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BOARD OF TOWNSHIP TRUSTEES MUST ACCEPT TRANSFER OF CEMETERY— § 517.27 RC—TRANSFER BY RELIGIOUS SOCIETY NEED NOT BE APPROVED BY COURT—§ 1715.39 RC BOARD OF TOWNSHIP TRUSTEES WITHOUT AUTHORITY TO REQUIRE AN ACCOUNTING FROM SUCH SOCIETY FOR FUNDS DERIVED FROM SALE OF LOTS IN CEMETERY TRANSFERRED.

SYLLABUS:

1. A board of township trustees is required under the provisions of Section 517.27, Revised Code, to accept the transfer of a cemetery by the trustees of a church or religious society, and in such case Section 1715.39, Revised Code, does not require such church or society to apply to the common pleas court for authority to transfer such cemetery to said township.

2. Where the trustees of a church or religious society transfer a cemetery to a board of township trustees as provided in Section 517.27, Revised Code, such board is without authority to require an accounting from such church or religious society for any proceeds of the sale of lots or for funds received for annual maintenance or from any other source before such township trustees accept the conveyance of such cemetery.

Columbus, Ohio, October 7, 1957

Hon. Tom Richards, Prosecuting Attorney
Carroll County, Carrollton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The trustees of a township within this County desire to know (1) whether they can require the trustees of a church or religious society holding title to a cemetery to file a petition in Common Pleas Court under the provisions of Section 1715.39 of the Revised Code for authority to transfer said cemetery to the township trustees before accepting a conveyance of such cemetery from the church trustees and (2) in the event the township trustees do not have the power to compel the church trustees to initiate and conclude such Common Pleas Court proceeding do the township trustees have the power or the right to require the church trustees to account to the township trustees for the proceeds of the sale of cemetery lots and of the funds received for their annual maintenance before accepting such conveyance.”

Your first question pertains to Section 1715.39, Revised Code, which reads in pertinent part as follows :

“When a charitable or religious society or association desires to sell, lease, exchange, or encumber by mortgage or otherwise any real estate owned by it, held in trust by it for a specified religious or charitable purpose, or held for its use or benefit by trustees chosen by it or otherwise constituted, for any such purpose, *except grounds used as burial places for the dead*, then “the trustees, wardens, and vestry, or other officers entrusted with the management of the affairs of such society or association or holding the title to such property, or such society or association itself if it is incorporated in this state, may file, in the court of common pleas of the county in which the real estate is situated, a petition stating how and by whom the title to such real estate is held, the desire of such society or association to make the sale, lease, exchange, or encumbrance, and the object thereof. * * *” (Emphasis added.)

It is immediately apparent that Section 1715.39, *supra*, has no application to cemeteries, such being specifically excluded by its terms. A search of the statutes reveals no provision which requires judicial approval as a prerequisite to the transfer of such grounds to the board of township trustees and to my knowledge Section 517.27, Revised Code, is the only provision relating directly to the question you present. This section reads :

“When a public cemetery in a township is not under the control of a municipal corporation, and the title or control thereof is vested in an association or the trustees thereof, or is vested in a religious society, whether incorporated or not, or in the trustees thereof, and such cemetery is used exclusively for cemetery purposes, such association, society, or the trustees thereof may convey such grounds to the board of township trustees and its successors in office. Subject to the rights of the original grantor, his heirs or assigns, the board shall accept and take possession of such grounds, and take care of, keep in repair, hold, treat and manage them in all respects as required by sections 517.01 to 517.32, inclusive, of the Revised Code.”

Concededly, this section is not found in the laws relating to cemetery associations, but is contained in the chapter relative to township cemeteries. I am not unmindful of Opinion No. 817, Opinions of the Attorney General for 1951, in which my predecessor referred to this section, at page 612, as follows :

“It appears to me, therefore, not to have been intended primarily to confer power on the association to sell its ground to the township, but rather to compel the township trustees, in the public interest, to take it over and maintain it.”

No doubt this statement is true and I do not question it; however, it is equally true that this section *does* grant the authority to transfer cemeteries to the board of township trustees.

Significantly, I believe, the legislature has elaborately provided procedures to be followed for the sale of cemetery grounds no longer usable, Section 1715.02, Revised Code, for the transfer of cemetery land to a cemetery association, Section 1715.03, Revised Code, for conveyance of a burying ground to a township when used by the people of two or more townships, Section 1715.04, Revised Code, and for sales or encumbrances generally, Section 1715.39, *supra*. Yet no provision is made, other than in Section 517.27, *supra*, for a transfer as outlined in this particular situation. In fact the only reference whatsoever to such a transfer is the exception as pointed out above in Section 1715.39, Revised Code.

I must therefore conclude that the procedures attending this transfer are to be found in Section 517.27, Revised Code, and that under this provision there is no authority granted the township trustees to require the trustees of a church or religious society to file a petition in common pleas court under the provisions of Section 1715.39, Revised Code.

Your second question must also be answered in the negative since there is no authority, express or implied, which grants to the board of township trustees the power to require an accounting from the trustees of a church or religious or benevolent society when the latter transfers a cemetery to the former.

Section 517.27, Revised Code, quoted above, makes plain the fact that the board of township trustees "shall accept and take possession of such grounds", with an enumeration of certain other requirements. In the syllabus of Opinion No. 13, Opinions of the Attorney General for 1937, page 17, it was held:

"Section 3471, General Code, (R.C. 517.27) requiring township trustees to take over burial grounds within their respective townships and not under the control of a municipal corporation is *mandatory*, subject to the conditions set out therein."

(Emphasis added.)

The statute has outlined the duties and responsibilities of the board of township trustees and since no mention is made of any right to demand an accounting, I must conclude, under the now familiar maxim "*expressio unius est exclusio alterius*", that the legislature did not intend to grant this authority to the board.

In answer to your questions, it is my opinion and you are advised that :

1. A board of township trustees is required under the provisions of Section 517.27, Revised Code, to accept the transfer of a cemetery by the trustees of a church or religious society, and in such case Section 1715.39, Revised Code, does not require such church or society to apply to the common pleas court for authority to transfer such cemetery to said township.

2. Where the trustees of a church or religious society transfer a cemetery to a board of township trustees as provided in Section 517.27, Revised Code, such board is without authority to require an accounting from such church or religious society for any proceeds of the sale of lots or for funds received for annual maintenance or from any other source before such township trustees accept the conveyance of such cemetery.

Respectfully,

WILLIAM SAXBE

Attorney General