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1. CEMETERY LOTS—PROCEEDS ARISING FROM SALE BY TRUSTEES—MUST BE USED TO IMPROVE AND EMBELLISH CEMETERY GROUNDS—SECTION 3449 G. C.
2. TOWNSHIP TRUSTEES—POWERS AND PRIVILEGES—STATUTORY.
3. NO STATUTORY AUTHORITY TO ESTABLISH TRUST FUND FROM PORTION OF PROCEEDS DERIVED FROM SALE OF CEMETERY LOTS—PROCEEDS ONLY AND NOT CORPUS OF TRUST FUNDS WOULD BE USED TO IMPROVE AND EMBELLISH CEMETERY GROUNDS.

SYLLABUS:

1. Under the terms of Section 3449, General Code, the proceeds arising from the sale of cemetery lots by any trustees must be used in improving and embellishing the cemetery grounds.

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.

Columbus, Ohio, October 4, 1951

Honorable Seabury H. Ford, Prosecuting Attorney
Portage County, Ravenna, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Board of Trustees of Nelson Township in this county desire to establish a trust fund for the perpetual care of the

Township Cemetery out of a portion of the funds received from the sale of lots as they are sold. For example, they would sell a lot for \$75.00, of which they would segregate \$25.00 to a fund to be administered by the Trustees to be added to as each lot is sold in the same manner.

“The question is, is it legal for them to do this? Second, if so, in what would they be permitted to invest the funds or fund thereby created?”

I assume from your question that you have in mind establishing a trust fund from a portion of the amounts received from the sale of each lot, and that the amounts received would be used to establish the corpus of the trust, and further, that only the income from such trust fund would be used in improving and embellishing the cemetery grounds.

Upon the basis of these assumed facts, I shall proceed to answer your question by first examining Section 3449, General Code, which reads as follows:

“The proceeds arising from the sale of such lots shall be used in improving and embellishing such grounds, and the trustees shall build and maintain proper and secure fences around all such cemeteries, to be paid for from the township funds.”

From this section, it is clear that the funds arising from the sale of lots in the township cemetery are to be used only to improve and embellish such grounds. This appears to be the only section of the General Code having to do with the use of funds derived from the sale of cemetery lots.

Section 5625-9, General Code, deals with the establishment of a special fund and is applicable to the funds received from the sale of lots. This Section reads as follows:

“(f) A special fund for each class of revenues derived from a source other than the general property tax, which the law requires to be used for a particular purpose.”

This section is, in my opinion, mandatory and the entire proceeds must be placed in the fund and used only for the purpose expressly stated in Section 3449, General Code. A fund such as this, it should be noted, does not return to the general fund at the end of the year but remains in this status until expended by the Township Trustees.

The township is a territorial and political subdivision of the state and is established exclusively for public purposes connected with the administration of the local government. The townships, therefore, possess only such powers and privileges as may be delegated to or conferred upon them by statute or such other powers as are necessarily to be implied from those granted. *Hopple v. Brown Twp.* 13 O.S. 311; *New London Twp. v. Miner*, 26 O.S. 452. See also 39 Ohio Jurisprudence 276. The powers and privileges of township trustees must be strictly construed. *Johnson v. Grunkenmeyer*, 8 O.N.P. 274, 11 O.D. 412. See also 39 Ohio Jurisprudence 276.

Township trustees are by Statute authorized within certain limitations to levy a tax for the purpose of defraying certain expenses in connection with township cemeteries. Section 3444, General Code, reads as follows:

“To defray the expenses of such purchase or appropriation, inclosing and improving of such lands, the trustees may levy for one or more years a tax sufficient for that purpose, not to exceed two thousand dollars in any one year, and each year thereafter such sum as may be necessary for the needful care, supervision, repair, and improvement of such cemeteries.”

It should be noted that this section makes it possible to levy a tax to provide for “needful care, supervision, repair, and improvement of such cemeteries.” This would seem to indicate that the Legislature intended that this method of obtaining funds to maintain the cemetery should be followed.

Section 3457, General Code, reads as follows:

“The township trustees may receive by gift, devise, bequest, or otherwise, any money, securities or other property in trust, as a permanent fund to be held and invested by them and their successors in office, the income therefrom to be used and expended under their direction, in the care, improvement and beautifying of any burial lot designated and named by the person making such gift, devise or bequest, in any township cemetery over which such trustees have jurisdiction.”

This section gives the township trustees the power to hold in trust as a permanent fund amounts of money which they may receive by gift, devise, bequest, or otherwise, any money, securities or other property. The trustees may hold these amounts or items in trust to be expended

under their direction and care. However, it is my considered opinion that this section providing that certain monies and properties may be held in trust for perpetual care does not include amounts which may be received from the sale of lots in the township cemetery. This particular section relates only to funds received by trustees otherwise than from the sale of lots.

Since the authority of the township trustees is statutory in nature and must be strictly construed, it may not be interpreted to include the establishment of a trust fund for perpetual care, as the funds received from the sale of lots would be used to create the corpus of the trust and only the income therefrom would be used for the actual improvement and embellishment of the grounds.

It is significant to note that union cemeteries have been given the express power by Section 4193-1, General Code, to establish perpetual trust funds for cemetery care. The pertinent part of said section reads as follows:

“* * * and such board of cemetery trustees shall together with other powers herein granted have the power to create a permanent endowment fund for the express purpose of keeping such cemetery clean and in good order and may add to the price regularly charged for lots therein a sum for said purpose or may receive gifts for said purpose or may enter into separate agreements with the purchasers of such lots whereby an agreed part of the purchase price of said lot or lots shall be and constitute a permanent fund, or may receive individual gifts for said fund, the income thereof to be used for the upkeep and care of such lot or lots and when any such fund or funds shall have been received or created, the same shall be a permanent fund for such use and the income therefrom shall be used for the said purpose and for no other purpose and the principal sum shall be kept and invested under the same terms and conditions fixed by law for the investment of the funds of a minor or his guardian. * * *”

It is further significant that no express authority has been given the townships to establish such a trust. We must, therefore, assume that the Legislature intended to withhold such authority.

It is, therefore, my considered opinion and you are so advised that:

1. Under the terms of Section 3449, General Code, the proceeds arising from the sale of cemetery lots by any trustees must be used in improving and embellishing the cemetery grounds.

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.

Since I have reached the conclusion that trustees may not establish such trust fund, it is not necessary to answer your further inquiry.

Respectfully,

C. WILLIAM O'NEILL
Attorney General