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1. CEMETERY LOTS—PURCHASER DOES NOT HAVE RIGHT BY VIRTUE OF EASEMENT TO ERECT MONUMENT BETWEEN HIS LOTS ON A PATH OR ANY PART OF PATH NOT INCLUDED IN DEED GRANTING LOTS.
2. BOARD OF TRUSTEES MAY GRANT SUCH RIGHT IF RESERVED IN ITS RULES AND REGULATIONS GOVERNING CEMETERIES.

SYLLABUS:

1. A purchaser of cemetery lots does not have the right by virtue of his easement to erect a monument between his lots on a path, which path or any part thereof has not been included in the deed granting him the lots.

2. A board of trustees may grant a purchaser of lots as described in paragraph 1 of the syllabus such right if such board of trustees has reserved such right in its rules and regulations governing cemeteries.

Columbus, Ohio, August 29, 1949

Hon. Darrell R. Hottle, Prosecuting Attorney
Highland County, Hillsboro, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“A board of township trustees have asked that I secure an informal opinion from your office relating to the following situation:

“The township has a cemetery located in it, and the cemetery has been laid out in lots, avenues and paths and the lots have been numbered. A suitable plat was made and has been kept by the township clerk all in accordance with Section 3447 of the Ohio General Code. Some years ago a purchaser of two lots was given the verbal right by one of the then trustees of setting his monument on a path between the two lots which he purchased. The lots are corner lots, one being bounded on the south by an avenue and both being bounded on the west by an avenue, the other lot being bounded on the north by a path and both being bounded on the east by a path. The purchaser wished to set a monument that would occupy the space in the center of the two lots, which space would be across the path between the two lots. The person, who was a trustee at the time the purchase was made

and who verbally told the purchaser that he would be able to place a monument at the spot desired, is no longer a trustee and the present board of trustees hesitate to grant him this privilege inasmuch as his deeds which have been duly recorded as provided in Section 3448 of the Ohio General Code do not include any part of the path between the two lots. The question which the trustees have propounded and would like answered is this:

“Has a township board of trustees the right to grant a purchaser of adjacent lots the privilege of setting a monument on a path between the lots, which path or any part thereof has not been included in the deeds granting him the lots and which monument would block the entrance to this path but only to the extent of the length of these two lots?”

Section 3447, General Code, referred to in your request reads as follows:

“The trustees shall have such cemetery laid out in lots, avenues and paths, number the lots and have a suitable plat thereof made, which shall be carefully kept by the township clerk. They shall make and enforce all needful rules and regulations for its division into lots, and the allotment thereof to families or individuals, and for the care, supervision and improvement thereof, and they shall require the grass and weeds to be cut and destroyed at least twice each year in all such cemeteries.”

Section 3448, General Code, reads in part as follows:

“* * * Upon complying with the terms of sale, purchasers of lots shall be entitled to receive a deed or deeds therefor which the trustees shall execute, and which shall be recorded by the township clerk in a book for that purpose, the expense of recording to be paid by the person receiving the deed. * * * ”

In 7 O. Jur. 31, it is stated that the purchaser of a cemetery lot receives an easement rather than title to a free hold. See also *Fraser v. Lee*, 8 O. A. 239, 136 A.L.R. 399, 174 A.L.R. 977.

The purchaser's title to a lot being an easement, its extent may be restricted by the express terms of the instrument creating it, and restrictions upon an easement imposed by the instrument creating the easement are binding upon a transferee of the dominant tenement. See 15 O. Jur. 84.

From the facts of the instant case it appears that the township trustees, the holder of the dominant tenement, granted to the purchaser herein two lots and the deed thereto was recorded with the township clerk. This deed, I assume recited by metes and bounds the purchaser's easement. The

deed, therefore, would seem to place a restriction upon the use of said lots and this restriction is binding upon the purchaser.

The verbal right given by a township trustee is of no effect since an easement cannot be created by parol. See 15 O. Jur. 24.

Therefore, it is my opinion that a purchaser of cemetery lots does not have the right by virtue of his easement to erect a monument between his lots on a path, which path or any part thereof has not been included in the deeds granting him the lots.

Your question as to whether the board of township trustees has the right to grant the purchaser this privilege depends on whether such board of trustees has reserved such right in its rules and regulations.

Respectfully,

HERBERT S. DUFFY,
Attorney General.