

In view of the foregoing, I am inclined to the view that since the dwelling house to which you refer was erected since the establishment of the cemetery in question, the cemetery may be extended up to within one hundred feet of such house, notwithstanding the fact that such house was erected prior to 1923.

It is observed that one hundred feet is the limitation applicable to the extension of a municipal cemetery as set forth in Section 3678, which you quote. Perhaps the views which I have herein expressed would not be applicable in case the proposed extension were to bring the township cemetery within the municipality up to within less than one hundred feet of the dwelling house under consideration. Since you state that the extension is to bring the cemetery to a distance of one hundred feet from the dwelling house, I do not deem it necessary to go into the situation which would prevail if the distance were less than one hundred feet, the distance provided in the case of an extension of a municipal cemetery under Section 3678.

While you have not expressly so stated, I have assumed that the dwelling in question was erected not only since the establishment of the cemetery but within two hundred yards thereof. Of course, if such dwelling had been erected more than two hundred yards from the original cemetery, the provision contained in Section 3455 would probably not apply and the limitations of Section 3442 would prevail.

In view of the foregoing and in specific answer to your inquiry, it is my opinion that a cemetery within the corporate limits of a municipality which is under the control of a board of township trustees may be extended to within one hundred feet of a dwelling house which was erected within two hundred yards of such cemetery and since the establishment thereof.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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2147.

CERTIFIED CHECK—CERTAIN INDORSEMENT ON FACE OF CHECK  
HELD TO AMOUNT TO CERTIFICATION.

SYLLABUS.

*Sufficiency of certification of check under Ohio law discussed.*

COLUMBUS, OHIO, July 23, 1930.

HON. MARCUS C. DOWNING, *Prosecuting Attorney, Findlay, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads:

“Under the law, bidders on public work are required to file a certified check with each bid. Please advise if the following indorsement on the face of a personal check, made payable to the proper party, is a certified check, under the law.

‘Good when properly indorsed for One Thousand Dollars (\$1,000.00).  
The A. Banking Company, By John Jones, Cashier.’

It is my opinion that such an indorsement on a personal check is sufficient to comply with the requirements of the statute. The moment the indorsement is stamped upon the check and signed by the proper officer, the amount specified is set aside, from which this check is paid at the time it is pre-

sented. The definition of a certified check in Bouvier's Law Dictionary is as follows:

'A check which has been recognized by the proper officer as a valid appropriation of the amount of money therein specified to the person therein named, and which bears upon itself the evidence of such recognition.'

In 59 Varb. C. S. 226, the following language is used:

'Certification of a check is usually accomplished by writing the name of the officer authorized to bind the bank in that manner or the word "good" across the face of the check.'

This question has been raised on numerous occasions at the time bids have been opened, especially by other bidders who had their checks indorsed by a more recent indorsement which includes the word 'certified.' This question arose yesterday when our commissioners were opening bids for the construction of bridges and I ruled that such indorsement on a check amounted to a certification and permitted the bids to be read and considered.

A prompt reply will be appreciated."

Certification of a check is an appropriation by the bank of a fund in the amount of money therein specified to the legal holders thereof. No particular form of words is required to constitute certification but any words or expressions intended to be an acceptance by the bank will be sufficient, although it is customary for the bank officer to write or to stamp the word "good" or "certified" and mark with his signature. 7 C. J. 705.

The Supreme Court of Ohio has had before it the question of the sufficiency of an endorsement of certification which is very similar to that set forth in your communication. I refer to the case of *Blake vs. Savings Bank Company*, 79 O. S. 189. In that case the endorsement of certification was as follows:

"Good for \$275.00 when properly endorsed.

The Franklin Bank, H. Sachteleben, Teller."

The first branch of the syllabus in the above case held:

"The certificate by a bank that a check is good is equivalent to acceptance, and raises an implication that it is drawn upon sufficient funds in the hands of the drawee, that they have been set apart for its satisfaction, and that they shall be so applied whenever the check is presented for payment."

The court in its opinion refers to *Daniel on Negotiable Instruments*, Section 1602, as follows:

"By the law merchant of this country, the certificate of the bank that a check is good is equivalent to acceptance. It implies that the check is drawn upon sufficient funds in the hands of the drawee, that they have been set apart for its satisfaction, and that they shall be so applied whenever the check is presented for payment. It is an undertaking that the check is good then and shall continue good, and this agreement is as binding on the bank as its notes of circulation, a certificate of deposit payable to the order of the depositor, or any other obligation it can assume. The object of certifying a check, as regards both parties, is to enable the holder to use it as money. The transferee takes it with the same readiness and sense of security that he would take the notes of the bank. It is available also to him for all the purposes of

money. Thus it continues to perform its important functions until in the course of business it goes back to the bank for redemption and is extinguished by payment.

"It cannot be doubted that the certifying bank intended these consequences, and it is liable accordingly. To hold otherwise would render these important securities only a snare and delusion.

"A bank incurs no greater risk in certifying a check than in giving a certificate of deposit. In well-regulated banks the practice is at once to charge the check to the account of the drawer, to credit it in 'certified check account,' and when the check is paid, to debit that account with the amount. Nothing can be simpler or safer than this process.

"The practice of certifying checks has grown out of the business needs of the country. They enable the holder to keep or convey the amount specified with safety. They enable persons not well acquainted to deal promptly with each other, and they avoid the delay and risks of receiving, counting and passing from hand to hand large sums of money."

In view of the holding in the case of *Blake vs. Savings Bank Company, supra*, I do not feel that it is necessary to go into an extended discussion of the question submitted in your communication.

In specific answer to your inquiry, I am of the opinion that a check endorsed "Good when properly indorsed for One Thousand Dollars (\$1,000.00). The A. Banking Company by John Jones, Cashier," carries a proper certification under the law.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

2148.

MUNICIPALITY—ONE-HALF OF INHERITANCE TAX PROCEEDS EXCEEDING GENERAL BONDED DEBT BUT NOT GENERAL AND SPECIAL ASSESSMENT BONDED DEBT—EXCESS OVER GENERAL BONDED DEBT NOT PAYABLE INTO GENERAL FUND.

**SYLLABUS:**

*Distribution of a municipality's portion of inheritance tax money under Section 5348-11, General Code, discussed.*

COLUMBUS, OHIO, July 23, 1930.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Your letter of recent date is as follows.

"Section 5348-11, G. C., provides in part that 50% of the amount of inheritance tax received by a municipal corporation shall be credited to the sinking fund or bond retirement fund, if any, and the residue to the general revenue fund.

Question. When a municipal corporation receives an amount of inheritance taxes, one-half of which is in excess of the total amount of the general