

connected, and members of the board of township trustees, members of the village council and other officers of such township and village cannot legally render services for compensation to a union cemetery formed by the joinder of such subdivisions, nor can they sell supplies thereto.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2580.

CEMETERY—VILLAGE—TRUSTEES MAY NOT RE-PURCHASE LOTS
SOLD FOR BURIAL PURPOSES—EXCEPTIONS.

SYLLABUS:

1. *The trustees of a village cemetery may legally fix the terms of sale for lots in a cemetery so as to provide for the repurchase of said lots if the owner has not made use of them for burial purposes and desires to dispose of them. If, however, the terms of sale do not provide for the repurchase of the lots, no rule or regulation that might be made by the cemetery trustees would permit them to purchase lots which had once been sold, or any other lands for burial purposes.*

2. *The council of a municipality being empowered by statute, to provide lands for cemetery purposes, may purchase lots from lot owners in a municipal cemetery or authorize the purchase of the same providing said lots have not been used for burial purposes and are at the time of the purchase available and suitable for such purpose.*

COLUMBUS, OHIO, September 17, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion as follows:

“QUESTION: May the Trustees of a Village Cemetery, or the Council of such Village legally provide by rule or Ordinance, for the repurchase, from lot owners, of lots in such cemetery which the owners have not used, and wish to dispose of?”

By the terms of Section 3622, General Code, municipalities are empowered “to provide public cemeteries and crematories for the burial or incineration of the dead and to regulate public and private cemeteries and crematories.” Sections 4175 and 4178, General Code, read in part as follows:

Section 4175. “The Mayor of a village owning a public burying ground, or cemetery, may appoint a board to be known as the board of cemetery trustees. * * *”

Section 4178. “The board of cemetery trustees shall have the powers and perform the duties prescribed in this chapter for the director of public service. * * *”

The powers and duties of directors of public service in cities, with reference to public cemeteries, are set forth in Sections 4161 et seq. of the General Code. Section 4161, General Code, reads as follows:

“The director of public service shall take possession and charge, and have the entire management, control, and regulation of public graveyards, burial grounds, and cemeteries located in or belonging to the corporation,

subject to its ordinances. When he deems it necessary, he shall direct the laying out into lots, avenues, walks, and paths, or other subdivisions, which lots shall be numbered and the avenues named. A plat thereof shall be made so as to exhibit a fair and distinct outline of the grounds, and kept in the office of the auditor of the corporation for the use of the public."

The following Sections, 4162 to 4173, General Code, inclusive, recite further duties and powers of a director of public service with reference to cemeteries. He is authorized, among other things, to direct all the improvements and embellishments of the grounds, and subject to the approval of council, appoint the necessary superintendents and employes and fix the amount of their compensation. He is also authorized to make such bylaws and regulations not inconsistent with the ordinances of the city and the constitution and laws of the state, as he may deem useful and necessary for the management and protection of the grounds. He shall determine the sizes and prices of the lots and the terms of payment therefor, but no more may be charged for lots than is necessary to reimburse the corporation for the expense of lands purchased or appropriated for cemetery purposes and the expense of keeping them in order, embellishing the grounds and managing the cemetery.

Inasmuch as the board of cemetery trustees in villages has the same power as have directors of public service in cities, to determine the sizes and prices of lots and the terms of payment therefor, by which authority, in my opinion, it would be within their power to provide in the terms of sale of lots, that in the event the purchaser should later determine that he had no use for the lot the same would be repurchased upon terms similar to those upon which it had been sold. If, however, this arrangement was not made a part of the terms of sale, the trustees would not in my opinion, be empowered to purchase lots from lot owners merely by providing therefor by a rule or regulation, for the reason that neither directors of public service in cities nor cemetery trustees in villages, are authorized to make purchases of land for cemetery purposes under any circumstances. Such purchases must be made or directed in the first instance, by council.

Upon the power conferred by Section 3622, General Code, to provide public cemeteries, council would undoubtedly have the right to purchase land for the enlargement or extension of cemeteries at any time, and if it should have happened that at some time in the past, when a cemetery had been provided for, a portion of the land had been sold, for the reason that it was not then needed for cemetery purposes, that fact would certainly not preclude council from repurchasing it if it should have later become necessary and advisable to repurchase it for the extension or enlargement of the cemetery. Likewise, the fact that a lot in the cemetery had been sold, would not preclude council from repurchasing it for burial purposes.

I am therefore of the opinion that the trustees of the village cemetery may legally fix the terms of sale for lots in a cemetery so as to provide for the repurchasing of said lots if the owner has not made use of them for burial purposes and desires to dispose of them. The money for the repurchase of said lots must of course be appropriated by council. If, however, the terms of sale do not provide for the repurchase of the lots no rule or regulation that might be made by the cemetery trustees would permit them to purchase lots which had once been sold, or any other lands for burial purposes without first being directed by council to do so. The council of a municipality being empowered by statute to provide lands for cemetery purposes may purchase lots or authorize the purchase of the same from lot owners in a municipal cemetery providing said lots have not been used for burial purposes, and are at the time of the purchase available and suitable for such purpose.

Respectfully,
EDWARD C. TURNER,
Attorney General.