

3570.

TOWNSHIP TRUSTEES—UNAUTHORIZED TO GRANT FINANCIAL HELP TO CEMETERIES OWNED BY CHURCH ORGANIZATIONS.

*SYLLABUS:*

*Township trustees have no authority to grant temporary financial aid to church organizations for the care and maintenance of cemeteries belonging to such church organizations.*

COLUMBUS, OHIO, September 15, 1931.

HON. I. K. SALTSMAN, *Prosecuting Attorney, Carrollton, Ohio.*

DEAR SIR:—Your request for my opinion reads as follows:

“The trustees of Loudon Township, Carroll County, Ohio, desire a ruling upon the following question concerning the cemeteries situated in their township. There are three cemeteries in this township, which are under the control of three different churches, but as happens in many rural communities, the members of these churches have declined in number to such an extent that said church congregations are unable to continue to keep up the cemetery adjacent to said churches, and hence have asked the township trustees for aid.

“The township trustees would be inclined to help them temporarily rather than take over the cemeteries permanently, as the township liability, so the question is as follows:

“Where a cemetery is now in the control of a church organization, and said church organization is about to abandon said cemetery or deed it to the township trustees, may the township trustees temporarily aid said church organization, in the care and maintenance of said cemetery out of the township funds?”

Section 5 of Article X of the Ohio Constitution reads as follows:

“No money shall be drawn from any county or township treasury, except by authority of law.”

From a reading of this section it follows that if there is authority for township trustees to pay money from the township treasury to the church organizations in question, such authority must be found in the statutes.

It is also to be noted that township trustees are administrative officers created by statute pursuant to the authority conferred by Article X, Section 1, of the Ohio Constitution, which reads:

“The general assembly shall provide, by law, for the election of such county and township officers as may be necessary.”

Since the offices of township trustees are created by statute they are necessarily limited in their powers to such as are clearly and expressly granted by statute or necessarily implied for the purpose of carrying out the express powers granted.

The duties and powers of township trustees with respect to the control and management of township cemeteries are found in sections 3441 to 3475, General

Code, and if the township trustees have the authority to donate money to, or temporarily aid church organizations in, the keeping up of their cemeteries, such authority must be found in or be implied from the sections above enumerated.

Section 3465, General Code, provides for the action to be taken in the event of the abandonment of a public or private burial ground, but contains no provision which might authorize the expenditure of township money for, or empower the township trustees to aid a church organization in the upkeep of a cemetery belonging to it.

Section 3471 provides for the transfer of a public burial ground in a township when the title thereto or control thereof is vested in an association or trustees, or in a religious society, but no mention is made therein as to possible aid by the township to the organization owning such cemetery.

The foregoing sections are the only ones which are pertinent to your inquiry and it can easily be seen there is no authority therein for township trustees to give aid to a church organization for the upkeep of its cemetery.

In view of the conclusions arrived at herein, I do not deem it necessary to consider the possible application of section 6 of Article VIII, which prohibits various governmental subdivisions raising money for, and lending their credit to or in aid of any company, corporation or association.

Where a cemetery is in the control of a church organization and said church organization is about to abandon the cemetery or deed it to the township trustees, I am of the opinion that said township trustees have no authority to temporarily aid, from township funds, such church organization in the care and maintenance of the cemetery.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

3571.

ELECTION LAW—METHOD OF COMBINING PROBATE AND COMMON PLEAS COURTS DISCUSSED.

*SYLLABUS:*

*The question of combining the probate court and the court of common pleas may not be submitted to the electors of a county at the November, 1931, election.*

COLUMBUS, OHIO, September 15, 1931.

HON. CEDRIC W. CLARK, *Prosecuting Attorney, Pomeroy, Ohio.*

DEAR SIR:— Your letter of recent date is as follows:

“There was filed yesterday in the Common Pleas Court of Meigs County a petition reading as follows:

‘To the Honorable Chas. E. Peoples, Judge of the Court of Common Pleas, Meigs County, Ohio: