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PARKS, CEMETERIES, BURIAL GROUNDS—AUTHORITY OF TOWNSHIP TRUSTEES—PRESCRIBED AND LIMITED BY STATUTE—TO ACQUIRE LAND BY DEED OF GIFT OR OTHERWISE THE STATUTORY CONDITIONS, LIMITATIONS AND RESTRICTIONS MUST BE OBSERVED—TRUST FUND.

## SYLLABUS:

The authority of township trustees with respect to parks, cemeteries and burial grounds is prescribed and limited by statute, and in acquiring land by deed of gift or otherwise for such purposes the statutory conditions, limitations and restrictions relating thereto must be observed.

Columbus, Ohio, November 14, 1947

Hon. Carl Abaecherli, Prosecuting Attorney, Warren County  
Lebanon, Ohio

Dear Sir:

This will acknowledge receipt of your letter in which you state that a landowner in your county holds the legal title to certain farm land, abandoned church property and burial grounds, which he desires to convey to the township trustees for park and burial purposes. Your letter reads as follows:

“At the request of a board of township trustees in this county, I am asking for your opinion regarding the following facts:

A landowner in this county holds title to a certain 45 acre farm near the Little Miami River, adjoining which farm is abandoned church property, including burial grounds, to which the owner of the farm holds legal title.

The owner wishes to donate the legal title to the farm, church and burial grounds to the board of trustees of the township in question and to create a trust fund of \$150,000.00 or more, for the purpose of perpetual maintenance of said property as a public park, involving soil conservation, fertilization, tree planting, dams, roadways, paths, fencing, general beautification and upkeep of buildings—all to be gradually accomplished as income from the trust fund permits year after year, so as to afford a perpetual scenic beauty spot for public recreation, relaxation, convenience

and inspiration which will provoke appreciation of the beauty in nature; also to improve the meeting house to serve as a shelter house; also to preserve, beautify and keep up the burial ground in a high class condition and to enlarge same in order, as in the past, to afford public opportunity for burial without charge.

The prospective donor intends immediately to place the cash equivalent of \$150,000.00 with a corporate trustee, the income to be used not only to pay the expenses of administration, but also to preserve said burial ground, and church property and to insure perpetual maintenance and improvement of said farm as a beautiful public park and also to provide assistance in the education of worthy young persons in Veterinary Science and/or General Sanitation.

The particular question which the board of trustees wishes to have answered is whether under and by virtue of Section 3281, General Code, which reads in part as follows:

‘The trustees may accept on behalf of the township the donation by \* \* \* deed of gift, or otherwise of any property, real or personal, for any township use’;

they may accept the title to said 45 acre farm and said church and burial grounds for the purposes specified, and if so, under what conditions and restrictions.”

As stated in your letter, Section 3281, General Code, empowers township trustees to accept on behalf of the township the donation by deed of gift or otherwise of any real or personal property “for any township use,” and while the acquisition of land for township park and burial purposes may very properly be classed as township uses within the meaning of that section, the authority of township trustees in such matters is purely statutory.

With respect to township parks, attention is directed to Sections 3415 to 3427, General Code, which relate exclusively to the establishment of park districts and the appointment of boards of park commissioners therefor. One of these sections, Section 3420, authorizes the park commissioners to accept conveyances of land for park district purposes, but before the district may be established, the question of establishment must be submitted to the electors of the township and approved by the requisite majority vote, as required by Sections 3418 and 3419. I assume from your letter that you do not contemplate the establishment of a park district and the appointment of a board of park commissioners under those sec-

tions, and for that reason I will not pursue that phase of the subject any further.

There is another statute relating to township parks, Section 3427-1, which recognizes and clearly implies that a township may have within its limits a public park, or grounds devoted to public park purposes, without there having been first established a park district under the park district sections hereinbefore referred to. That section reads as follows:

“That the trustees of any township, having within its limits a public park, public square or grounds devoted to public uses for park purposes, and which are not under control of park commissioners, are authorized and empowered to control, care for, grade and improve any such public park, public square or public grounds; to plant or place therein and care for trees, shrubbery and plants, and to maintain lawns in good condition; to construct and maintain fountains; to lay out, construct, reconstruct, repair and maintain in good condition suitable drive-ways and walks, constructing the same of such materials as are deemed most suitable, and to provide and maintain suitable and sufficient lights in any such public park, public square or public grounds; to construct, reconstruct, repair and maintain therein all necessary sewers, drains and ditches; and to protect and preserve to public uses for park purposes all of said property and improvements, and, to that end, to adopt by-laws, rules and regulations for the government and control of any such public park, public square or public grounds and the driveways and walks therein, and to protect them and the trees, shrubbery, plants and improvements from misuse, injury or destruction, and to provide for the due enforcement of such rules and regulations by fines and penalties, but such by-laws, rules and regulations shall not conflict with the constitution or laws of the state of Ohio.

That the trustees of any township, having funds available that may be used for park improvements, are authorized to use such funds for the building of a swimming pool within the limits of any such public park, or public grounds. If the park, or grounds be also within the jurisdiction of a municipality, the trustees of the township are authorized to use such funds to cover the entire expenditures, or to use such funds in conjunction with any funds which the municipality may provide under Sections 4065-1, 4065-2, 4065-3, 4065-6 and 4065-7 of the General Code, to meet the expenditures incurred in building, equipping, and maintaining said swimming pool.

If the public park or grounds be outside the jurisdiction of a municipality, the council of said municipality in conjunction with the trustees of an adjacent or surrounding township are author-

ized to use such funds as are available and may be used for park purposes, with those funds of the township that are available for park purposes, to meet the expenditures incurred in building, equipping and maintaining a swimming pool.”

Inasmuch as Section 3427-1 recognizes that a township may have a public park other than one established under the park district law, it is my view that any person having the legal title to real estate may convey the same to the township for public park purposes, and that the township trustees may accept the conveyance and improve, maintain and control the property as a public park, as provided for in that section. See also Section 18, General Code, which, among other things, provides that township trustees may receive lands or other property by gift, devise or bequest,

“and hold and apply the same according to the terms and conditions of the gift, devise or bequest. Such gift or devise of real estate may be in fee simple or of any lesser estate, and may be subject to any reasonable reservation.”

In view of the authority conferred upon township trustees by Sections 18 and 3281, it is my opinion that if the landowner and township trustees would modify their plan so as to keep the obligations and activities of the trustees within the scope of those enumerated in Section 3427-1, there would be no objection to the trustees accepting a conveyance of the farm land and abandoned church property.

The establishment of township cemeteries and acquisition of burial grounds is also governed by the statutory law of the state. See Section 3441 et seq., General Code.

One of these statutes, Section 3441, expressly authorizes township trustees to accept conveyances of such land as they “deem necessary and proper for cemetery purposes,” but in that connection it is also provided in Section 3445 that before a conveyance may be accepted, the question of establishing the cemetery “shall be submitted to a vote of the electors of the township at a regular annual election.” See also 7 O. Jur., “Cemeteries,” Sections 2 and 7. It follows therefore that if the township trustees contemplate accepting a conveyance of any of the land referred to in your letter, for the purpose of establishing a new township cemetery, they would be without authority to do so without the approval of the township electors.

There are also statutes, which by their own terms, vest the title to certain old publicly used and non-dedicated graveyards and burial grounds in the township trustees, and make provision for their protection and preservation. See Sections 3451 and 3452. As to the graveyards and burial grounds referred to in those sections, there would be no title to convey to the township trustees for the reason, as just indicated, the title thereto is already vested in the trustees. The duties and responsibilities of the trustees with respect to their protection, preservation and use are prescribed and governed by Sections 3252 and 3254.

Another statute on the subject, Section 3471 empowers township trustees to accept conveyances of burial grounds from religious societies and associations, with authority to care for, keep in repair and manage the same in all respects as required by the statutes relating to burial grounds in and belonging to the township.

And, finally, there is another group, Sections 3465 and 3466, dealing with public and private graveyards and burial grounds which have been abandoned, and those whose further use would be detrimental to the public health and welfare. These statutes prescribe the duties and authority of the township trustees with respect thereto, and also make provision for their sale by the trustees.

I am unable definitely to determine the particular class to which the burial grounds referred to in your letter belongs, and therefore can not advise you on that phase of the plan mentioned in your letter other than to call attention to the statutes relating to graveyards and burial grounds, and to say that unless you can find some statute which clearly authorizes the township trustees to accept a conveyance of the burial grounds in question from the person whom you say holds the legal title thereto, they would be without authority to do so. As you know, the law is well settled in this state that township trustees have only such power and authority as are expressly conferred upon them by statute, and such as are clearly implied from those granted. See 39 O. Jur., page 306, Section 46; Opinions Attorney General, 1945, pages 274 and 471.

The statement of facts contained in your letter also seems to indicate that the township trustees would be required to incur some obligation by way of "assistance in the education of worthy young persons in veterinary

science and/or general sanitation." I know of no statute which attempts to confer any such authority upon township trustees.

Respectfully,

HUGH S. JENKINS,  
Attorney General.