

Payments made by the county clerks to the state treasurer, of fees received for registration of land under the said Torrens Law, are not payments in discharge of an obligation owing to the state as such, and are not, in my opinion, such payments as are embraced within the terms of Section 248, *supra*.

I am of the opinion, therefore, in specific answer to your question, that payments made to the Treasurer of State by county clerks, in pursuance of Section 8572-103 of the General Code, need not be by pay-in-order or draft of the Auditor of State as is provided for payments into the state treasury by Section 248 of the General Code.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

1526.

APPROVAL, CONTRACT FOR ELIMINATION OF GRADE CROSSING  
NEAR BELLEVUE, HURON COUNTY.

COLUMBUS, OHIO, February 15, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of January 9, enclosing copy of proposed contract providing for the elimination of the grade crossing over the tracks of the New York Central Railroad Company, The Wheeling and Lake Erie Railway Company, and The Lake Shore Electric Railway Company, on State (Intercounty) Highway No. 289, just east of Bellevue in Huron County.

I have carefully examined the proposed agreement and find it correct in form and hereby approve the same.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

1527.

TOWNSHIP CEMETERY LOT—EXPENSE FOR RECORDING OF DEED  
DETERMINED—SUCH EXPENSE RETAINED BY TOWNSHIP CLERK  
—TWO TRUSTEES MAY EXECUTE SAID DEED.

**SYLLABUS:**

1. *The expense of recording a deed for a township cemetery lot to be charged by a township clerk as provided in Section 3448, General Code, should not exceed ten cents per one hundred words.*
2. *Such expense may be legally retained by the township clerk.*
3. *A deed for a township cemetery lot executed in accordance with the provisions of Section 3448, General Code, by at least two members of the board of township trustees is sufficient compliance with this section.*

COLUMBUS, OHIO, February 15, 1930.

*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:

Section 3448, G. C., relating to the sale of cemetery lots by township trustees, provides that such deeds shall be recorded by the township clerk in a book for that purpose, the expense of recording to be paid by the person receiving the deed. Section 3308, G. C., provides certain fees which the township clerk shall be entitled to receive but does not provide a fee for the recording of the deed for a cemetery lot.

Question 1. What expense of recording a deed is the purchaser of a lot required to pay?

Question 2. May the clerk charge any fee for such recording and if he may legally make such charge, can he retain the sum for his own use?

Question 3. In executing a deed for a cemetery lot, may two members of the board of township trustees sign the same or is it required that all members of the board sign?"

Section 3448, General Code, to which you refer, provides :

"Upon application the township trustees shall sell at a reasonable price such number of lots as the public wants demand for burial purposes. Upon complying with the terms of sale, purchasers of lots shall be entitled to receive a deed or deeds therefor which the trustees shall execute, and which shall be recorded by the township clerk in a book for that purpose, the expense of recording to be paid by the person receiving the deed. Upon the application of a head of a family living in the township, the trustees shall make and deliver to such applicant a deed for a suitable lot for the burial of his or her family without charge, if in the opinion of the trustees, by reason of the circumstances of such family, payment therefor would be oppressive."

As stated in your letter, Section 3308, General Code, does not provide a fee to be charged by the township clerk for the recording of a deed for a cemetery lot. The section, however, provides that the clerk shall be entitled to a fee of ten cents for each hundred words of record required in the establishment of township roads, and ten cents for each hundred words of record or copies in matters relating to partition fences. While this last mentioned section relates to fees as distinguished from expenses referred to in Section 3448, supra, I am inclined to the view that in the absence of an express provision as to what the limitation of such expenses shall be, if a clerk were to charge ten cents per hundred words as expense of recording such deeds, as provided for in the case of recording other instruments, such charge would be reasonable.

To say because the statute has set forth no express schedule or limitations as to the expense of recording deeds to township cemetery lots, that, therefore, no charge may be made, would be to render invalid and ineffective the provision of Section 3448, supra, here under consideration. As stated in Sutherland on Statutory Construction, Vol. II, p. 916:

"All acts will be construed if possible so as to be valid and effective. When the alternative is presented of attributing to an enactment a rational purpose and effect, or of regarding it as a dead letter on the statute book, the court will exercise great ingenuity in the endeavor to avoid the latter contingency."

It must be remembered that this is not a consideration of the absence of a provision for a charge to be made for recording. The statute expressly provides that this expense is to be paid and is silent only as to the extent or limitation of this charge.

With reference to the question of whether the expense of recording such deeds may be retained by the clerk, your attention is directed to an opinion found in Opinions of the Attorney General for the year 1921, Vol. I, p. 86, the syllabus of which is as follows:

"Under Sections 3294, 3308 and 3318, G. C., the limitation upon maximum annual compensation of the township officers therein named has reference only to services for the township as such, for which payment is made by the township out of the township treasury; and payments by individuals, for the services of such officers, do not come within such limitation."

At p. 88, the following language is used:

"It must be borne in mind that township officers, unlike county officers, are not compensated on a salary basis, but on the basis of fees and allowances. The limitation on annual compensation does not entrench upon the fee and allowance system except to the extent of providing a limitation upon the total amount of fees drawn annually from the township as such."

I concur in these views.

In regard to the number of trustees which shall be necessary to execute a deed for a cemetery lot, Section 3448, supra, merely provides that such deed shall be executed "by the trustees." The general rule is set forth in 29 Cyc. 1434, wherein it is said:

"Where official authority is conferred upon a board or commission, composed of three or more persons, such authority may be exercised by a majority of the members of such board."

In the case of *State, ex rel. vs. Wilkesville Township*, 20 O. S. 288, it was held that the execution of certain bonds by two township trustees when the third trustee was absent from the state, was sufficient compliance with the statute providing that "The trustees may \* \* \* issue bonds." There is no provision in Section 3448, supra, to the effect that these deeds shall be executed by all of the trustees, and the execution of such a deed by at least two members of the board, does, in my view, constitute a sufficient compliance with this section.

Specifically answering your questions, I am of the opinion that:

1. The expense of recording a deed for a township cemetery lot to be charged by a township clerk as provided in Section 3448, General Code, should not exceed ten cents per one hundred words.
2. Such expense may be legally retained by the township clerk.
3. A deed for a township cemetery lot executed in accordance with the provisions of Section 3448, General Code, by at least two members of the board of township trustees is sufficient compliance with this section.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

1528.

APPROVAL, NOTES OF HOPEWELL TOWNSHIP RURAL SCHOOL DISTRICT, PERRY COUNTY—\$65,000.00.

COLUMBUS, OHIO, February 15, 1930.

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