

Note from the Attorney General's Office:

1991 Op. Att'y Gen. No. 91-062 was approved
and followed by 2014 Op. Att'y Gen. No. 2014-044.

OPINION NO. 91-062**Syllabus:**

1. Pursuant to R.C. 759.08, when a cemetery to which a township holds title under R.C. 517.10 becomes located in a village by annexation, title to the cemetery and the concomitant duty of care and maintenance vests in the village, regardless of whether a deed to the cemetery is given to the village by the board of township trustees. (1963 Op. Att'y Gen. No. 26, p. 116, approved and followed.)
 2. Pursuant to R.C. 759.19, a village may transfer to a township a cemetery to which the village holds title under R.C. 759.08, and the terms of such transfer may include an agreement that the village will assist with maintenance costs.
 3. Pursuant to R.C. 759.27 and R.C. 759.31, an existing cemetery to which a village holds title under R.C. 759.08 may be established as a union cemetery subject to the joint management and control of a township and village. (1962 Op. Att'y Gen. No. 3170, p. 601, syllabus, paragraph 3, approved and followed.)
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To: Anthony G. Pizza, Lucas County Prosecuting Attorney, Toledo, Ohio
By: Lee Fisher, Attorney General, December 31, 1991

I have before me your request for an opinion regarding township cemeteries. You relate that a township maintains three cemeteries that are now located, through various annexations, within a village. A member of your staff has indicated that there are no existing agreements between the township and village with respect to these cemeteries. Because the fees associated with the cemeteries do not cover the cost of maintenance, "the township would like to either negotiate a fee contract with the village for township maintenance of the cemeteries or give the cemeteries to the village along with the incumbent maintenance responsibilities." You ask whether either option is available under Ohio law.

R.C. 759.08 states:

The title to and right of possession of public cemeteries and burial grounds located within a municipal corporation¹ and set apart and dedicated as public cemeteries or burial grounds, and grounds used as such by the public but not dedicated, except those owned or under the care of a religious or benevolent society, or an incorporated company or association, are hereby vested in the municipal corporation in which such cemetery or burial ground is located. (Footnote added.)

Interpreting this language in conjunction with the similar provisions of R.C. 517.10, which vest title to public cemeteries located outside any municipal corporation in the board of township trustees, one of my predecessors held:

Under Section 759.08, Revised Code, when through incorporations or annexations a township-owned cemetery becomes located in a village, title to and right to possession of such cemetery vests in the village, regardless of whether a deed to said cemetery is given to the village by the board of township trustees. Opinion No. 3170, Opinions of the Attorney General for 1962, [p. 601], and Opinion No. 1339, Opinions of the Attorney General for 1929, [vol. III,] page 2010, approved and followed.

1963 Op. Att'y Gen. No. 26, p. 116 (syllabus). Thus, by operation of law, title to the cemeteries you have described is now vested in the village. The transfer of title is not dependent on either the formal execution of a deed or the willingness of the village to accept the property. 1963 Op. No. 26 at p. 118; 1929 Op. Att'y Gen. No. 1339, vol. III, p. 2010. Accordingly, upon annexation, responsibility for the maintenance of the cemeteries described in your request shifted to the legislative authority of the village or to the village board of cemetery trustees, pursuant to the provisions of R.C. 759.19-.26, and there is no necessity for the board of township trustees to "give" the cemeteries to the village. The trustees have authority, however, to take cognizance of the statutory change of title by formal transfer of a deed, *see, e.g., King v. City of Shelby*, 40 Ohio App. 195, 197, 178 N.E. 22, 23 (Richland County 1931).

If the board of township trustees is willing to remain involved in the maintenance and care of these cemeteries, I am aware of only two statutory mechanisms by which this can be accomplished. First, under the circumstances described in R.C. 759.19, a village may transfer the cemetery property back to the board of township trustees. R.C. 759.19 states:

In all cases in which the legislative authority of a village which has title to a cemetery fails to take proper care thereof, and the township in which the village is located desires to control such cemetery, the village may, by ordinance, transfer any real property acquired for cemetery purpose to the board of township trustees, *upon such terms as are agreed to* between the village and the board. (Emphasis added.)

¹ Villages are a type of municipal corporation. *See* Ohio Const. art. XVIII, §1.

The statute further authorizes the board of township trustees to receive such property "and enter into any contract relating thereto." I see no reason that the terms of the transfer cannot include an agreement that the village will share in the cost of maintenance.²

An alternative would be to establish the cemeteries as union cemeteries pursuant to R.C. 759.27-43. It is possible to convert a preexisting cemetery to a union cemetery under these provisions. See 1962 Op. Att'y Gen. No. 3170, p. 601 (syllabus, paragraph 3); 1951 Op. Att'y Gen. No. 817, p. 606. Pursuant to R.C. 759.31, such cemeteries are then managed jointly by the township and the municipal corporation.

It is, therefore, my opinion, and you are hereby advised that:

1. Pursuant to R.C. 759.08, when a cemetery to which a township holds title under R.C. 517.10 becomes located in a village by annexation, title to the cemetery and the concomitant duty of care and maintenance vests in the village, regardless of whether a deed to the cemetery is given to the village by the board of township trustees. (1963 Op. Att'y Gen. No. 26, p. 116, approved and followed.)
2. Pursuant to R.C. 759.19, a village may transfer to a township a cemetery to which the village holds title under R.C. 759.08, and the terms of such transfer may include an agreement that the village will assist with maintenance costs.
3. Pursuant to R.C. 759.27 and R.C. 759.31, an existing cemetery to which a village holds title under R.C. 759.08 may be established as a union cemetery subject to the joint management and control of a township and village. (1962 Op. Att'y Gen. No. 3170, p. 601, syllabus, paragraph 3, approved and followed.)

² Failure of the village to take proper care of the cemeteries logically must be construed to include voluntary abdication of control over the cemetery to the township. To interpret this language otherwise would require that the village first allow the cemetery to fall into actual neglect in order to effect a transfer to a willing township, thus encouraging the very condition the statute seeks to avoid. See generally *Henry v. Central National Bank*, 16 Ohio St. 2d 16, 242 N.E.2d 342 (1968) (purpose of statutory construction is to give effect to legislative intent); *Chesapeake & Ohio Railway Co. v. W.G. Ward Lumber Co.*, 1 Ohio App. 164, 172 (Lawrence County 1913) (court may look to mischief to be prevented in interpretation of statute); R.C. 1.49(A) and (E).