

the thirty-first day of December, 1932, by the terms of which the State will be required to pay fifty dollars (\$50.00) per month, on the first day of each and every month, in advance.

You have submitted encumbrance estimate No. 1248, which contains the certificate of the Director of Finance to the effect that funds are available for the payment of rentals for the months of May and June, 1931, which is believed to be sufficient.

Finding said lease in proper legal form, I hereby approve it as to form, and return it herewith.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

3197.

APPROVAL, BONDS OF JUNCTION CITY-JACKSON VILLAGE SCHOOL DISTRICT, PERRY COUNTY, OHIO—\$66,000.00.

COLUMBUS, OHIO, May 1, 1931.

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

3198.

TOWNSHIP TRUSTEES—POWER TO ADOPT REASONABLE RULES FOR SALE OF CEMETERY LOTS—INCORPORATION OF SAID RULES IN DEEDS—PROTECTING THEMSELVES AND TOWNSHIP RESIDENTS FROM FRAUDULENT TRANSFERS BY SAID RESIDENTS TO NON-RESIDENTS.

*SYLLABUS:*

*A board of township trustees may adopt reasonable rules and regulations for the purpose of protecting the trustees and residents of the township against speculative sales of township cemetery lots to non-residents, and incorporate in deeds to the lots such rules and regulations as are pertinent.*

COLUMBUS, OHIO, May 4, 1931.

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

DEAR SIR:—Acknowledgment is hereby made of your request for my opinion which reads in part as follows:

“I am writing for your advice as to how the trustees may regulate the sale of cemetery lots to resident and non-resident purchasers, so as to prevent a non-resident from circumventing their rules and regulations in reference to the price for non-residents by having a resident purchaser buy lots and then transfer it to the non-resident purchaser during his life time, or have an arrangement with the relatives whereby they will

quit claim to the non-resident heir in accordance with an agreement had by the non-resident heir with the decedent during his life time.

"The facts are that many, if not all of our township trustees, give a reduction in price to the heads of families, residing in the township, in the sale of cemetery lots, and charging a larger sum to non-residents. The difference between the two sums enable them to care for the cemeteries. In some instances they charge \$10.00 to \$25.00 to residents of the township and \$75.00 to \$100.00 a lot to non-residents.

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"The trustees, at this time, have no rule or regulation prohibiting the sale of a cemetery lot by a resident owner to a non-resident, without the written permission of the trustees, nor do they have a rule providing that in the event of the death of a resident owner, who has made no use of the lot for burial purposes during his life time and his body is not buried therein, after his death, that the trustees may re-purchase the lot for the original purchase price paid by the deceased.

"My question is, can the board under the authority of Section 3448 of the General Code, adopt rules and regulations and have them made a part of their deed to the purchaser, so as to protect the trustees and the residents of the township against fraudulent transfers to non-residents?"

Section 3448, General Code, to which you refer in your communication, reads as follows:

"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."

Section 3447, General Code, which is *in pari materia* with Section 3448, supra, provides in part that:

"They (the township trustees) shall make and enforce all needful rules and regulations for its division into lots, and the allotment thereof to families or individuals. \* \* \*"

Section 3448, General Code, was originally passed in an act found in 54 Ohio Laws, page 187, being Section 2 thereof, and read as follows:

"That it shall be lawful for the trustees of said township, for the purpose of grading, improving, and embellishing said 'cemetery grounds', after proper notice having been given, to proceed to sell, in such manner, and at such time, and upon such terms as may be in their judgment deemed most advantageous, such number of lots as the public wants may demand; and all lots so sold, the purchasers thereof shall, upon complying with the terms of the sale, be entitled to receive a deed or deeds, which the

trustees aforesaid are hereby authorized and empowered to execute, and which shall be recorded in a book provided for that purpose by the clerk of said township—the expense of recording to be paid by the person receiving said deed: Provided, that no person not a resident of the township shall be allowed to become the purchaser of any lot or lots in said cemetery, nor shall any person being the owner or purchaser of any of the said lot or lots transfer his, her, or their title or claim to any person or persons not a resident of the township, without the written assent of the trustees of said township, or a majority of them.”

The latter part of this section contains an express proviso that no person not a resident of the township shall be allowed to become the purchaser of any lot, nor shall any person, being the owner, transfer the same to any person not a resident of the township without the written assent of the trustees of the township.

This act was amended in 70 Ohio Laws, page 136, to read as follows:

“That it shall be lawful for the trustees of said township, for the purpose of grading, improving, and embellishing said cemetery ground, after proper notice shall have been given, to proceed to sell in such manner and at such time and on such terms as in their judgment may be deemed most advantageous, such number of lots as the public wants may demand; and purchasers of all lots so sold, shall, upon complying with the terms of sale, be entitled to receive a deed or deeds, which the trustees aforesaid are hereby authorized to execute, and which shall be recorded in a book provided for that purpose by the clerk of said township, the expense of recording to be paid by the person receiving said deed: Provided, that the township trustees shall, upon the application of the head of any family living in such township, make and deliver to such head of a family 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 heavy and oppressive.”

It is to be noted that the only substantial change made in the latter enactment is that the proviso prohibiting the direct sale by the township trustees of township cemetery lots to non-residents and providing for the consent of the township trustees in the case of a transfer of a township cemetery lot from a resident to a non-resident was omitted. The effect of this omission was to allow non-residents the privilege of purchasing directly from the township trustees lots in a township cemetery. It does not follow that the change in the statute evidenced an intent on the part of the legislature to prohibit township trustees from enacting reasonable rules and regulations in regard to the transfer of such lots if they saw fit so to do.

Under Sections 3447 and 3448, supra, the power of township trustees to make and enforce needful rules and regulations as to the division and allotment of cemetery lots was expressly set forth.

It is well settled that the township is constituted a body politic and corporate for the purpose of enjoying and exercising the rights and privileges conferred upon it by law. *Township Trustees v. Harrison Township*, 5 O. N. P. (n. s.) 354.

In that case the court ordered that:

“an entry be drawn authorizing said township through its trustees

to sell the said property in such manner and on such terms as are consistent with the faithful performance of the duties of their office as such trustees."

The question then arises as to whether or not the insertion of a clause in a deed to a lot in a township cemetery which would protect the trustees and residents of the township against speculative transfers of cemetery lots to non-residents would be consistent with the faithful performance of the duties of their office as trustees. A consideration of the fact that such township cemeteries are acquired and maintained in part from the proceeds of township taxation impels the conclusion that a restraint on alienation would be a reasonable requirement in a deed of sale of a township cemetery lot.

Such a restriction would also seem to be reasonable from the standpoint of public policy for, as was stated in the case of *Frazer v. Lee et al.*, 8 Ohio App. 235, at 245:

"It was never contemplated or intended that a burial lot in a public cemetery should be made the subject matter of barter and sale, nor can such claim be predicated upon the acquisition of a certificate of transfer of title to said lot. The idea of making the lot of land chosen by a man in his lifetime as a last resting place for himself and his family a subject for public auction is offensive to the sensibilities of mankind."

It is, therefore, my opinion that a board of township trustees may adopt reasonable rules and regulations for the purposes of protecting the trustees and residents of the township against speculative sales of township cemetery lots to non-residents, and incorporate in deeds to the lots such rules and regulations as are pertinent.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

3199.

#### VACCINATION—INDIGENT SCHOOL PUPILS—WHEN MEDICAL EXPENSES CHARGEABLE AGAINST TOWNSHIP.

##### SYLLABUS:

1. Under section 7685, General Code, application must be made to the trustees of a township by a board of education for the means of smallpox vaccination for indigent school children in order to charge the trustees for the expense thereof.
2. Under section 3480, General Code, relative to poor relief, application for the payment of medical services rendered indigent poor must be made within three days after such service is rendered to the trustees of the township in order to charge the township trustees with the duty of allowing a claim therefor in such amount as they deem just and reasonable.

COLUMBUS, OHIO, May 4, 1931.

HON. JOSEPH J. LABADIE, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—This will acknowledge the receipt of your recent communication, which reads as follows: