

**OPINION NO. 991**

**Syllabus:**

A board of township trustees may contract with an independent contractor, when reasonably necessary, to maintain and care for a township cemetery under its jurisdiction.

---

To: Robert L. Perdue, Ross County Pros. Atty., Chillicothe, Ohio  
By: William B. Saxbe, Attorney General, April 16, 1964

Your recent request for my opinion reads as follows:

"I would appreciate your answering the following question:

"Do township trustees have the authority to make a contract with an independent contractor to maintain and to care for a township cemetery under their jurisdiction?"

Though Chapter 517, Revised Code, contains no express grant of authority to contract with an independent contractor, the chapter does impose a duty upon the board of trustees to care for and maintain a cemetery under its jurisdiction. Upon this basis, one of my predecessors, in Opinion No. 791, Opinions of the Attorney General for 1929, at page 1211, stated:

"In view of the duties imposed upon the township trustees, by implication, undoubtedly they have the right to employ some person to supervise and care for the cemeteries. While there seems to be no express authority authorizing such employment, under the well known rules of construction to the effect that such a board has sufficient implied power to carry into effect the express powers granted, I have no difficulty in reaching the conclusion that township trustees may employ a sexton or caretaker under a contract \* \* \*"(Emphasis added)

This opinion establishes that a board of township trustees may contract to maintain and care for a cemetery. I am in accord with the conclusion reached therein.

If a board may employ, under contract, a caretaker or sexton, it does not appear unreasonable, since the board is responsible for the preservation of a cemetery, to employ, under contract, an independent contractor to maintain and care for a cemetery. An independent contractor remains responsible to his employer for the results which he undertakes to bring about. Post Pub. Co. v. Schickling, 22 Ohio App., 318, aff'd., 115 Ohio St., 589. It should be noted, however, that a board of township trustees may not delegate its responsibility for the care and maintenance of a cemetery under its jurisdiction and a contract with an independent contractor should be so drawn that responsibility is retained by the board of township trustees.

Therefore, it is my opinion and you are hereby advised that a board of township trustees may contract with an independent contractor, when reasonably necessary, to maintain and care for a township cemetery under its jurisdiction.