

“(a) The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, State, county, district, or municipality in advance of the payment of dividends to creditors, and upon filing the receipts of the proper public officers for such payment he shall be credited with the amount thereof, and in case any question arises as to the amount or legality of any such tax the same shall be heard and determined by the court.”

It is therefore clear in the foregoing provisions that the personal property tax owing by a bankrupt has priority over the claims of the general creditors and is paid in full in advance of the payment of dividends to creditors.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2446.

CEMETERY—GROUNDS OUTSIDE MUNICIPALITY FORMERLY OWNED
BY RELIGIOUS SOCIETY NOW DEFUNCT—TITLE VESTS IN TOWNSHIP TRUSTEES.

SYLLABUS:

Where a religious society which owned and cared for public burial grounds in a township outside of the limits of any municipal corporation therein becomes wholly dissolved and extinct, such grounds, if the same be still used as a place of public burial, vest in the trustees of the township for burial purposes, under the provisions of Section 3451, General Code; and such trustees are authorized and required to keep such cemetery in repair out of the public funds of the township, as provided by Section 3453, General Code.

COLUMBUS, OHIO, August 16, 1928.

HON. OTTO J. BOESEL, *Prosecuting Attorney, Wapakoneta, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication, which reads in part as follows:

“We have located in the east part of our county, in Pusheta Township, a cemetery or public burial grounds, the title to which is in the name of a church organization. There are still located on said cemetery numerous bodies, and frequently burials are still made there.

The religious society that acquired this cemetery has long gone out of existence, no one now located in the vicinity of said cemetery being a member of said organization. Consequently, the cemetery is unkept and parties from said community have appealed to the prosecuting attorney with a view of having him take some action in the matter, as will insure the proper care of this cemetery.

In view of the fact that none of the members comprising said religious society are alive in this community, and the organization has not functioned for many years, the question arises, under what procedure can the trustees of Pusheta Township take possession of said premises and expend public funds to keep it in repair and free from weeds.”

Sections 3451 and 3453, General Code, are applicable in the consideration of the question here presented. These sections read as follows:

"Section 3451. The title, right of possession and control to and in all public graveyards and burial grounds located without the corporate limits of any city, or village, which has been set apart and dedicated as public graveyards or burial grounds, and grounds which have been used as such by the public, but not expressly dedicated, except such as are owned or under the care of a religious or benevolent society, or an incorporated company or association, or under the control of the authorities of any city, or village, shall, severally be vested in the trustees of the township where located."

"Section 3453. The trustees shall inclose such burying grounds with a substantial fence or hedge, and keep them in good repair, and levy a tax for that purpose, not to exceed one-half of one mill in any one year, upon all the taxable property of the township."

These sections of the General Code, which were enacted as part of the same act (75 O. L. 581), evince a clear legislative intention that any tract or parcel of land in a township dedicated as public burial grounds, or used by the public as such, should be cared for by some responsible authority; and to this end it is provided that if such burial grounds are not owned and cared for by some religious society or by some city or village, such grounds shall vest in the township trustees, who are required to keep the same in repair out of the funds of the township.

It appears from your communication that the cemetery here in question was at one time owned and presumably cared for by a religious society in the community. In the use of the term "religious society," I assume that you mean the same was a voluntary association or society and not a corporation. You further state that this religious society has long since gone out of existence. The question here presented is one with respect to the effect of this fact on the application of the provisions of Section 3451, General Code, as above quoted.

In the case of *Miller vs. Riddle*, 227 Ill. 53, it was held:

"In order to constitute a religious society there must be a membership of persons associated together which collectively constitutes the society, with such officers as are required, or a definite collective body acting as a society. If there has been no collective body associated together, acting as a society, for such a period of time that an inference of abandonment necessarily follows, the society must be regarded as dissolved even though there has been no formal dissolution by agreement of the members."

In the case above cited it was further held that where a religious society, which was in existence and exercising its functions at the death of a testatrix, is made the beneficiary of a trust fund, but subsequently, for a period of fifteen years, has had no pastor, had held no meetings or religious services of any sort and has allowed its church building to decay, the society must be regarded as dissolved and that the trust fund reverts to the heirs of the testatrix.

You do not state in your communication in what manner or upon what conditions this religious society obtained title to the cemetery grounds here in question. But, whatever such conditions may have been, it is clear that there can be no reverter of such grounds for the reason that the same have not been abandoned as a cemetery. It is likewise clear that said burial grounds are not at this time subject to the ownership or control of any religious society for the simple reason that on the facts stated in your communication there is not now in existence any religious society to exercise either of

said functions. It follows from this that said burial grounds have vested, by operation of law, in the township trustees of Pusheta Township for burial purposes and such township trustees, under the provisions of Section 3453, General Code, are not only authorized to keep such grounds in repair, but are required to do so.

By way of specific answer to the question presented in your communication, I am of the opinion that no procedure on the part of the trustees of said township is necessary in order that they can take possession of said burial grounds and expend public funds to keep the same in repair; but that the right to possession of the grounds has already vested in said township trustees for this purpose.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2447.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE
NEW YORK CENTRAL RAILROAD COMPANY FOR THE ELIMINA-
TION OF GRADE CROSSING NEAR THE VILLAGE OF GRANVILLE,
LICKING COUNTY, OHIO.

COLUMBUS, OHIO, August 16, 1928.

HON. HARRY J. KIRK, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted to me form of contract between the State of Ohio and the New York Central Railroad Company providing for the elimination of the grade crossing over the tracks of said railway company on State (Intercounty) Highway No. 47, just west of the village of Granville, Ohio, in Licking County.

I have examined the contract as to form and am of the opinion that, when properly executed, the same will be in compliance with law and a valid and binding obligation upon the parties thereto.

In accordance with Section 1229-10, General Code, I have accordingly endorsed my approval as to form upon the contract. Respectfully,

EDWARD C. TURNER,
Attorney General.

2448.

APPROVAL, TWO GAME REFUGE LEASES.

COLUMBUS, OHIO, August 16, 1928.

Department of Agriculture, Division of Fish and Game, Columbus, Ohio.

GENTLEMEN:—This will acknowledge your letter of recent date in which you enclosed the following Game Refuge Leases in duplicate, for my approval:

| <i>No.</i> | <i>Lessor</i> | <i>County</i> | <i>Township</i> | <i>Acres</i> |
|------------|---------------------------|---------------|-----------------|--------------|
| 1100 | Mary Brinkman, et al..... | Putnam | Jackson | 68 |
| 1105 | August Gerker, et al..... | " | " | 130 |

I have examined said leases, find them correct as to form, and I am therefore returning the same with my approval endorsed thereon.

Respectfully,

EDWARD C. TURNER,
Attorney General.