

OPINION NO. 1151**Syllabus:**

1. Boards of township trustees have a duty to repair and re-erect monuments and tombstones in public cemeteries within their jurisdiction, when the repair or re-erection is necessary to "keep it in good repair" within the meaning of Section 517.11, Revised Code.

2. Boards of township trustees are not liable for injuries to persons caused by tombstones or monuments or pieces thereof falling upon them in cemeteries within the jurisdiction and control of such boards of township trustees.

To: Robert O. Stout, Marion County Pros. Atty., Marion, Ohio
By: William B. Saxbe, Attorney General, June 22, 1964

I have your request for my opinion regarding the duty of township trustees to repair or re-erect fallen monuments in a public cemetery under the jurisdiction of such trustees and of the liability of township trustees for injuries caused to persons by reason of monuments or parts of monuments falling upon such persons while in a cemetery within the jurisdiction of township trustees.

In Opinion No. 4163, Opinions of the Attorney General for 1954, page 423, my predecessor in office considered the duty of a board of township trustees to care for and maintain a public cemetery within its jurisdiction. Paragraph two of Opinion No. 4163, supra, reads as follows:

"Where title to a public cemetery is vested in a board of township trustees as provided in Section 517.10, Revised Code, the duty of caring for and maintaining such cemetery is placed in the board of township trustees as provided in Section 517.11, Revised Code."

I assume that title to the public cemetery to which you refer is in the board of township trustees.

Section 517.11, Revised Code, provides:

"The board of township trustees shall provide for the protection and preservation of cemeteries under its jurisdiction, and shall prohibit interments therein when new grounds have been procured for township cemeteries or burial grounds. Where such old cemeteries are in or near village plats, and the public health is liable to be injured by further interments therein, the board shall institute suits to recover possession thereof, remove trespassers therefrom, and may recover damages for injuries thereto or any part thereof or to any fence or hedge enclosing them, or to any tomb or monument therein.

"The board shall enclose such cemeteries with a substantial fence or hedge, and shall keep it in good repair. It may re-erect any fallen tombstones, regardless of the cause of the falling, in such cemeteries. The board shall levy a tax for such purpose, not to exceed one half mill in any one year, upon all the taxable property of the township."

Although Section 517.11, Revised Code, was amended in 1957 by the General Assembly (127 Ohio Laws, 634), I do not consider the amendment changed the duty of the board of township trustees regarding care and maintenance of public cemeteries within the board's jurisdiction. The

amendment added the following sentence:

"It may re-erect any fallen tombstones, regardless of the cause of the falling, in such cemeteries."

Under this statute the board has a general duty to keep the cemetery in repair. See Opinion 4163, supra. The 1957 amendment empowers the board to re-erect tombstones in order to carry out the duty to repair and maintain cemeteries which is imposed on the board by Section 517.11, supra. If the duty to maintain and repair dictates that tombstones be re-erected, the board is obligated to do so by the 1957 amendment.

Your second question deals with the liability of the board of township trustees for injuries caused to persons by reason of the failure of the board to keep tombstones in repair.

Since the township is considered a subdivision of the state government, as are counties and municipalities, the township is afforded the protection of sovereign immunity for negligence except in those instances where statutes specifically impose liability. Except for the provisions of Section 5571.10, Revised Code, wherein immunity has been waived as to injuries caused by roads, road machinery, or equipment used with relation to roads (Opinion No. 3200, Opinions of the Attorney General for 1962), there is no statutory liability imposed on boards of township trustees, See Hunter and Bayer, Tort Liability of Local Governments in Ohio, 9 Ohio St., L.J. 377, 404.

The tort liability of townships for torts inflicted on their employees is primarily determined by proceedings under the Workmen's Compensation Act. See Comment, Workmen's Compensation For Public Employees in Ohio, 9 Ohio St., L.J. 508.

In conclusion, it is my opinion and you are advised that:

1. Boards of township trustees have a duty to repair and re-erect monuments and tombstones in public cemeteries within their jurisdiction, when the repair or re-erection is necessary to "keep it in good repair" within the meaning of Section 517.11, Revised Code.

2. Boards of township trustees are not liable for injuries to persons caused by tombstones or monuments or pieces thereof falling upon them in cemeteries within the jurisdiction and control of such boards of township trustees.