

Note from the Attorney General's Office:

1969 Op. Att'y Gen. No. 69-101 was overruled on the basis of legislative amendment by 2019 Op. Att'y Gen. No. 2019-030.

OPINION NO. 69-101

Syllabus:

1. Within the ten-mill limitation of Section 5705.02, Revised Code, township trustees may levy for cemetery purposes under Section 517.03, Revised Code, for a cemetery currently being used.

2. Within the ten-mill limitation of Section 5705.02, Revised Code, township trustees may levy for cemetery purposes under Section 517.11, Revised Code, for cemeteries no longer in use but under the control of the township trustees.

To: James K. Nichols, Morgan County Pros. Atty., McConnelsville, Ohio
By: Paul W. Brown, Attorney General, August 20, 1969

I have received your request for my opinion as to the relationship of Sections 517.03 and 517.11, Revised Code, and whether or not the township trustees may levy a tax under Section 517.03, Revised Code, for a sum not exceeding \$2,000 for cemeteries within its boundaries

My research has revealed that Sections 517.03 and 517.11, supra, are each for a separate and distinct purpose. What is currently Section 517.03, supra, was first enacted in 1853 (51 Ohio Laws, 489). The 1853 enactment gave the township trustees the power to purchase and improve a cemetery or burying ground and the authorization to levy and assess a tax for paying for and improving such ground.

What is currently Section 517.11, Revised Code, was enacted in 1874 (71 Ohio Laws, 109). The purpose of the 1874 enactment was "For the protection of certain burial grounds" and title to all public graveyards and burial grounds, with exceptions, was vested in the township trustees. The trustees were given the duty to provide for the protection and preservation of such grounds. To carry out this duty the trustees were empowered to levy a tax not exceeding one-half of one mill per year.

In 1878 (75 Ohio Laws, 581), what is now Section 517.11, Revised Code, was amended in part as follows:

"* * * it shall be the duty of such trustees
* * * to prohibit interments in any such grounds
when new grounds have been procured for township
cemeteries or burial grounds * * *."

Note that this language is still part of Section 517.11, Revised Code. See also Section 517.32, Revised Code.

It is my conclusion that Section 517.03, Revised Code, refers to a township cemetery in current use, while Section 517.11, Revised Code, refers to cemeteries which are no longer being used. Section 517.10, Revised Code, passes title to the trustees of certain public cemeteries. Section 517.11, Revised Code, imposes a duty on the trustees to care for cemeteries under their jurisdiction. For further interpretation of Section 517.11, Revised Code, see Opinion No. 4163, Opinions of the Attorney General for 1954.

Thus, within the ten-mill limitation of Section 5705.02, Revised Code, township trustees may levy a tax under Section 517.03, Revised Code, for the appropriate expenses for a cemetery currently being used. Also within the ten-mill limitation of Section 5705.02, Revised Code, under Section 517.11, Revised Code, the trustees may levy a tax not to exceed one-half mill for the appropriate expenses for cemeteries no longer in use but under the control of the trustees.