

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that township trustees, by virtue of sections 3441 and 3442, General Code, may acquire by purchase grounds for cemetery purposes within two hundred yards of a dwelling from the owner of such dwelling and with the owner's consent to the use of such grounds for such purposes, and any heir of such owner or subsequent purchaser of the dwelling would take title subject to such consent, which consent would be a defense in proceedings to compel the township trustees to cease the use of such plot for cemetery purposes or remove graves placed therein.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4670.

EMBALMING—PERSON UNDER AGE OF TWENTY-ONE MAY NOT
TAKE EXAMINATION FOR LICENSE.

SYLLABUS:

A person under the age of twenty-one years may not, under the provisions of Section 1342, General Code, be admitted to take the examination for a license to practice embalming and the preparation of the dead for burial, cremation or transportation in this state.

COLUMBUS, OHIO, October 5, 1932.

State Board of Embalming Examiners, 6406 Franklin Blvd., Cleveland, Ohio.

GENTLEMEN:—Your recent request for my opinion reads:

"We are preparing to hold our coming examination for licensing embalmers on the 24th, 25th and 26th of October and a matter has come up for our decision which makes it necessary that we secure an opinion from your department concerning Section 1342 of our law, which section reads in part as follows:

'All applications for a license to practice embalming and the preparation of the dead for burial, cremation or transportation in this state, must be made to the state board of embalming examiners in writing and contain the name, age, residence and the person or persons with whom employed, the name of the school attended together with a certificate from two reputable citizens that the applicant is of *legal age* and of good moral character, * * *.'

We have received requests from would-be applicants for this examination who are not yet of legal age but who will have attained the age of twenty-one years very soon *after* the examination. One young man will be twenty-one just ten days after our test, another twenty days, etc. We desire to know if we can, lawfully, according to Section 1342 of the General Code, permit any applicant to write our examination who is not twenty-one years of age providing we issue no license until he is of the required age. It shall be understood that we would accept no applicant unless the period of time to elapse be only a matter of a very few days."

There is no doubt but that the term "legal age" as used in the above section, has reference to the age of majority fixed by Section 8023, General Code, at twenty-one years.

It should be noted that by the terms of Section 1342, General Code, the application must contain, among other things, "a certificate from two reputable citizens that the applicant is of legal age", etc. It clearly follows that if an applicant is not of legal age, then the necessary certificate to that effect cannot truthfully be made and consequently the mandatory prerequisite of Section 1342, General Code, as to the age of the applicant would not be satisfied. Of course, only those submitting valid applications are entitled to examinations.

A question similar to that presented by you was considered in an opinion found in Opinions of the Attorney General for 1930, p. 984, which construed Section 1295-28 of the General Code, relative to the admission of applicants to the standard examination to practice optometry in this state. Such section provides that "any person over the age of twenty-one years * * * shall be entitled to take a standard examination * * *." In holding that a person under the age of twenty-one years may not be admitted to such examination, I pointed out that "The legislature has seen fit to expressly provide in plain, unambiguous language that one of the qualifications which an applicant must have before he may take the examination therein provided is that he be over the age of twenty-one years."

This same observation is true of the provision of Section 1342, General Code, relative to the certification that the applicant is of legal age.

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that a person under the age of twenty-one years may not, under the provisions of Section 1342, General Code, be admitted to take the examination for a license to practice embalming and the preparation of the dead for burial, cremation or transportation in this state.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4671.

PROSECUTING ATTORNEY—NO DUTY TO DEFEND COUNTY DOG
WARDEN IN SUIT INVOLVING PERSONAL LIABILITY.

SYLLABUS:

A county prosecuting attorney under Section 2917 G. C. owes no duty to appear on behalf of a county dog warden in an action which involves only the personal liability of such dog warden.

COLUMBUS, OHIO, October 6, 1932.

HON. R. S. CUNNINGHAM, *Prosecuting Attorney, Lancaster, Ohio.*

DEAR SIR:—Your recent request for my opinion reads:

"We respectfully ask that you give us your opinion in the interpretation of Section 2917 of the General Code.

The County Dog Warden in this county filed affidavits against three individuals for assault with intent to kill. Upon a preliminary hearing in a magistrate's court these men were discharged, the warden having failed to identify them as his assailants.

Will you now tell us whether or not it is the duty of the Prosecuting Attorney in his official capacity under Section 2917 of the General Code to defend the dog warden in a civil action for false arrest and malicious prosecution."