

5135.

TOWNSHIP—LIABLE FOR BURIAL OF RESIDENT OF VILLAGE WITHIN TOWNSHIP WHEN—O. A. G. 1927, VOL. I, P. 624; O. A. G. 1928, VOL. II, P. 1179; O. A. G. 1932, VOL. II, P. 1387; AND O. A. G. 1934, VOL. I, P. 311, OVERRULED ON AUTHORITY OF CASE OF TOWNSHIP OF WILLIAMSBURG V. MAHAN, CT. OF APPEALS, FIRST APP. DIST., OCT. 18, 1935.

SYLLABUS:

The dead body of a person who was a resident of a village within the township, and who was not an inmate of a penal, reformatory, benevolent or charitable institution in this state and whose body is not claimed by any person for private interment at his own expense, or delivered for the purpose of medical or surgical study or dissection in accordance with the provisions of Section 9984, General Code, should be buried at the expense of the township in which the village is located. 1927 O. A. G., Vol. I, Page 624; 1928 O. A. G., Vol. II, Page 1179; 1932 O. A. G. Vol. III, Page 1387 and 1934 O. A. G., Vol. I, Page 311, overruled on authority of the case of Township of Williamsburg v. Mahan, Court of Appeals of the First Appellate District, decided October 18, 1935.

COLUMBUS, OHIO, February 3, 1936.

HON. GEORGE L. LAFFERTY, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR: I am in receipt of your request for my opinion which reads as follows:

“Under the provisions of Section 3495, your predecessors in office have held that the expense of burial of an indigent person, pursuant to said section, shall be borne by the township in which he had a legal residence at the time of his death, but if the person was also a legal resident of a municipal corporation, the expense of his burial should be paid by the municipal corporation and not by the township in which said corporation is situated.

We have been requested by several of our boards of township trustees for an opinion in this matter, and I also have a letter from the solicitor of the village of Columbiana in our county on the subject, and it seems to us that there is some question as to whether or not the village should be required to pay for the burial when the village has no poor fund and the people

of the village pay into the township poor fund for that purpose. Will you please give us your opinion."

Sections 3476 and 3495, General Code, both appear in Title XI, Division IV of the General Code under the general title of "Charity" and as part of Chapter I, entitled "Poor". Section 3476, General Code, provides:

"Subject to the conditions, provisions and limitations herein, the trustees of each township or the proper officers of each city therein, respectively, shall afford at the expense of such township or municipal corporation public support or relief to all persons therein who are in condition requiring it. It is the intent of this act that townships and cities shall furnish relief in their homes to all persons needing temporary or partial relief who are residents of the state, county and township or city as described in sections 3477 and 3479. * * * When a city is located within one or more townships, such temporary relief shall be given only by the proper municipal officers, and in such cases the jurisdiction of the township trustees shall be limited to persons who reside outside of such a city."

Section 3495, General Code, provides:

"When the dead body of a person is found in a township or municipal corporation, and such person was not an inmate of a penal, reformatory, benevolent or charitable institution, in this state, and whose body is not claimed by any person for private interment at his own expense, or delivered for the purpose of medical or surgical study or dissection in accordance with the provisions of section 9984, it shall be disposed of as follows: If he were a legal resident of the county, the proper officers of the township or corporation in which his body was found shall cause it to be buried at the expense of the township or corporation in which he had a legal residence at the time of his death; if he had a legal residence in any other county of the state at the time of his death, the infirmary superintendent of the county in which his dead body was found shall cause it to be buried at the expense of the township or corporation in which he had a legal residence at the time of his death, but if he had no legal residence in the state, or his legal residence is unknown, such infirmary superintendent shall cause him to be buried at the expense of the county. * * *"

In an opinion of one of my predecessors, to be found in the Opinions of the Attorney General for 1927, Volume I, p. 624, it was held as disclosed by the syllabus:

"When the dead body of a person is found in a township or municipal corporation and such person was not an inmate of a penal, reformatory, benevolent or charitable institution in this state, and the body is not claimed by any person for private interment at the expense of such person, or delivered for the purpose of medical or surgical study or dissection, if the deceased were a legal resident of the county, the proper officers of the township or corporation in which his body was found shall cause it to be buried at the expense of the township or corporation in which he had a legal residence at the time of his death."

It is stated at pages 625 and 626:

"* * * * * * * * * *"

In your letter you mention Section 3476 of the General Code. A discussion of this section is unnecessary to determine the question that you present. I desire to call your attention to the fact that both sections appear in Title XI, Division IV of the General Code under the general title of "Charity" and as part of Chapter I entitled "Poor". Both sections were last amended on April 17, 1917, as part of the same act (108 O. L., Part I, 266).

It will be observed that Section 3476 uses the words 'township' and 'city' and where the words 'municipal corporation' are used, the meaning thereof is restricted by the use of the word 'such' and thereby limited to cities. Section 3495 uses the word 'township' and 'municipal corporation' and 'corporation', and it is apparent that the legislature intended the words 'municipal corporation' and 'corporation' as used in this section to include both cities and villages as provided in Section 3497, General Code, which reads in part as follows:

'Municipal corporations, which at the last federal census, had a population of five thousand or more, shall be cities. All other municipal corporations shall be villages, * * *' and not to limit the meaning of those words to 'cities' as provided in Section 3476, General Code.

As stated in Sutherland on Statutory Construction at page 327:

'It is a familiar rule of construction, alike dictated by authority and common sense, that common words are to be extended to all the objects which, in their usual acceptance, they describe or denote. * * * They should be construed according to the intent of the legislature which passed the act. * * * The words themselves do, in such case, best declare the intention of the legislature.' * * *"

In Opinions of the Attorney General for 1928, Volume 2, p. 1179, it was held following the 1927 opinion pointed out, *supra*, as disclosed by the syllabus:

“The dead body of a person not an inmate of a penal, reformatory, benevolent or charitable institution, which is not claimed for private burial and is not turned over for dissection in the manner provided by law, should be buried at the expense of the village in which he resided at the time of his death and not by the township in such county in which the village was located.”

It was held in an opinion by my immediate predecessor in office, to be found in Opinions of the Attorney General for 1932, Volume 3, p. 1387, as disclosed by the third branch of the syllabus:

“3. The burial expenses of an indigent person afflicted with tuberculosis, who was not an inmate of a county tuberculosis sanatorium, but who was given home treatment, should be paid by the township, city or village of his legal residence. If such person’s legal residence was a township, such expenses should be paid from the poor fund if a levy has been made for such purpose—otherwise, from the general fund. If such person’s legal residence was in a municipal corporation, then such expenses should be paid from the general fund of the municipality.”

It was also held in the Opinions of the Attorney General for 1934, Volume 1, page 311, as disclosed by the syllabus:

“Opinions reported in Opinions of the Attorney General for 1932, Volume 3, page 1387, and in Opinions of the Attorney General for 1928, Volume 2, page 1179, followed.”

All of the above opinions were rendered prior to any judicial determination of the question presented by your inquiry, by the courts of this state, and were based on the reason pointed out above in the 1927 opinion.

It was held in the case of *Mahan v. Williamsburg Township* reported in the Ohio Law Reporter in the weekly bulletin of April 1, 1935, the case having been decided February 1, 1935, as disclosed by the first branch of the head notes:

“Sections 3476 et seq., General Code, providing for poor relief by townships and cities, do not refer to villages, which are

therefore not responsible for the burial of indigent dead.”

It is stated in the course of the opinion :

“However, we find the chapter on poor is a very short one, containing some twenty-odd sections and that it is not divided or sub-divided and there is nothing to show that the legislature had any intention to separate poor relief into sub-divisions such as maintenance, medical care and burial. Inasmuch as there are no such divisions, the chapter must be construed as a whole and there should be no distinction made between Section 3495 and 3496 and the sections preceding them. * * *

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It will be noted (referring to Section 3476, General Code) that only cities and townships are permitted thereby to give relief to the poor. The word ‘village’ does not appear any place in this section. You will also note that in this and in several sections following, the word municipal corporation is used and that the term is synonymous with the meaning of city, and cannot, by the wildest imagination, be construed to include village in any possible way.

You will also note that the code provides that the legislature refers to the act and not to the section, by the quotation ‘It is the intent of this act that townships and cities shall furnish relief’, etc.

It therefore appears that in Section 3495, while only the terms of municipal corporation and corporation are used, it is the intention of the legislature to confine them to cities; for inasmuch as the term corporation and municipal corporation is used in the code where the villages have no authority to grant relief to the living, we feel that it is only fair and proper to interpret this section, to wit, 3495, to give a like intent to that. For instance Section 3480 pertains to poor relief and medical services. This likewise uses the term ‘municipal corporation’ exclusively, and for the same reason heretofore given, the term can only mean city, and it has so been interpreted that villages are not responsible to give medical attention to the poor residing therein.

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Therefore since the term ‘municipal corporation’ and ‘corporation’ has been used all through the chapter on poor relief interchangeably with the word ‘city’, and since it has been held in the case of Rhodes v. Weldy, 46 O. S. 234:

‘That the same word or phrase is used more than once in relation to the same subject and same purpose, if clear in one connection and doubtful in another, it will have the same con-

struction in the latter as in the former, unless a different construction is plainly called for.'

It will therefore clearly be shown and must follow that the intention of the legislature, for the reasons above given, was to use the term city and municipal corporation interchangeably and that villages are not responsible for the burial of dead, who are residents of both the village and the township where the limits of the two are not corresponding and interchangeable.

As further evidence of this fact, we find the additional truth that the tax levy for the purpose of taking care of the poor in the township of Williamsburg is levied both in and outside of the municipal corporation of Williamsburg and that the same rate is fixed in both and the township receives the sum total of this levy, thereby receiving the tax in the village of Williamsburg as well as the same on property outside of the village, which is used for poor relief.

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This case was unanimously affirmed by the Court of Appeals of the first appellate district on October 18, 1935, in the case of Township of Williamsburg v. Mahan on the docket of that court as case No. 127. It was stated in the course of the Appellate Court opinion:

"At the bar, it was learnedly debated whether 'municipal corporation' as used in that section included villages. In cognate sections of Division IV, headed 'Charity', the phrase 'municipal corporation' is manifestly used as a synonym of 'city', and for that reason, and because by Section 5625-5, G. C., townships are expressly authorized to include in their general levy a sum for the relief of the poor, it was urged that the sole duty of providing burial for the indigent dead rested upon the township. In a well-reasoned opinion the Court of Common Pleas reached the conclusion that that was the proper construction to be placed on Section 3495, G. C.

These sections were enacted at the same time and as a part of the same bill (108 (pt. 1), 266 Ohio Laws) and we think the legislature has shown by the whole context of the bill that the phrase 'municipal corporation' was used by it to distinguish between the township and other political subdivisions which it had charged with duties to the poor, that is the cities.

Upon the reasoning and authorities found in the opinion of the Court of Common Pleas, the judgment is affirmed."

In view of this Appellate Court decision, it is my opinion that the

former opinion of this office set out above, should be overruled and the judgment of the Court of Appeals uniformly followed. You are advised therefore, that the dead body of a person who was a resident of a village within the township, and who was not an inmate of a penal, reformatory, benevolent or charitable institution in this state, and whose body is not claimed by any person for private interment at his own expense, or delivered for the purpose of medical or surgical study or dissection in accordance with the provisions of Section 9984, General Code, should be buried at the expense of the township in which the village is located.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5136.

PROSECUTING ATTORNEY—NOT REQUIRED TO PAY FEES
SET FORTH IN SECTION 2778, G. C., TO COUNTY RE-
CORORDER, WHEN.

SYLLABUS:

A county recorder may not require the prosecuting attorney or his assistant to pay the fees set forth in Section 2778, General Code, at the time of application for certified copies of deeds and mortgages recorded in the recorder's office, when such copies are to be used as evidence by the State in the trial of a criminal case in such county.

COLUMBUS, OHIO, February 3, 1936.

HON. GEORGE L. LAFFERTY, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR: This will acknowledge receipt of your communication as follows:

“In the course of a criminal trial our office was required to procure from our County Recorder certified copies of deeds and mortgages to be used as evidence. The Recorder billed us for these certified copies, and the amount was paid out of the money coming to us through Section 3004 of the General Code. The Recorder wanted his money right during the course of the trial before he delivered the copies. His reason for so doing I do not know except that he wanted to have his records of receipts and expenditures checked for that day with the work actually done, so in order not to cause any friction we issued a check in payment for the same.