

2161.

UNION CEMETERIES—CUSTODY OF SECURITIES OF SUCH CEMETERIES—WHERE KEPT.

In union cemeteries the better practice is that securities should be held by the clerk of the city council.

Where a board of trustees is elected, it, or its clerk, is the proper custodian of securities.

COLUMBUS, OHIO, June 10, 1921.

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

GENTLEMEN:—Your letter of recent date received in which you request the opinion of this department, as follows:

“Statement of Facts.

Our examiners have found in several instances that investments of union cemeteries between a municipality and a township are scattered around in a very unsatisfactory and unsafe manner.

Question: In a union cemetery between a municipality and a township who should properly have the custody of securities held as investments for permanent or endowment fund?”

Union cemeteries are governed by the following statutes:
General Code section 4183:

“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.”

General Code section 4186:

“When an appropriation of land for such purpose becomes necessary, it shall be made by the municipal corporation, or if there be more than one such corporation, then by the one having the largest number of inhabitants at the last federal census, which corporation, in making the appropriation, shall act for itself and any other corporation or township uniting with it, and the proceedings therefor shall be the same as required in this title where the appropriation is to be made for the use of the corporation alone.”

General Code section 4187:

“The title to such cemetery grounds, whether by purchase or otherwise, shall vest in and be held by the corporation making the appropriation, in trust for the use of its inhabitants and the inhabitants of the other corporations or townships in common, and provision shall be made for the interment in such cemetery of all persons buried at the expense of the corporation or townships.”

General Code section 4189:

"The cemetery so owned in common, shall be under the control and management of the trustees of the township or townships and the council of the municipal corporation or corporations and their authority over it and their duties in relation thereto shall be the same as where the cemetery is the exclusive property of a single corporation."

General Code section 4169:

"The directors shall turn over to the council property on hand or held by him as a permanent fund, for such purposes under his control, or such money as may thereafter come to him for such purpose, rendering a full statement thereof, by whom, when, and*for what purpose paid. The council shall acknowledge receipt thereof in writing to the director signed by its clerk. By resolution duly passed and entered on the minutes of its proceedings, the council shall pledge the faith and credit of the corporation to forever hold such money as a permanent fund, and pay in semi-annual payments, to the director as interest on the funds, sufficient to provide perpetual care of the lot and lots as agreed by the director. The council and its successors shall invest and keep invested such funds in interest bearing debts of the city, if any, and if no such debts are owing by the city, in safe interest bearing bonds, or stocks for the benefit of such cemetery funds, that will bear as great an income as possible, and all such money and the income thereof shall be exempt from taxation, the same as other cemetery property."

Calling attention to the Attorney-General's Opinions of 1912, page 1747, it is there held that funds of a municipal cemetery are to be invested by order of the council and the investment is under its control. The securities therefore should be held by the clerk of council in his official capacity. This opinion takes care of the municipality which has an endowment fund.

For the reason that title to a union cemetery is in the municipality and said cemetery is held in trust for others interested therein, and because of section 4189 above quoted, it is believed that the clerk of the city council should be the custodian of the funds of said cemetery, as outlined in the aforementioned opinion of the Attorney-General.

It is to be noted, however, that the law is not explicit in union cemeteries as to who should hold securities, and it is not considered an illegal holding should funds of a union cemetery be found in the custody of township trustees or their proper representative. The interest in a union cemetery is a common interest. Securities should have proper protection and not be subject to the danger of destruction or loss. Therefore the better practice would be to place them with the clerk of the city council.

General Code section 4193-1 provides for the election of a board of trustees and outlines their powers, as follows:

"* * * Such board of cemetery trustees so elected, shall have all the powers and perform all the duties exercised and performed by directors of public service of municipalities under sections 4161 and 4168 inclusive of the General Code, and such board of cemetery trustees shall together with other powers herein granted have the power to create a permanent endowment fund for the express purpose of keeping such cemetery clean and in good order and may add

to the price regularly charged for lots therein a sum for said purpose or may receive gifts for said purpose or may enter into separate agreements with the purchasers of such lots whereby an agreed part of the purchase price of said lot or lots shall be and constitute a permanent fund, or may receive individual gifts for said fund, the income thereof to be used for the upkeep and care of such lot or lots and when any such fund or funds shall have been received or created the same shall be a permanent fund for such use and the income therefrom shall be used for the said purpose and for no other purpose and the principal sum shall be kept and invested under the same terms and conditions fixed by law for the investment of the funds of a minor by his guardian."

When this board is elected they themselves are responsible for all funds. They have full control and assume full responsibility and would be the proper custodian of all securities. Should said board have a clerk, he would be the proper custodian of securities.

It is to be understood that the law is not definite as to who the proper officer to hold securities is and that the above opinion is meant only to suggest what is believed to be the better practice.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2162.

APPROVAL, BONDS OF STARK COUNTY, OHIO, IN AMOUNT OF \$31,500, ROAD IMPROVEMENTS.

COLUMBUS, OHIO, June 10, 1921.

Industrial Commission of Ohio, Columbus, Ohio.

2163.

APPROVAL, BONDS OF STARK COUNTY, OHIO, IN AMOUNT OF \$48,000, ROAD IMPROVEMENTS.

COLUMBUS, OHIO, June 10, 1921.

Industrial Commission of Ohio, Columbus, Ohio.

2164.

APPROVAL, LEASE OF LAND AT BUCKEYE LAKE, OHIO.

COLUMBUS, OHIO, June 11, 1921.

HON. JOHN I. MILLER, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—With your letter of June 9, 1921, you submitted to me for examination and approval a proposed lease to John E. Ohlen of land at