th General Assembly passed Amended Senate Bill No. 69, which provides in part as follows:

“Sec. 1. At any time prior to the thirty-first day of December, 1944, the taxing authority of any subdivision, by a vote of two-thirds of all of its members, may declare by resolution that the amount of taxes which may be raised within the ten mill limitation by levies on the current tax duplicate will be insufficient to provide an adequate amount for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the purposes in section 5625-15 of the General Code, or to supplement general fund appropriations for one or more of the following purposes: relief, welfare, hospitalization, health, and support of general or tuberculosis hospitals, and that the question of such additional tax levy shall be submitted to the electors of the subdivision at a special or primary election to be held at a time therein specified, however, no more than one such special election shall be held in any one year. Such resolution shall conform to the requirements of section 5625-15 of the General Code, excepting that such levy may not be for a longer period than two years and such resolution shall specify the date of holding such special or primary election, which shall not be earlier than twenty-five days after the adoption and certification of such resolution nor later than one hundred and twenty days thereafter. Said resolution shall go into immediate effect upon its passage and no publication of the same shall be necessary other than that provided for in the notice of election. A copy of such resolution shall, immediately after its passage, be certified to the board of elections of the proper county or counties in the manner provided by section 5625-17 of the General Code, and the provisions of said section shall govern the arrangements for the submission of such question and other matters and things with respect to such election, to which said section 5625-17 of the General Code refers, excepting that such election shall be held on the date specified in the resolution, provided, however, that no special election shall be held during the ten days preceding Easter Sunday, Thanksgiving Day or Christmas day in any year. Publication of notice of such election shall be required to be made in one or more newspapers of general circulation in the county once a week for four consecutive weeks. * * *

All provisions of the General Code in so far as they conflict with the provisions of this act are suspended for the period ending December 31, 1944, otherwise they shall in no manner be impaired by the passage of this act. * * *”

While it might appear from the opening sentence of this act that the resolution providing for the submission might be passed as late as

December 30, 1944, and the election held at a later date, an examination of the entire act, including the emergency section leads to the conclusion that it was the intention of the Legislature to authorize elections to be held only during the years 1943 and 1944. The emergency declaration reads in part as follows:

“The reason for such necessity lies in the fact that it is necessary that opportunity be afforded the political subdivisions of this state to submit questions of levying additional taxes at special elections to be held in 1943 and 1944. Therefore this act shall go into immediate effect.”

It appears, therefore, and in specific answer to your question it is my opinion that a village owning a cemetery not connected in any way with the township or other cemetery association may levy a tax on the property of such village for cemetery purposes, and that in case a proposal to levy such tax is submitted to a vote of the electors the same must pursuant to Section 5625-17, General Code, be submitted at the general election held in November. Provided, that at any time during the year 1944, such submission may be made at a special or primary election as provided in Amended Senate Bill No. 69 passed by the 95th General Assembly.

Respectfully,

THOMAS J. HERBERT
Attorney General