

13.

BURIAL GROUNDS—UNDER SECTION 3471, G. C., TOWNSHIP TRUSTEES REQUIRED TO TAKE OVER SUCH GROUNDS WHEN.

SYLLABUS:

Section 3471, General Code, 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.

COLUMBUS, OHIO, January 15, 1937.

HON. FERDINAND E. WARREN, *Prosecuting Attorney, Putnam County, Ottawa, Ohio.*

DEAR SIR: I acknowledge receipt of your communication of January 11th, as follows:

“The Monterey Township Trustees have requested an opinion as to whether or not Section 3471 of the General Code is mandatory. The facts are as follows:

The Antioch Church has for many years supported a burying ground on its premises. In the past several years the congregation of this church has dwindled down to so few that they no longer hold services. The Trustees of the church association have prepared and tendered a deed for the burying ground to the Trustees of Monterey Township in which the church is located. Bodies are still interred there occasionally. The Township Trustees are not anxious to accept this additional burden. They request your opinion as to whether or not Section 3471 is mandatory.”

Your request contains one question: Whether or not Section 3471, General Code, is mandatory or directory. That section is in the following language:

“When a public burying ground in a township is not under the control of a municipal corporation and the title or control thereof is vested in an association or trustees thereof, or is vested in a religious society, whether incorporated or not, or the trustees thereof, and such burying ground is used exclusively for cemetery purposes, such association, society, or the trustees

thereof may convey such grounds to the trustees of the township and their successors in office. Subject to the rights of the original grantor, his heirs or assigns, the trustees of such township 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 law relating to public burying grounds in and belonging to such township.”

The language of the statute is not always conclusive as to its nature whether mandatory or directory. Primarily, we must look to the purpose of the law. The supervision and control of burying grounds in a township must be delegated to some person or persons, and it was doubtless a wise provision of the legislature to delegate this power to the township trustees as they are representative of the township in practically all matters. The management of private or public burying grounds by those having control thereof would necessarily result in a menace and a threat to the public welfare, if not properly cared for, and that was probably the primary reason for the enactment. When there is doubt as to the nature of a statute the language may be consulted in order to dispel such doubt. We re-quote so much of the section as is apropos to your question :

“ * * Subject to the rights of the original grantor, his heirs or assigns, the trustees of such township *shall* accept and take possession of such grounds * * ” (Italics, ours.)

Therefore, I am of the opinion that Section 3471, General Code, is mandatory.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

14.

APPROVAL—BONDS OF CITY OF AKRON, SUMMIT COUNTY,
OHIO, \$10,000.00.

COLUMBUS, OHIO, January 16, 1937.

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