

The foregoing will dispose of your question in so far as a county coroner and general health commissioner are concerned. However, your letter further presents the question as to whether a county coroner and a "county physician" may be one and the same person. It is assumed that in the use of the term "county physician" you have reference to a physician employed by the county commissioners for the county home or a physician appointed for the county jail, or both. In any event, an examination of the sections authorizing the appointment or employment of a physician for the county home or county jail discloses that there is no incompatibility in either case with the office of county coroner.

Based upon the foregoing, you are specifically advised that :

1. The office of county coroner and commissioner of a general health district may be held by one and the same person, except in cases wherein the contract of employment of such health commissioner is so drawn, under the provisions of Section 1261-19, General Code, as to require such health commissioner to devote full time to the duties of his office, which would result in such commissioner not being able to perform his duties as coroner.

2. A county coroner may be employed by the county commissioners as physician for the county home or appointed by the commissioners as physician for the county jail.

Respectfully,
GILBERT BETTMAN,
Attorney General.

791.

CEMETERIES—TOWNSHIP—POWER OF TRUSTEES TO REQUIRE THAT ONLY SEXTONS UNDER CONTRACT MAY DIG GRAVES.—PROCEDURE FOR ENFORCEMENT.

SYLLABUS:

1. *Under the provisions of Section 3447, General Code, township trustees may make rules and regulations to the effect that only a sexton or caretaker having a contract with the township trustees for such purposes may participate in digging graves in such a cemetery.*

2. *Such rules and regulations may be enforced in accordance with the provisions outlined in Sections 10108, 12495, and 12496 of the General Code.*

COLUMBUS, OHIO, August 26, 1929.

HON. MICHAEL B. UNDERWOOD, *Prosecuting Attorney, Kenton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

"We wish to submit the following for your consideration and opinion: Township trustees of Hale Township have discharged the sexton, or at least have hired another on some form of competitive bidding, and the former sexton refuses to quit. Having been sexton over a period of years, he is acquainted with a large number of burial lot owners and has made arrangements with these individual owners to dig the graves on their lot. Under the contract which trustees make with the sexton, the work of digging the graves should go to the sexton that is employed and acting.

Section 3447, G. C., among other things, provides that the trustees shall make 'needful and necessary rules and regulations' which they have done, and under these rules the sexton which they employ has charge of the cemetery and the digging of the graves.

What they wish to know is what procedure are they to follow in enforcing these rules and regulations.

They have requested that I write to you and inquire relative to this matter."

Section 3447 of the General Code which relates to the duties of the trustees in connection with the township cemeteries, provides :

"The trustees shall have such cemetery laid out in lots, avenues and paths, number the lots and have a suitable plat thereof made, which shall be carefully kept by the township clerk. They shall make and enforce all needful rules and regulations for its division into lots, and the allotment thereof to families or individuals, and for the care, supervision and improvement thereof, and they shall require the grass and weeds to be cut and destroyed at least twice each year in all such cemeteries.

Suitable provision shall be made therein for persons whose burial is at the expense of the township."

From the section above quoted and other related sections, it appears to be clear that the township trustees are charged with the control and management of township cemeteries. Under Section 3464 authority is given to township trustees to appoint three directors to take charge of any cemeteries in the township under their control. When and if such directors are appointed, it would seem they perform the same duty with reference to management of cemeteries as are required of township trustees.

In view of the duties imposed upon the township trustees, by implication, undoubtedly they have the right to employ some person to supervise and care for the cemeteries. While there seems to be no express authority authorizing such employment, under the well know rules of construction to the effect that such a board has sufficient implied power to carry into effect the express powers granted, I have no difficulty in reaching the conclusion that township trustees may employ a sexton or caretaker under a contract in the manner set forth in your communication. Inasmuch as Section 3447, supra, expressly authorizes township trustees to make all the needful rules and regulations for the supervision of such cemetery, I am inclined to the view that they may provide that graves should be dug by the person so employed, or under his supervision. In other words, it would seem to be obvious that the method employed in digging graves is a proper subject for regulation by the management of such a cemetery.

You inquire as to what procedure should be followed by the township trustees in enforcing such rules.

Your attention is directed to Section 10108, General Code, which provides :

"The trustees, directors, or other officers of a cemetery company or association, whether incorporated or unincorporated, and township trustees having charge of township cemeteries, may appoint as many day and night watchmen of their grounds as they deem expedient. Such watchmen, and all superintendents, gardeners, and agents of such company or association or of the township trustees, stationed on the grounds, may take and subscribe, before any mayor or justice of the peace in the township where the grounds are situated, an oath of office similar to the oath required by law of constables.

Upon taking such oath, such watchmen, superintendents, gardeners, or agents shall have and may exercise all the powers of police officers within and adjacent to the cemetery grounds."

Your attention is also invited to Section 12495, General Code, which provides :

"Whoever violates a by-law, rule or regulation adopted by the trustees, directors or other officers of a cemetery company or association, or by a board of township trustees having charge of township cemeteries, with reference to the protection, good order and preservation of cemeteries, and the trees, shrubbery, structures and adornments therein, shall be fined not less than five dollars nor more than fifty dollars."

Section 12496, General Code, also provides :

"Watchmen, superintendents, gardeners, or agents of a cemetery company or association may arrest on view, a person found violating the next preceding section and bring him before a mayor or justice of the peace within the township for trial."

The foregoing sections, it is believed, are sufficiently explicit in themselves as to inform you of the procedure that may be taken thereunder in order to enforce the rules and regulations relative to a township cemetery.

Based upon the foregoing and in specific answer to your inquiry, it is my opinion that :

(1) Under the provisions of Section 3447, General Code, township trustees may make rules and regulations to the effect that only a sexton or caretaker having a contract with the township trustees for such purpose may participate in digging graves in such a cemetery.

(2) Such rules and regulations may be enforced in accordance with the provisions outlined in Sections 10108, 12495, and 12496 of the General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

792.

SCHOOL DISTRICT—HAVING UNVOTED INDEBTEDNESS EXCEEDING ONE-TENTH OF ONE PER CENT OF PROPERTY VALUATION—MAY NOT ISSUE BONDS TO REBUILD BURNED GARAGE WITHOUT VOTE OF PEOPLE.

SYLLABUS:

When a school district has an outstanding unvoted net indebtedness equal to or in excess of one-tenth of one per cent of the total value of all property in such district as listed and assessed for taxation, such school district may not issue bonds without a vote of the people in any amount for the purpose of rebuilding a garage destroyed by fire, under the provisions of paragraph "C" of Section 2293-15, General Code.