

91.

CEMETERY ASSOCIATION—BURIAL LANDS EXEMPT FROM TAXATION IF HELD WITH NO VIEW TO PROFIT.

SYLLABUS:

Under the provisions of Section 10093, General Code, lands held by a cemetery association exclusively for burial purposes and in no wise with a view to profit, regardless of whether or not said lands are in process of preparation for burial purposes, are exempt from taxation.

COLUMBUS, OHIO, February 19, 1927.

GENTLEMEN:—This will acknowledge receipt of your recent communication in regard to the exemption from taxation of lands held by The Spring Grove Cemetery, an incorporated company. You state that said company has acquired certain lands to be used as an addition to the present cemetery; that certain parcels of said lands are in process of preparation for use as cemetery purposes, and that a part is not used for any purpose. You then inquire as follows:

- “1. Is that part of the lands now in process of preparation entitled to exemption from taxation?
2. Is that part which is not used for any purpose entitled to exemption?”

Article XII, Section 2, of the Ohio Constitution, provides that:

“Laws shall be passed, taxing by a uniform rule, all * * * real estate and personal property according to its true value in money * * * ; but burying grounds * * * may, by general laws, be exempted from taxation; * * * .”

Section 5328, General Code, reads:

“All real or personal property in this state, belonging to individuals or corporations, * * * shall be subject to taxation, except only such property as may be expressly exempted therefrom.”

Section 10093, General Code, was formerly Revised Statutes Section 3571, and in the original enactment and in all amendments prior to 109 O. L., page 172, said section in exempting said cemetery associations from taxation, contained the limitation that their lands were exempt “if *used* exclusively for burial purposes, and in no wise with a view to profit.” Under the form of the statute with this limitation therein, the courts held that the unused lands were taxable.

In 1921, as stated above, this section was again amended, 109 O. L. page 172. It now provides that:

“A company or association incorporated for cemetery purposes may appropriate or otherwise acquire, and may hold, not exceeding six hundred and forty acres of land; * * * all of which shall be exempt * * * from taxation, if held exclusively for burial purposes, and in no wise with a view to profit.”

This amendment changed the section so as to read “if *held* exclusively for burial purposes,” whereas it formerly read “if *used* exclusively for burial purposes.”

It must be conceded that the legislature had some purpose in omitting the word "used" and including the word "held."

In Webster's Dictionary the word "use" is defined as follows:

"To make use of; to convert to one service; to employ; to put to a purpose."

. The word "held" or "hold" is defined as follows:

"To retain in one's keeping; to maintain possession of, or authority over; not to give up or relinquish; to keep; to defend."

It is clear that under the former statute lands not *used* exclusively for burial purposes were not exempt from taxation, and the courts so held. It is only reasonable to assume that the legislature was familiar with these decisions, and that Section 10093 was amended in 1921 with knowledge that the courts had held the unused lands taxable.

As stated before, the legislature had some purpose in amending the section so as to relate to lands held by the cemetery association; and it must be assumed that they intended to use the word "held" in its usual and ordinary meaning, which, as defined by Webster is "to keep; to retain; to maintain possession of or authority over."

The conclusion then is that the lands held by The Spring Grove Cemetery Association under the provisions of Section 10093 are exempt from taxation if they are held exclusively for burial purposes and in nowise held with a view to profit. This is true regardless of whether or not said lands are in process of preparation for burial purposes.

You also inquire as to whether Section 10093, General Code, in so far as it attempts to exempt from taxation lands held for cemetery purposes is in conflict with the provisions of the Constitution of Ohio, Article XII, Section 2, relating to exemption of burying grounds.

Unless clearly unconstitutional, the provisions of a duly enacted statute should be followed by administrative officers unless and until such statute be declared unconstitutional by a court of competent jurisdiction. I am unable to say that a statute exempting from taxation all property of a cemetery association up to six hundred and forty acres is clearly unconstitutional, for the reason that what is reasonable and necessary for burial purposes is a question of fact, and the facts will differ in different localities. The Constitution requires all laws of a general nature to be of uniform operation throughout the state. Therefore, in placing a limitation, the legislature must have in view the demands of the largest community in the state.

While the matter is not free from doubt, I do not believe that the courts would hold this provision of the statutes unconstitutional, at least not until there had grown up generally in the state an abuse of the privilege granted in that statute to reasonably anticipate future needs.

You also inquire as to whether the decision of the court in the case of Cemetery vs. Brooks, 4 O. C. D. 478 is nullified by amended Section 10093.

The court in that case was construing Section 10093 as it read before the amendment of 1921, and based its decision upon that provision of the statute that all lands used exclusively as graveyards were exempt from taxation; and the court decided that as the lands in question were not used exclusively as a graveyard, they were not exempt.

Since the amendment of Section 10093, that decision is not in point in construing said section.

Respectfully,
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Attorney General.