

OPINION NO. 75-083**Syllabus:**

A board of township trustees has a duty pursuant to R.C. 517.11 to repair and re-erect monuments in a cemetery that has been vandalized. 1964 Op. Att'y Gen. No. 1151 approved and followed.

To: Ronald W. Vettel, Ashtabula County Pros. Atty., Jefferson, Ohio
By: William J. Brown, Attorney General, November 25, 1975

Your request for my opinion poses the following question:

Does a township board of trustees have a responsibility or a liability to repair and re-erect monuments in a cemetery that have been vandalized?

It is my understanding in view of materials submitted with your request that title to the cemetery in question is vested in the board of township trustees pursuant to R.C. 517.10. That section reads:

"The title to, right of possession, and control of all public cemeteries located outside any municipal corporation, which have been set apart and dedicated as public cemeteries, and any grounds which have been used as such by the public, but not expressly dedicated as a cemetery, except such as are owned or under the care of a religious or benevolent society, or an incorporated company or association, or under the control of the authorities of any municipal corporation, shall, severally be vested in the board of township trustees."

In such cases R.C. 517.11 imposes a duty on the township trustees to provide for the care of the cemetery:

"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."
(Emphasis added.)

My predecessor in 1964 Op. Att'y Gen. No. 1151 directed his attention to the question you have posed. Noting that authority to re-erect fallen tombstones was added to R.C. 517.11 by a 1957 amendment, H.B. No. 291, eff. 9/9/1957, 127 Ohio Laws 634, he opined that this did not change the trustees' basic duty under existing language to keep the cemetery in good repair. Thus he concluded that:

"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."

I agree with this interpretation. The protection and preservation of monuments and tombstones is an integral part of the care of

of a cemetery. On this point I would refer you to that language in R.C. 517.11 which authorizes township trustees to recover damages for injuries to monuments. Furthermore, I find nothing in the 1957 amendment of R.C. 517.11 to indicate an attempt by the General Assembly to qualify the duty of care imposed by that section.

In specific answer to your request it is my opinion, and you are so advised that a board of township trustees has a duty pursuant to R.C. 517.11 to repair and re-erect monuments in a cemetery that has been vandalized. 1964 Op. Att'y Gen. No. 1151 approved and followed.