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MEMORIAL — TOWNSHIP TRUSTEES — AUTHORITY TO ERECT MEMORIAL, USING AVAILABLE FUNDS—NEED NOT FIRST SUBMIT QUESTION OF TAX LEVY IN EXCESS OF TEN MILL LIMITATION TO ELECTORS—STATUS AS TO ELECTION THEREFORE HELD ON QUESTION—SECTION 3059 G. C.

SYLLABUS:

Under the provisions of Section 3059, General Code, township trustees have authority to cause a memorial to be erected using available funds therefor, without first submitting to the electors of such township the question of levying a tax for such purpose in excess of the ten mill limitation, and regardless of the result of any election theretofore held on such question.

Columbus, Ohio, January 24, 1952

Hon. Charles H. Anderson, Prosecuting Attorney
Trumbull County, Warren, Ohio

Dear Sir :

This will acknowledge receipt of your letter of recent date, which reads as follows :

"We have been requested by the Township Trustees of H. Township to advise concerning their authority under General Code Section 3059 as to whether the township trustees may expend money which they have available for the purpose of erecting a memorial.

"At the last general election the question was submitted to all of the electors of H. Township and the issue was resolved in the negative. We would, therefore, like to have your opinion as to whether or not the township trustees may expend money which they have available, without the necessity of a tax levy."

Section 3059, General Code, to which you refer, provides as follows:

"The taxing authority of any township, municipality or county at any time not less than thirty days prior to a general election in any year, by vote of two-thirds of all members of the taxing authority, may, and upon presentation to the clerk of said taxing authority of a petition signed by not less than two per cent of the electors of the political subdivision, as shown at the preceding general election held therein, *shall, declare by resolution that the amount of taxes which may be raised within the ten mill limitation will be insufficient to provide an adequate amount for the necessary requirements of such subdivision and that it is necessary to levy a tax or taxes in excess of such limitation for either or both of the following purposes:*

"A. For purchasing a site, erecting, equipping and furnishing, or for establishing a memorial to commemorate the services of all members and veterans of the armed forces of the United States.

"B. For the operation and maintenance of a memorial, and the functions related thereto.

"Such resolution shall be confined to the purpose or purposes hereinabove set forth and shall specify the amount of increase in rate which it is necessary to levy, the purpose thereof and the

number of years during which such increase shall be in effect, which may or may not include a levy upon the tax duplicate of the current year. The number of years shall be any number not exceeding ten. The question of an increase in tax rate under paragraphs A and B of this section may be submitted on one ballot.

“The total tax for the purpose included herein shall not in any year exceed one mill of each dollar of valuation.

“Such 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.” (Emphasis added.)

As I read the emphasized portion of Section 3059, *supra*, the only instance in which the question of erecting a memorial is to be submitted to the electors of a township or county, etc., as the case may be, is where sufficient funds are not available from the general tax levy to meet the necessary requirements of such memorial and an additional tax exceeding the ten mill limitation is necessary for this purpose. I think the legislature has clearly indicated by this section that if there are sufficient funds available from the general fund, the township trustees may authorize the erection of a memorial without submitting the question to the vote of the members of the township. This interpretation is borne out by Section 3061-1, General Code, which authorizes the taxing authority of a township, etc., to appoint a board of memorial trustees to determine the estimated cost of an appropriate war memorial and to make other recommendations as circumstances may dictate. It is provided in part therein :

“Such board of trustees shall formulate specific plans for the erection of such war memorial, or alternate plans, as circumstances dictate and obtain estimates of the cost of the completed project, and all other information and data reasonably necessary to advise the residents of the appropriate subdivision as to the proposals of the board of trustees, either as an incident to an election for the voting of a tax levy, or authorizing a bond issue, or both, for the purpose of erecting the same, or *for the information of the appropriating authority in the event that the funds are available without a bond issue or additional tax levy.*”

(Emphasis added.)

If as you have indicated in your request, there were sufficient funds available for the purpose of erecting a memorial, without an additional

tax levy beyond the ten mill limitation, subsequent to the submission of the question to a vote of the electors, I think the township trustees have authority to cause a memorial to be erected notwithstanding the outcome of the previous vote. This is so whether the funds were made available by a change in the plans for the memorial or by subsequent additions to the general fund.

In specific answer to your question, therefore, it is my opinion and you are advised that under the provisions of Section 3059, General Code, township trustees have authority to cause a memorial to be erected using available funds therefor, without first submitting to the electors of such township the question of levying a tax for such purpose in excess of the ten mill limitation, and regardless of the result of any election theretofore held on such question.

Respectfully,

C. WILLIAM O'NEILL
Attorney General