

3441.

BOND ISSUE—BY MUNICIPALITY AND TOWNSHIP FOR CONSTRUCTION OF BUILDING IN UNION CEMETERY—TOWNSHIP'S PORTION MUST BE AUTHORIZED BY ELECTORS.

SYLLABUS:

1. *A municipality and a township may each issue bonds to pay their respective portions of the cost of constructing a building for cemetery purposes in a union cemetery, owned and managed by such village and township.*

2. *Bonds for such purposes may be issued by a township only pursuant to authority of the electors.*

COLUMBUS, OHIO, July 18, 1931.

HON. RAYMOND E. LADD, *Prosecuting Attorney, Bowling Green, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"The Union Cemetery, owned and managed by the Village of Perrysburg and the Trustees of Perrysburg Township, wish to construct a permanent brick building in said cemetery, the same to be used as a tool house, shelter house and offices for the Union Cemetery Trustees, at an estimated cost of \$7000. What procedure is necessary for the issuance of bonds to provide for this improvement?"

I have checked opinions of Attorneys General and the statutes, but find nothing in point. I do find that a union cemetery is not a separate taxing district; also that a vote by the people after the cemetery is established is not necessary for purchasing additional lands.

I presume Section 4188 would govern as to the proportion of the bonds to be issued by the Village of Perrysburg and the Township Trustees.

I also note that Section 3461 provides for the erection of permanent buildings by the Township Trustees, where they own a burial place within the grounds of a cemetery association. I believe, however, that Section 3444 is a governing statute, which provides for the levying of a tax for one or more years sufficient for the purpose of defraying the expenses of purchase or appropriation and improving cemetery lands, the same not to exceed \$2000 in any year.

It seems to me the erection of this necessary building would be an improvement to the cemetery. The question bothering me would be whether the levy of a tax, under Section 3444 must be done by a vote of the people, as authorized in Section 2293-17 of the Bond Act, or whether the case of *Norton vs. Trustees*, 8 C. C. 335, governs, which is to the effect that after a cemetery is established it is not necessary to submit the question of purchasing additional grounds to a vote of the people."

As you indicate, a union cemetery is not a subdivision within the meaning of the Uniform Bond Act and therefore if the cost of the improvement in question may be raised by the issuance of bonds, the township and municipality must each issue bonds for their share of such cost. The legislature has recognized in Section 4188, General Code, that in the case of a union cemetery, bonds may be issued for

cemetery purposes by the municipality and township for their respective shares of the cost of purchasing such property.

Section 2293-2, General Code, authorizes the issuance of bonds by the taxing authority of any subdivision "for the purpose of acquiring or constructing, any permanent improvement which such subdivision is authorized to acquire or construct."

The question then becomes one of whether or not townships and municipalities are authorized to acquire or construct such a building as is desired.

In the case of townships, the trustees are authorized generally to improve township cemeteries. Section 3444, General Code, which you mention in your communication, authorizes the levy of a tax for such purpose. Section 3461, General Code, provides as follows:

"Where the township owns a burial-place within the grounds of a cemetery association, the trustees of the township may levy a tax not exceeding five mills on the dollar of the tax duplicate of the township for the purpose of erecting permanent buildings upon and within such cemetery grounds."

In view of the provisions of these sections, I have little difficulty in concluding that township trustees are authorized to acquire or construct a building such as you describe in your communication.

With respect to the authority which the legislature has given to municipalities to acquire or construct such a permanent improvement, attention is directed to Section 3939, General Code, which section provides in part as follows:

"Each municipal corporation in addition to other powers conferred by law shall have power:

(1) To acquire by purchase or condemnation real estate with or without buildings thereon, and easements or interests therein, for any lawful purpose;

* * * * *

(9) To provide grounds for cemeteries or crematories, to enclose and embellish them, and to construct vaults or crematories;

* * * * *

Section 4155, General Code, provides as follows:

"The council of a municipality owning a public burial ground or cemetery, whether within or without the corporation, may pass and provide for the enforcement of ordinances necessary to carry into effect the provisions of this chapter, and regulate such public burial grounds and cemeteries, the improvement thereof, the burial of the dead therein, define the tenure and conditions on which lots therein shall be held and protect such burial grounds and cemeteries and all fixtures thereon."

In view of these provisions, I think municipalities clearly have the power to construct any building reasonably appropriate for the proper maintenance, embellishment and improvement of a municipal cemetery.

You next inquire as to the necessity of submitting the question of issuing bonds by the township for the purpose of paying the township portion of the improvement, to the electors thereof. This office has held that under the provisions of Section 2293-17, General Code, townships may not issue bonds except in anticipa-

tion of the collection of special assessments unless authorized by a vote of the electors. Opinions of the Attorney General for 1929, Vol. I, 224, 517, Vol. II, 1406.

It is accordingly my opinion in specific answer to your questions that:

1. A municipality and a township may each issue bonds to pay their respective portions of the cost of constructing a building for cemetery purposes in a union cemetery, owned and managed by such village and township.

2. Bonds for such purposes may be issued by a township only pursuant to authority of the electors.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3442.

APPROVAL, CONTRACTS FOR ROAD IMPROVEMENTS IN FRANKLIN
AND TUSCARAWAS COUNTIES.

COLUMBUS, OHIO, July 20, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

3443.

APPROVAL, BONDS OF THE VILLAGE OF MEDINA, MEDINA COUNTY,
OHIO—\$5,000.00.

COLUMBUS, OHIO, July 20, 1931.

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

3444.

APPROVAL, BONDS FOR THE FAITHFUL PERFORMANCE OF THEIR
DUTIES—MARGARET E. KEPLER, AS STENOGRAPHER—HELEN
M. HARE, EXAMINER.

COLUMBUS, OHIO, July 20, 1931.

HON. FRANK F. MCGUIRE, *Superintendent of Building and Loan Associations,
Wyandotte Building, Columbus, Ohio.*

DEAR SIR:—You have submitted two bonds, each in the penal sum of \$5,000.00, upon which the American Surety Company appears as surety.

One of said bonds is conditioned to cover the faithful performance of the duties of the principal, Margaret E. Kepler, as stenographer, and the other is conditioned to cover the faithful performance of the duties of the principal, Helen M. Hare, Examiner.

Finding said bonds proper as to form, I have accordingly endorsed my approval thereon, and return the same herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.