

Your attention is directed to the following language which appears therein:

"However, if the board of county commissioners of this county, in the exercise of its discretion in the matter, does not see fit to make such supplemental appropriations, or if by way of receipts and balances in said fund or monies transferred thereto there is not in said fund sufficient monies to make such supplemental appropriations, there would in such case be no authority for paying deputies, assistants or clerks in any such county offices an aggregate compensation exceeding that now fixed by appropriations heretofore made by the board of county commissioners for such respective offices."

In view of the foregoing and answering your question specifically, it is my opinion that the amount of money that may be expended by a county treasurer for deputies, assistants or clerk hire may not in the aggregate exceed the appropriations made by the board of county commissioners for said purpose. If a board of county commissioners, in the exercise of its discretion in the matter, does not see fit to make supplemental appropriations, or if by way of receipts and balances in the general county fund there is not sufficient money to make such supplemental appropriations, a county treasurer is without authority to pay deputies, assistants or clerks an aggregate compensation exceeding that fixed by appropriations theretofore made by the board of county commissioners for such office.

I am enclosing herewith a copy of Opinion No. 1339 referred to.

Respectfully,
 EDWARD C. TURNER.
Attorney General.

1729.

APPROVAL, BONDS OF OAKWOOD VILLAGE SCHOOL DISTRICT,
 MONTGOMERY COUNTY, OHIO—\$206,500.00.

COLUMBUS, OHIO, February 18, 1928.

Industrial Commission of Ohio, Columbus, Ohio. --

1730.

CEMETERIES—PURCHASE AND RESALE OF INDIVIDUAL GRAVE
 VAULTS—AUTHORITY OF TOWNSHIP TRUSTEES.

SYLLABUS:

The trustees of a township are not authorized, by virtue of the authority vested in them with respect to the management and control of cemeteries, or otherwise,

to use public funds for the purpose of purchasing individual grave vaults for resale to persons desiring to make burials in the said cemeteries.

COLUMBUS, OHIO, February 20, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your communication, which reads as follows:

“We respectfully request you to furnish this department with your written opinion upon the following question:

Question: May the board of trustees of a township, having charge of a township cemetery, legally purchase grave vaults and pay for the same out of the township treasury, the purpose being to sell such vaults to persons desiring to make burials in the township cemetery?”

The existence of counties and townships and the necessity for administrative officers therefor is recognized by the Constitution of Ohio, wherein it is provided in Article X, Section I, of that instrument that:

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

These administrative officers, being created by statute, are necessarily limited in their powers to such as are clearly and expressly granted by the statute or necessarily implied for the purpose of carrying out the express powers granted. This doctrine as applied to such boards, as boards of county commissioners, is stated by the Supreme Court in the case of *State, ex rel. Locher, Prosecuting Attorney, vs. Menning*, 95 O. S. 97, in the following language:

“The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.”

This doctrine, as applied to boards of county commissioners in their financial transactions, must in principle be equally obligatory upon township trustees in their financial transactions. The use of township funds is limited in the Constitution itself to such uses as are authorized by law. Article X, Section 5 of the Constitution of Ohio provides:

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

The duties and powers of township trustees with respect to the control and management of cemeteries is found in Section 3441 to 3475, inclusive, of the General Code. Nowhere in these sections, or any other sections of the Code, will be found authority to invest public funds in burial vaults or other articles necessary in making burials to be sold or furnished to the patrons of the cemetery.

Authority is given to township trustees by Section 3285, General Code, to levy a tax "to purchase a hearse and build a vault," providing the proposition is first submitted to a vote of the electors of the township and it carries by a majority of all the votes cast at such election; but it is clear that this does not mean that individual vaults may be purchased for sale to the patrons of the cemetery. This section reads, in part, as follows:

"The trustees of a township may levy a tax in such amount, as they determine, to purchase a hearse and build a vault, or for either purpose, for the use of such township to be under the control of the trustees or a person appointed by them. * * * "

The language of the above statute, wherein it authorizes the trustees to "purchase a vault," which, when purchased, shall be "for the use of such township to be under the control of the trustees or a person appointed by them" clearly indicates that the purchase of but one vault is contemplated, and that when it is purchased, it shall be under the control of the trustees. It is manifest that this does not mean the purchase of individual vaults for resale, but rather the construction or building of what is commonly known as a receiving vault for the use of the patrons of the cemetery generally. This conclusion is fortified by the fact that this act was passed in 1878, (75 O. L. 46), when the use of receiving vaults in cemeteries was quite general, and before the use of individual vaults for each grave became customary.

To authorize the use of public funds for the purpose of buying grave vaults or other paraphernalia necessary and proper in making burials would be virtually authorizing public authorities to act as merchant brokers for private individuals and would be a diversion of public funds to private uses, which, in my opinion, would be an unwarranted and unconstitutional grant of power even if such action were authorized by statute, which it is not.

I am therefore of the opinion that the trustees of a township can not legally purchase grave vaults and pay for the same with township funds, for the purpose of selling such vaults to the patrons of the cemetery, thereby reimbursing the township treasury with the proceeds of such sale.

Respectfully,
EDWARD C. TURNER.
Attorney General.

1731.

DISAPPROVAL, BONDS OF THE VILLAGE OF SEVEN MILE, BUTLER COUNTY, OHIO—\$8,244.09.

COLUMBUS, OHIO, February 20, 1928.

Industrial Commission of Ohio, Columbus, Ohio.