

OPINION 65-229**Syllabus:**

There is no authority in law for a board of township trustees to transfer the lands, lots and improvements of an existing township cemetery to an incorporated cemetery association.

To: John O. Crouse, Highland County Pros. Atty., Hillsboro, Ohio
By: William B. Saxbe, Attorney General, December 17, 1965

Your request for my opinion reads:

"Are township trustees, under the laws of the State of Ohio, authorized to transfer to an incorporated cemetery association the lands, lots and improvements of a cemetery owned and controlled by the township when said cemetery is not abandoned or is not a union or joint township cemetery?"

Chapter 517, Revised Code, authorizes boards of township trustees to acquire land and to establish cemeteries. The pertinent sections of that chapter also impose specific duties upon such boards for the care and maintenance of cemeteries which are located within the township, although not originally township cemeteries.

Section 517.10, Revised Code, vests in a board of township trustees the title to, right of possession, and control of all cemeteries located in the unincorporated area of the township, except those owned by or under the control or care of a religious or benevolent society, an incorporated company or association, or a municipal corporation. Section 517.11, Revised Code, directs that such boards shall protect and preserve cemeteries under their jurisdiction and enclose them with fences or hedges.

Section 517.27, Revised Code, reads:

"When a public cemetery in a township is not under the control of a municipal corporation, and the title or control thereof is vested in an association or the trustees thereof, or is vested in a religious society, whether incorporated or not, or in the trustees thereof, and such cemetery is used exclusively for cemetery purposes, such as-

sociation, society, or the trustees thereof may convey such grounds to the board of township trustees and its successors in office. Subject to the rights of the original grantor, his heirs or assigns, the board shall accept and take possession of such grounds, and take care of, keep in repair, hold, treat, and manage them in all respects as required by sections 517.01 to 517.32, inclusive, of the Revised Code."

This section has been interpreted on several occasions and has been considered to be mandatory. Your attention is invited to the following: Opinion No. 13, Opinions of the Attorney General for 1937, page 17; Opinion No. 1125, Opinions of the Attorney General for 1957, page 519; Opinion No. 65-146, Opinions of the Attorney General for 1965, page 2-328; and Informal Opinion No. 13, Informal Opinions of the Attorney General for 1963, issued February 27, 1963.

I know of no statute which specifically empowers a board of township trustees to transfer the ownership and the duty of preservation and care of an existing cemetery to an incorporated cemetery association. In my opinion there is nothing which grants an implied power to such board to divest itself of its statutory duties by such a transfer.

It is a familiar principle of law that boards of township trustees have limited powers. In Opinion No. 802, Opinions of the Attorney General for 1951, page 558, it was said that such a board did not have legal authority to use a portion of the proceeds from the sale of lots to establish a trust fund for the perpetual care of the cemetery. The syllabus reads in part:

"2. Township trustees possess only such powers and privileges as may be delegated to or conferred upon them by statute, or such powers as are necessarily implied from those granted.

"3. There is no statutory authority, and the authority may not be necessarily implied, to establish a trust fund from a portion of the proceeds derived from the sale of cemetery lots, where only the proceeds and not the corpus of such trust fund would be used in improving and embellishing the cemetery grounds."

I am aware, of course, that the title to and duty to care for a township cemetery may be transferred by operation of law from a board of township trustees to a municipal corporation. This is true where, as a result of incorporation or annexation, the boundaries of a municipal corporation are extended to include a township cemetery. As said in Opinion No. 26, Opinions of the Attorney General for 1963, in which I approved and followed prior opinions, this transfer results whether or not there is a deed from the board of township trustees.

Boards of township trustees may dispose of cemetery lands by proceeding under Section 517.22, Revised Code. This statute, however, can have no application to the question you have presented, as it authorizes a public sale and requires removal of the dead buried in the cemetery, and the stones and monuments.

Not only do I reach the conclusion that boards of township trustees have no authority to convey an existing township cemetery to an incorporated cemetery association, I find no authority for such corporation to assume the duty to care for such cemetery. In making this statement, I am assuming that the corporation to which you referred is one organized pursuant to Chapter 1721, Revised Code. Section 1721.06, Revised Code, directs that, after paying for its land, a cemetery company shall use its entire receipts and income for cemetery purposes. This question is not before me for determination; nevertheless, it is my belief that there is considerable doubt concerning the power of a cemetery company to accept a conveyance of such an existing cemetery and use corporate funds for its care and maintenance.

It is, therefore, my opinion and you are advised that there is no authority in law for a board of township trustees to transfer the lands, lots and improvements of an existing township cemetery to an incorporated cemetery association.