

1672.

APPROVAL, BONDS OF VILLAGE OF OLMSTED FALLS, CUYAHOGA COUNTY—\$21,000.00.

COLUMBUS, OHIO, March 25, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1673.

UNION CEMETERY—BOARD MUST HAVE REPRESENTATIVE FROM TOWNSHIP TRUSTEES AND MUNICIPAL COUNCIL—THIRD MEMBER MAY BE OUTSIDER—VACANCY CREATED IN SUCH BOARD WHEN TERM OF TOWNSHIP TRUSTEE OR COUNCILMAN EXPIRES.

SYLLABUS:

1. *When a union cemetery is established by the council of one municipal corporation and the trustees of one township as provided in Section 4183, et seq., General Code, the board of cemetery trustees must, under Section 4193-1, General Code, be composed of at least one member of such municipal council, one member of such board of township trustees and one member who need not be either a member of council or a member of a board of township trustees.*

2. *If the one member of such board of cemetery trustees who is the representative of the municipal council or who is the representative of the board of township trustees, should cease to be a member of such council or board of township trustees, the office of such member of the board of cemetery trustees would be vacated.*

COLUMBUS, OHIO, March 26, 1930.

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

GENTLEMEN:—Your letter of recent date is as follows:

“You are respectfully requested to render this department your written opinion upon the following:

Section 4183 of the General Code, provides for the establishment of union cemeteries. Section 4193-1, G. C., provides for the election of the board of cemetery trustees, consisting of three members, of which one or more must be a member of each of the separate boards of township trustees and municipal council, comprised in the union cemetery association represented by such joint meeting.

Question 1: In case of the joining of one township and one municipality for the creation of a union cemetery must all three members of the board of trustees be members of council or of the trustees of the township, or may a third member be a member of neither?

Question 2: If the term of office of the township trustee or trustees or the member or members of the municipal council, composing the board

of trustees of a union cemetery, expires during their terms as cemetery trustees, will they continue to hold such position or will this create a vacancy in the board of trustees of the cemetery, which is to be filled as provided by law?"

Section 4183, General Code, provides that the councils of two or more municipal corporations or of such corporation or corporations, or trustees of a township or townships, when conveniently located for that purpose, may unite in the establishment and management of a cemetery. Section 4189, General Code, provides that such cemetery shall be under the control and management of the trustees of the township or townships and the council of the municipal corporation or corporations. Section 4193-1, General Code, in so far as it is pertinent to your questions, provides that at any joint meeting of such council and the township trustees, there may be elected by a majority vote of all present, counting council members and trustees, "a board of cemetery trustees consisting of three members, of which one or more must be a member of each of the separate boards of township trustees and municipal councils comprised in the union cemetery association represented by such joint meeting."

In an opinion of my predecessor, appearing in Opinions of the Attorney General for 1928, Vol. III, p. 2089, a question was under consideration involving the right of members of a board of union cemetery trustees to be interested in the sale of personal services or supplies to the cemetery with which they are connected and also the right of such members to render services for compensation and sell supplies to such union cemetery. After quoting Section 4193-1 in its entirety, the then Attorney General commented upon the matter of membership of the municipal council and of the board of township trustees as a qualification of membership of the board of union cemetery trustees. The language appearing on p. 2092, following the quotation of this section, is as follows:

"You will observe the language used in the first sentence of this section. I construe this to mean that at least one member of the board must be a member of the municipal council and at least one member must be a member of the board of township trustees. Accordingly, if the sole representative of the municipal council on the board should go out of office as a councilman, I believe his office as a member of the board would also be vacant, and the same rule would apply to the member chosen from the board of township trustees. The statute is not clear as to the qualifications of the third member, and it is conceivable that he need not be either a member of council or a member of the board of township trustees, in which event a portion of the discussion hereinafter had would be of no value."

I concur in these views. The section only requires that in the case you present this board of cemetery trustees must be made up of one member of council and one member of the board of township trustees. There is no inhibition against the third member being a member of either the council or board of trustees, but there is no such requirement as to this third member.

Specifically answering your first question, I am of the opinion that when a union cemetery is established by the council of one municipal corporation and the trustees of one township as provided in Section 4183, et seq., General Code, the board of cemetery trustees must, under Section 4193-1, General Code, be composed of at least one member of such municipal council, one member of such board

of township trustees and one member who need not be either a member of council or a member of a board of township trustees.

In the consideration of your second question, the views of my predecessor hereinbefore quoted and concurred in are dispositive thereof. Your attention is also directed to Opinion No. 1399, directed to your Bureau under date of January 13, 1930, which involves similar principles, the first branch of the syllabus being as follows:

“Trustees of a police relief fund chosen as representatives of a city council, cease to be trustees of such fund in the event that their terms as councilmen expire during their terms as trustees and their offices are accordingly vacated.”

The provisions of law relating to the council members of the police relief fund trustees are substantially the same as those relative to the council members and township trustee members of the board of union cemetery trustees. The principles set forth in Opinion No. 1399 are, therefore, applicable to your second question.

It is, accordingly, my opinion that if the one member of such board of cemetery trustees who is the representative of the municipal council or who is the representative of the board of township trustees, should cease to be a member of such council or board of township trustees, the office of such member of the board of cemetery trustees would be vacated.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1674.

TRANSFER OF TERRITORY—COUNTY BOARD UNAUTHORIZED TO TRANSFER TERRITORY TO RURAL OR VILLAGE SCHOOL DISTRICT OF ADJOINING COUNTY—WHERE PROPERTY AND TAXES VEST WHEN TERRITORY TRANSFERRED TO ADJACENT COUNTY DISTRICT.

SYLLABUS:

1. *A petition filed with a county board of education, asking that school territory of a school district of the county school district be transferred to a rural or village school district of an adjacent county school district, confers no jurisdiction upon the county board of education to make the transfer as requested, and the county board of education has no authority to make the transfer of territory upon the filing of such a petition.*

2. *When a transfer of territory is made by a county board of education to an adjacent county school district and the said transfer is accepted by the county board of education of the district to which the transfer is made, it becomes the duty of the county board of education accepting such transfer to annex the territory transferred to a contiguous school district of its county school district, and when such transfer is complete, the legal title of the school property in the territory transferred becomes vested in the board of education of the school district to which the territory is annexed, and school taxes thereafter collected from*