

allowance to cover such expenses and the court shall issue an order instructing the auditor to issue his warrant for such purpose.

While it is true that the so-called budget law, Section 5625-33, General Code, and its related sections, does not contemplate any expenditures being made unless appropriations have been properly made by the county commissioners and unless the certificate of the auditor to the effect that the funds are available before a contract is entered into has been made, it must be concluded that this is a general rule and not applicable to the particular case about which you inquire.

Sections 2507 to 2510, inclusive, of the General Code, were passed notwithstanding the objection of the Governor, on May 11, 1927. Section 5625-33, General Code, and its related sections were passed April 13, 1927, (112 O. L. 355). Therefore, it will be apparent that the law relating to the auditor making and publishing the financial report is later in the order of enactment than the budget law.

It is a well known rule of statutory construction in this State that when there is a marked inconsistency between two Acts of the Legislature, which Acts are of general operation, the one last enacted will control. While, as above stated, the budget law is a law of general nature, and probably contemplated covering expenditures generally, the law relating to the publishing of the financial report by the auditor must, in my opinion, be read as an exception to the budget law in so far as it is inconsistent. The provision of Section 2510, General Code, expressly authorizes the payment for the publication of said report, irrespective of whether the commissioners have made an appropriation or not. This compels the conclusion that the auditor, in exercising these powers in reference to making and publishing such report, is not limited by any of the provisions of the budget law.

Based on the foregoing, and in specific answer to your inquiry, it is my opinion that:

First, it is the duty of the county auditor to publish his financial report under the provisions of Section 2507, of the General Code, notwithstanding he may not be able to make the certificate required by Section 5625-33, of the General Code.

Second, in the event such report is published and no appropriation has theretofore been made by the county commissioners, Section 2510 of the General Code authorizes any person interested to apply to a Court of Common Pleas for an allowance to cover the expenses of such publication and the court shall issue an order instructing the county auditor to issue his warrant for such purpose.

Respectfully,

GILBERT BETTMAN,
Attorney General.

329.

TOWNSHIP TRUSTEES—AUTHORITY TO ACCEPT EASEMENT ACROSS PRIVATE LANDS EVEN THOUGH CONDITIONS IMPOSED.

SYLLABUS:

The trustees of a township are authorized to accept a conveyance of a right of way and easement in, on, upon and across the lands of another for use as a driveway in connection with the conduct of a township cemetery, although in the deed by which such easement is conveyed to the township trustees, there is inserted the condition or reservation that said driveway shall be used for cemetery purposes only, and that if

the trustees shall fail to perform the conditions imposed upon them by the conveyance the grant of said easement shall be void and no longer binding.

COLUMBUS, OHIO, April 22, 1929.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of recent date in which you request my opinion as to the authority of the board of township trustees of Seneca Township, Monroe County, to accept from one H. T. and M. B. T., his wife, a deed granting and conveying to said board of township trustees a right of way or easement in and over and through the lands of said grantor from the Callais Township Cemetery to the public road from Callais to Woodsfield.

With respect to the right of way or easement granted and conveyed by said deed, it is therein provided that said cemetery drive is to be one rod wide, and that as a part of the consideration for the deed the same is to be fenced by the grantees. It is further provided that the trustees are to maintain and keep said fence in repair and to place a gate across said driveway south of their hitching ground and to close said gate after all funerals; and that grantors are to have free ingress and egress cross said cemetery driveway and are to maintain their own gates.

The question on which my opinion is asked, arises by reason of the following provisions in said deed, to-wit:

“Said driveway to be used for cemetery purposes only by the said grantees. If the grantees, or their successors or assigns should fail to perform any of the foregoing conditions then this grant shall be void and no longer binding.”

The proposed deed here in question is on the stated consideration of “one dollar and other good and valuable considerations.”

It may perhaps be assumed from the consideration stated in the deed that the same represents a proposed purchase of this right of way and easement in and across the lands of the grantor, rather than a gift or donation to the township trustees for cemetery purposes. If however, in fact this gift of conveyance is substantially a donation or a gift by the grantor therein named to the township trustees for cemetery purposes, an affirmative answer to your question as to the authority of the township trustees to accept said conveyance would seem to be required by the provisions of Sections 18 and 3281, General Code. Section 3281, General Code, as amended in 112 O. L., page 218, provides inter alia that: “The trustees may accept on behalf of the township, the donation by bequest, devise or deed of gift, or otherwise, of any property, real or personal, for any township use.”

Section 18, General Code, provides among other things, that a township or a board of other officers thereof may receive by gift or devise lands or other properties for its benefit or the benefit of those under its charge, and to hold and apply the same according to the terms and conditions of the gift or devise; and that such gifts or devise of real estate may be in fee simple or of any lesser estate, and may be subject to any reasonable reservation.

If on the other hand the deed here in question represents a proposed purchase of this right of way and easement for a substantial consideration the question here presented is controlled by other statutory provisions.

Under the provisions of Section 3244, General Code, a civil township is a body politic and corporate. And among the powers conferred upon the township trustees are those relating to the establishment and maintenance of township cemeteries. Sections 3441 and 3442, General Code, provide that township trustees may accept the

conveyance of, or purchase and enclose, improve and protect such lands in one or more places within the township as they deem necessary and proper for cemetery purposes; and if suitable lands cannot be procured by contract on reasonable terms they may appropriate lands for such purpose. Section 3443, General Code, provides that when petitioned by twenty-five interested persons the trustees shall provide a public road to any township cemetery over which they have control, in the same manner as is provided for establishing cemeteries and obtaining the land therefor.

It does not appear that the conveyance here in question is one to the township trustees for the purpose of establishing a cemetery, or for the purpose of establishing a public road to such cemetery.

Section 3244, General Code, above noted, providing for the incorporation of civil townships and defining their powers, provides among other things that they shall be capable of receiving and holding real estate by devise or deed for the benefit of the township for any useful purpose. The conveyance here in question is a right of way or easement in and over the lands of the grantor, and the same is an interest in real estate which the township trustees are authorized to take by purchase and by deed under the provisions of the section of the General Code just noted. There is nothing in the provisions of Sections 3441, et seq. relating to the acquisition of lands for cemetery purposes or in other sections of the General Code which prevents the township trustees from accepting a conveyance of real estate or an interest therein subject to reasonable reservations imposed by the grantor with respect to the use to be made of the lands covered by the conveyance; and without defining the legal and technical character of the condition or reservation in this deed above noted, I am quite clear that there is nothing in said condition or reservation which in any way affects the authority of the township trustees to accept said deed.

Respectfully,

GILBERT BETTMAN,
Attorney General.

330.

TOWNSHIP TRUSTEES—MUST NOT EXPEND OVER \$2,000 FROM GENERAL FUND NOR INCUR INDEBTEDNESS WITHOUT VOTE OF ELECTORS IN BUILDING TOWNSHIP HALL.

SYLLABUS:

For the purpose of constructing a township hall, township trustees are authorized to expend a sum not exceeding two thousand dollars from the general township fund without a vote of the electors; such township trustees may not, however, incur any indebtedness for such purpose unless authorized by vote of the electors under the provisions of Section 2293-17, General Code.

COLUMBUS, OHIO, April 22, 1929.

HON. EARL D. PARKER, *Prosecuting Attorney, Waverly, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your letter of recent date which is as follows:

“I request your opinion on the following statement of facts:

The trustees of Newton Township, Pike County, Ohio, want to erect a two-story Township Hall to be used for community purposes and also a