

462.

TOWNSHIP CEMETERY—JOINT MAINTENANCE BY ADJACENT TOWNSHIPS—WHERE TITLE VESTS—HOW OPERATED.

SYLLABUS:

1. *When a township cemetery is used by the people of such township and also by the people of the two adjoining townships for burying purposes, the township trustees of such townships may jointly maintain such township cemetery, as provided in Section 3456, General Code, and the title to such cemetery grounds should vest in and be held by the township trustees of the township in which the cemetery lies, in trust for the use of its inhabitants and the inhabitants of the other two townships, as provided in Section 4187, General Code.*

2. *When the trustees of two or more townships have jointly established a cemetery under the provisions of Section 3456, General Code, such joint cemetery may be operated by the trustees of such township jointly or by a board of cemetery trustees appointed under the provisions of Section 4193-1, of the General Code.*

COLUMBUS, OHIO, May 29, 1929.

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

GENTLEMEN:—Your letter of recent date is as follows:

“You are respectfully requested to furnish this department your written opinion upon the following:

In a certain township in Delaware County, a township cemetery has been established and has been under the control of the trustees of such township for a long period of years. Two adjoining townships, the residents of which use such cemetery for burial purposes, now desire to join with the township in which the cemetery is located in keeping up the same.

Question 1. May these townships legally join in the keeping up of the cemetery in question; and if so, by what procedure?

Question 2. If the two townships may legally join with the original township, will the cemetery then be operated in accordance with the first two sentences of Section 3456, General Code, by the trustees of such townships jointly, or in accordance with the last sentence of said section, whereby the trustees shall have the same powers, be governed by the same rules, and proceed in the same manner as provided for municipal corporations and townships uniting for cemetery purposes?”

Section 3456 of the General Code to which you refer is as follows:

“When a public burial ground located on or near a township line, is used by the people of two or more townships for burying purposes, the trustees of such townships shall jointly take possession thereof, and take care of and keep it in repair, as in case of burial grounds belonging to a township. The trustees of each township shall levy needful taxes therefor, not to exceed in any year more than one-fourth of one per cent. Two or more townships may join in establishing and maintaining a cemetery, and for such purpose the trustees shall have the same powers, be governed by the same rules, and proceed in the same manner, as provided for municipal corporations and townships uniting for that purpose.”

It is noted that the first sentence of this section provides that the trustees of two or more townships shall jointly take possession of, and take care of and keep in repair a public burial ground when the same is located on or near a township line and is used by the people of two or more townships for burial purposes. This provision of the section was enacted in substance as it now stands March 15, 1875, 72 O. L., page 52, and had reference to public burial grounds as distinguished from township cemeteries. It is not applicable therefore to township cemeteries.

This same section, however, provides for the establishment and maintenance of a joint cemetery by two or more townships and refers to the rules and procedure governing the establishment of joint cemeteries formed by municipalities and townships. This reference is to Sections 4183, et seq. of the General Code. Section 4183 is as follows:

“The councils of two or more municipal corporations, or of such corporation or corporations, and the trustees of a township or townships, when conveniently located for that purpose, may unite in the establishment and management of a cemetery, by the purchase or appropriation of land therefor, not exceeding in extent one hundred acres, to be paid for as hereinafter provided.”

Section 4187, General Code, provides that the title to such joint cemetery grounds, whether by purchase or otherwise, shall vest in and be held by the corporation making the appropriation, in trust for the use of its inhabitants and the inhabitants of the other corporations or townships in the county.

Section 4188, General Code, provides for the apportionment of the expense of the purchase of such union cemeteries between the corporations and townships. Under the provisions of Section 4189, General Code, control and management of such cemeteries shall be under the trustees of the township or townships and the council of the municipal corporation or corporations, and their authority over it and their duties in relation thereto shall be the same as where the cemetery is under the exclusive authority of the single corporation.

Section 3456, General Code, is part of Title II, Division 3, Chapter 6, of the General Code, providing for township cemeteries. There appears in this chapter no express provisions for the trustees of several townships jointly taking possession of a township cemetery lying in one such township. The provision however that the trustees of several townships may establish and maintain a joint cemetery and proceed in the same manner as provided in Sections 4183, et seq., is, I believe, indicative of a legislative intent that the trustees of the several townships to which you refer may jointly maintain such cemetery. In this case, when the cemetery is already established and now being used by the people of the three townships, to construe this statute strictly would be to say that the trustees of these three townships may not jointly maintain the cemetery. The statute says they may jointly “establish and maintain” such cemetery. Such construction may result in a needless expenditure of the taxpayer's money by requiring that before the townships may jointly maintain a cemetery, they must first establish a new cemetery. This is clearly not the legislative intent.

In specific answer to your first question, I am of the opinion that when a township cemetery is used by the people of such township and also by the people of the two adjoining townships for burying purposes, the township trustees of such townships may jointly maintain such township cemetery, as provided in Section 3456, General Code, and that the title to such cemetery grounds should vest in and be held by the township trustees of the township in which the cemetery lies, in trust for

the use of its inhabitants and the inhabitants of the other two townships, as provided in Section 4187, General Code.

Your second question refers to the way in which the cemetery in question may be operated. As previously stated, joint township cemeteries being governed by the same rules as applicable to union cemeteries, it follows, from the provisions of Section 4189, General Code, that such cemeteries may be operated jointly by the trustees of the three townships. Section 4193-1, General Code, provides that the township trustees and council may if they so desire appoint a sub-board. Manifestly, if it should be desired, there exists here express authority for the township trustees of the three townships in question to appoint a board of cemetery trustees who shall be charged with the operation and management of the joint cemetery. See Opinions of the Attorney General for 1917, Volume I, page 301. This opinion was predicated upon a consideration of a joint township cemetery and not a union cemetery jointly held by a township and a municipality. The syllabus is in part as follows:

"1. Sections 4183 and 4201, inclusive, G. C., apply to procedure in creating a board of joint township cemetery trustees, subject to provisions of Section 4193-1, G. C., when advantage is taken thereof.

2. Sections 4183 and 4193, G. C., are not inconsistent. The former is the general law, subject to the later optional provisions of the latter.

* * * * *

In view of the foregoing, and in specific answer to your second question, I am of the opinion that when the trustees of two or more townships have jointly established a cemetery under the provisions of Section 3456, General Code, such joint cemetery may be operated by the trustees of such township jointly or by a board of cemetery trustees appointed under the provisions of Section 4193-1, of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

463.

APPROVAL, BONDS OF HOUSTON RURAL SCHOOL DISTRICT, SHELBY COUNTY—\$75,000.00.

COLUMBUS, OHIO, May 29, 1929.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

464.

APPROVAL, NOTES OF BERLIN RURAL SCHOOL DISTRICT, ERIE COUNTY, OHIO—\$4,900.00.

COLUMBUS, OHIO, May 31, 1929.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.