

3789.

APPROVAL, CONTRACT OF STATE OF OHIO WITH A. F. JOHNSON, TOLEDO, OHIO, FOR CONSTRUCTION AND COMPLETION OF BRICK WORK FOR TWO BOILERS COMPLETE, FOR TOLEDO STATE HOSPITAL AT A COST OF \$4,300—SURETY BOND EXECUTED BY SOUTHERN SURETY COMPANY.

COLUMBUS, OHIO, December 13, 1922.

HON. H. S. MACAYEAL, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—You have submitted to me for approval a contract (four copies) between the State of Ohio, acting by the Department of Public Welfare, and A. F. Johnson, 2445 Broadway, Toledo, Ohio. This contract is for the construction and completion of brick-work for two (2) 350 H. P. Boilers complete, for the Toledo State Hospital, and calls for an expenditure of Four Thousand, Three Hundred Dollars (\$4,300.00).

Accompanying said contract is a bond to insure faithful performance, executed by Southern Surety Company.

I have before me the certificate of the Director of Finance that there is an unencumbered balance legally appropriated sufficient to cover the obligations of this contract.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon, and return same to you herewith, together with all other data submitted to me in this connection.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

3790.

UNION CEMETERY—LIMITED TO ONE HUNDRED ACRES IN ACQUISITION BY PURCHASE OR APPROPRIATION.

*Under the provisions of section 4183 G. C. an union cemetery is limited in its power of acquisition by purchase or appropriation of land for cemetery purposes to one hundred acres. However, in the calculation of said acreage lands acquired by methods other than purchase or appropriation need not be included.*

COLUMBUS, OHIO, December 13, 1922.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Your recent communication reads as follows:

“We are respectfully requesting your written opinion upon a question submitted to this department by Mr. W. S. Meeker, a member of the board of cemetery trustees of the Greenville Cemetery, Greenville, Ohio, as follows:

*QUESTION:* In view of the provision of section 4183 G. C., limiting union cemeteries to one hundred acres, could the Greenville Cemetery trustees purchase land in excess of the said one hundred acres?

We are enclosing herewith Mr. Meeker's letter."

The letter to which you refer discloses that there are some forty acres of land used by the union cemetery referred to for burial purposes; that there are eighty-eight acres of land adjoining the original tract which the board of trustees desires to purchase for burial purposes. It has further come to the attention of this department that the question of whether or not this cemetery was an union cemetery or a village cemetery was presented to the Attorney General in 1914 as disclosed by an opinion found in the reports for that year, page 311. It appears that at that time the title to a greater part of this forty acres referred to was in the village of Greenville, and that only 4.27 acres had as a matter of fact been conveyed to the union cemetery. This opinion held that a union cemetery had been created notwithstanding the fact that the title to a part of the land had not been actually conveyed to the union cemetery.

Section 4183, which gives rise to your question provides:

"The councils of two or more municipal corporations, or of such corporation or corporations, and the trustees of a township or townships, when conveniently located for that purpose, may unite in the establishment and management of a cemetery, by the purchase or appropriation of land therefor, not exceeding in extent one hundred acres, to be paid for as hereinafter provided."

The question presented in view of the facts, is whether or not the language "not exceeding in extent one hundred acres" is a limitation upon the amount of land a union cemetery may acquire by purchase, or whether it is intended to be a limitation upon the amount of land that such cemetery may hold or manage. Upon the face of it it would seem absurd to limit a union cemetery composed of a village and a township to the holding of one hundred acres when there is no limit to the number of acres of land that a village might hold if it were not joined in a union cemetery. However, it is interesting to note the legislative history of this enactment. Section 4183 *supra*, was enacted in its present form May 7, 1869, 66 O. L. 212, which said act repealed a similar act of 1860, 57 O. L. Statute 44. Also see Swan & Critchfield, p. 1563. This original act authorized the trustees of a township and council of any incorporated village to unite in the establishment of an union cemetery "by the purchase of land therefor, not exceeding thirty acres in extent, at a cost not exceeding six thousand dollars," to be paid for by tax levy, etc.

This act further provides that in the establishment of a cemetery under it, use could be made of any land acquired by such village or township "by deed of gift or by devise, for burial purposes, but such cemetery, so held, or land so acquired, shall be part of the tract of land, not exceeding thirty acres, devoted to cemetery purposes, under this act."

In the original act it is clear that a limitation was provided as to the number of acres and as to the amount of money that could be expended for the same. Then it further appeared in a special section that any land held by the township or mu-

nicipality at the time of the union was to be considered as a part of the total number of acres which the cemetery was authorized to use. In other words, the original act definitely limited the amount of land that such a cemetery could manage or hold to thirty acres. In the amendment the original act was repealed, and the acreage was changed from thirty to one hundred. It will be observed that no limit was set in the amended act as to the expenditures that could be made for such land, and the provision requiring that the lands previously held by the uniting bodies was to be considered a part of the acreage which was authorized to be purchased was completely omitted from the re-enactment. It would therefore seem logical to conclude that the legislature in its re-enactment purposely omitted this provision relating to lands acquired by deed of gift, etc. by the township or village prior to the uniting in an union cemetery, and that such land so held for the purposes of this statute are not now to be considered. When the legislature intended that the rule should apply, it was permitted to stand as a part of the laws of the state, when it was repealed, it must be assumed that it was its intention that the rule should have no further application.

In view of the foregoing, it is the opinion of this department that an union cemetery is limited in its power of acquisition by purchase or appropriation to one hundred acres of land for cemetery purposes, but that in the calculation of said acreage, no consideration need be given to lands acquired by methods other than purchase or appropriation.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

3791.

**INHERITANCE TAX LAW—WHERE X FOR VALUABLE CONSIDERATION CONVEYED REAL ESTATE TO A AND B, HUSBAND AND WIFE, AND TO SURVIVOR AND TO HEIRS AND ASSIGNS OF SUCH SURVIVOR, B DIED—SUCCESSION NOT TAXABLE.**

*Since June 5, 1919, X for a valuable consideration conveyed certain real estate to A and B, husband and wife, and to the survivor and to the heirs and assigns of such survivor, B died.*

*HELD. No succession taxable under the inheritance tax law of Ohio thereby arose.*

COLUMBUS, OHIO, December 13, 1922.

*Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—The Commission requests the advice of this department on the following question:

“Since June 5, 1919, X for a valuable consideration conveyed certain real estate to A and B, husband and wife, and to the survivor and to the heirs and assigns of such survivor. It does not appear that B, the wife, contributed any separate funds towards this purchase although the payments were made largely from what might be called family savings. B