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TOWNSHIP BURIAL GROUNDS—TRUSTEES NOT AUTHORIZED TO SELL PLOTS IN FEE SIMPLE, BUT MAY CONVEY FOR BURIAL PURPOSES — MAUSOLEUM SUFFICIENT BURIAL PURPOSE — §§517.07, 547.07 R.C. — 1912 OAG No. 594 MODIFIED.

## SYLLABUS:

1. Township trustees are not authorized to sell and convey in fee simple burial lots in a township cemetery, but under the provision of Section 517.07, Revised Code, they may convey for burial purposes such lots as public wants demand.

2. Under the provisions of Section 517.07,, Revised Code, township trustees have authority to convey for an adequate consideration to an individual or company for burial purposes such number of burial lots or spaces as may be required for the erection thereon of a mausoleum. Opinion No. 594 for 1912 modified.

Columbus, Ohio, June 29, 1959

Hon. Everett Fahrenholz, Prosecuting Attorney  
Preble County, Eaton, Ohio

Dear Sir:

I have before me your letter requesting my opinion, and reading as follows:

“The Washington Township Trustees of this County propose to sell a tract of township cemetery ground to a private

mausoleum company. The trustees propose to deed the area for a stipulated sum, under the same restrictions as cemetery lots, being in fact akin to an easement for the purpose of erecting the mausoleum and burial therein. The mausoleum company would sell the crypts, and provide a trust fund, the income to be used for maintenance of the mausoleum. The trustees would take the responsibility for sealing the mausoleum crypts after interment.

“The statutes do not specifically authorize the foregoing. A 1912 Attorney General’s Opinion directly prohibits such a project, at Page 342 of that volume.

“Are the trustees legally empowered to convey and contract as proposed?”

Chapter 517., of the Revised Code deals with the powers and duties of township trustees in the establishment and control of cemeteries. Section 517.11, Revised Code, places upon the trustees the responsibility for the protection and preservation of cemeteries under their jurisdiction.

I find no provision in the law authorizing the outright sale of any of the cemetery property. But Section 517.07, Revised Code, contains the following provisions:

“Upon application, the board of township trustees shall sell at a reasonable price such number of lots as public wants demand *for burial purposes*. Purchasers of lots, upon complying with the terms of sale, may receive deeds therefore which the board shall execute, and which shall be recorded *by the township clerk in a book for that purpose*, and the expense of recording shall be paid by the person receiving the deed. \* \* \*

While this section speaks of a sale and deed, it is obvious that the intention is not to authorize an outright deed of conveyance in fee simple, but only such instrument as will evidence the right of the purchaser to use the lot or lots for burial purposes. “Burial purposes,” in the light of long continued practice, includes interment in a mausoleum, as well as in the ground.

As to the character and limited purpose of a deed for a cemetery lot, see Opinion No. 2087, Opinions of Attorney General for 1933, page 1996.

Manifestly, the township trustees, under authority of the statute quoted, would have authority to sell to the head of a family as many burial lots as he requires for the burial of his family, and for the purpose, if he desires, of erecting thereon a mausoleum. And such sales are not limited to heads of families. The trustees may sell “such number of lots as public wants demand, for burial purposes.”

If, therefore, some person or company is willing to invest a sufficient amount of money to build a large mausoleum, capable of providing for interment of many bodies, it appears to me that that would be a great service to the cemetery and its future patrons.

Nor can I see anything in the law which would forbid the trustees from "selling" in the manner and for the purpose above indicated, such number of lots, or such space as is required for the building of such mausoleum. I consider that, for the purpose of carrying out this desirable purpose, we have a right to give the statute a liberal construction. With care that the endowment fund offered should be sufficient to provide an adequate consideration for the conveyance, and for the future care of the building, I am of the opinion that the contract proposed would be within the power given by the statute quoted.

In the 1912 opinion, to which you call my attention, my predecessor appears to have viewed the statute somewhat more strictly. The opinion, being No. 503, page 342, is very brief. The proposed contract was to the effect that certain lots were to be "set apart for the purpose of erecting thereon a mausoleum sufficient to accommodate at least three hundred crypts." It was further provided that the mausoleum company would, upon completion of the building, pay to the trustees as an endowment fund, the sum of five dollars for each and every crypt, to be held as an endowment fund for the care of the land and building "as cemetery property."

No reference was made to the statute authorizing the sale of lots. The decision that the contract could not legally be made was based largely on the claim that the township trustees would not have complete control of the cemetery, and that this "new arrangement" had not been specifically authorized by the legislature.

The syllabus of that opinion, which as will be observed, hardly follows the facts involved, reads as follows:

"Cemetery trustees or boards either municipal or township, are not authorized to deed or lease lots to mausoleum company."

While I disagree with the reasoning and conclusion of that opinion, yet since the syllabus is broader than the case before me, I will not overrule it, but will modify it to accord with the views above expressed.

Accordingly, in specific answer to your inquiry, it is my opinion and you are advised:

1. Township trustees are not authorized to sell and convey in fee simple, burial lots in a township cemetery, but under the provision of Section 517.07, Revised Code, they may convey for burial purposes such lots as public wants demand.

2. Under the provisions of Section 517.07, Revised Code, township trustees have authority to convey for an adequate consideration to an individual or company for burial purposes such number of burial lots or spaces as may be required for the erection thereon of a mausoleum. Opinion No. 594 for 1912 modified.

Respectfully,  
MARK McELROY  
Attorney General