

OPINION NO. 71-062

Syllabus:

Moneys from the general fund of a township may not be expended to acquire land to establish a cemetery, as provided for by Section 517.01, Revised Code, unless a vote is taken with respect thereto as provided for by Section 517.04, Revised Code.

To: Robert A. Jones, Clermont County Pros. Atty., Batavia, Ohio
By: William J. Brown, Attorney General, October 4, 1971

Your request for my opinion reads as follows:

"Would you please favor us with your opinion as to whether or not a Board of Township Trustees may purchase land for the establishment of a new cemetery out of general fund monies of the township without submitting the question of establishing a new cemetery to a vote of the people under Section 517.04 of the Revised Code of the State of Ohio."

Your letter further explains that the subject township cemetery is completely filled, that the township trustees have an opportunity to purchase a suitable tract of land to establish a new cemetery and that there is adequate general fund money available to make an outright purchase.

Four closely related statutes are pertinent in resolving the question you have posed. They are Sections 517.04, 517.07, 517.08 and 517.13, Revised Code, formerly Sections 3445, 3448, 3449 and 3455, General Code, respectively.

The pertinent parts of these sections are as follows:

517.04. "Before a purchase or appropriation of land for cemetery purposes is made or a conveyance is accepted, except where funds may be available for such purchase or appropriation of land for cemetery purposes under section 517.08 of the Revised Code, the question of the establishment of such cemetery, on the

order of the board of township trustees or the written application of any six electors of the township, shall be submitted to a vote of the electors of such township at a regular annual election. * * * (Emphasis added)

517.07. "Upon application, the board of township trustees shall sell at a reasonable price such number of lots as public wants demand for burial purposes. * * *

517.08. "The proceeds arising from the sale of cemetery lots under section 517.07 of the Revised Code shall be used in improving and embellishing such grounds, except that upon unanimous consent of the board of township trustees, such proceeds may be used in the purchase or appropriation of additional land for cemetery purposes in accordance with sections 517.01 and 517.13 of the Revised Code; * * *." (Emphasis added)

517.13. "In any township in which there is a cemetery owned or partly owned by such township, if in the opinion of the board of township trustees, it is desirable to add to the area of such cemetery by the purchase of additional grounds, * * * such additional lands shall be considered a part of the original cemetery even though separated therefrom by a road or highway.

"For such purpose the board may expend funds as provided in section 517.08 of the Revised Code, or the board may levy a tax, not to exceed one half of one mill, on the taxable property of the township, for a period not to exceed five years, which tax shall be collected as other taxes, and appropriated for the purchase or appropriation of such additional cemetery grounds which shall become part of the township cemetery." (Emphasis added)

From a reading of Section 517.04, supra, it is clear that the question of the establishment of a township cemetery, except where funds are available from the sale of cemetery lots under Section 517.07, supra, must be submitted to a vote of the electors of the township. Before its amendment in 1961, this section contained no exception relative to expenditure of the cemetery fund to purchase land for the establishment of a cemetery.

With respect to the general fund of the township being used to purchase land for the establishment of a cemetery, the statutes have not been changed since a similar question was answered in Opinion No. 6350, Opinions of the Attorney General for 1943.

The syllabus of that opinion reads as follows:

"Moneys from the general funds of a township may not be expended to acquire land to establish a

cemetery, as provided for by Section 3441, General Code, unless a vote is taken with respect thereto as provided for by Section 3445, General Code."

The statutes mentioned in that syllabus are now found with minor changes in Sections 517.01 and 517.04, Revised Code. Such changes are not pertinent to your question.

While establishment of a cemetery is to be distinguished from enlargement or additions to an established cemetery as is described in Section 517.13, supra, enlargement can only be made on land nearby the original cemetery. Since your question does not involve enlargement of an existing cemetery but, rather, the establishment of a new one the statutory provisions governing establishment must be complied with.

From the foregoing it is therefore my opinion and you are so advised that moneys from the general fund of a township may not be expended to acquire land to establish a cemetery, as provided for by Section 517.01, Revised Code, unless a vote is taken with respect thereto as provided for by Section 517.04, Revised Code.