

August 12, 2008

The Honorable Joseph R. Burkard
Paulding County Prosecuting Attorney
112 ½ Water Street
Paulding, Ohio 45879

SYLLABUS:

2008-027

Under R.C. 5901.37, the board of county commissioners is required to pay from the county general fund the expenses necessary to care for and properly preserve veterans monuments located in all cemeteries within the county, including private and township cemeteries and cemeteries located within municipal corporations.



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OPINION NO. 2008-027

The Honorable Joseph R. Burkard
Paulding County Prosecuting Attorney
112 ½ Water Street
Paulding, Ohio 45879

Dear Prosecutor Burkard:

We have received your request for an opinion concerning the extent to which the board of county commissioners is responsible under R.C. 5901.37 for the care and maintenance of monuments erected as memorials for veterans. You have raised the following questions:

- 1) Are the county commissioners financially responsible for the care and maintenance of veterans monuments in all cemeteries within the county, including private and township cemeteries?
- 2) If a veterans monument is located in a cemetery within a village or city within the county, what responsibility does the board of county commissioners have for the veterans monument?

You have informed us that your questions pertain to monuments that are erected in memory of veterans and are located in cemeteries within the county, but do not pertain to individual grave markers that may be memorial in nature.¹

¹ The terms “monument” and “memorial” are commonly used to refer to structures or works of art erected in memory of a group of veterans. *See, e.g., Gleason v. City of Cleveland*, 49 Ohio St. 431, 31 N.E. 802 (1892) (erection of Soldiers’ and Sailors’ Monument in Public Square); R.C. 345.01, .13 (the taxing authority of a municipal corporation, township, or county may levy taxes for purchasing a site and erecting a memorial to commemorate the services of all

For the reasons set forth below, we conclude that under R.C. 5901.37, the board of county commissioners is required to pay from the county general fund the expenses necessary to care for and properly preserve veterans monuments located in all cemeteries within the county, including private and township cemeteries and cemeteries located within municipal corporations.

Duties of the Board of County Commissioners Under R.C. 5901.37

R.C. Chapter 5901 governs the provision of various services for veterans and their family members. Each county has a veterans service commission that is responsible for providing financial assistance and burial assistance in cases of indigency. *See* R.C. 5901.02-.17; R.C. 5901.25-.32. Provision is made for burial plots for veterans and for memorial grave markers. *See, e.g.,* R.C. 5901.22-.24, R.C. 5901.32, .34. The county bears many of the costs for the services provided under R.C. Chapter 5901.37, either directly or through amounts budgeted to the county veterans service commission. *See* 2004 Op. Att’y Gen. No. 2004-032, at 2-291 (a county veterans service commission is a county body); 2001 Op. Att’y Gen. No. 2001-033, at 2-

members and veterans of the armed forces of the United States, and for operating and maintaining the memorial); R.C. 511.08 (construction by a township of “a memorial building, or . . . monument, statue, or memorial to commemorate the services of the soldiers, sailors, and marines of such township”); R.C. 717.01(M) (construction by a municipal corporation of “monuments or memorial buildings to commemorate the services of soldiers, sailors, and marines of the state and nation”); *see also Schaeffer v. Unknown Heirs & Next of Kin of Fletcher*, 16 Ohio Op. 2d 301, 303, 175 N.E.2d 776 (C.P. Cuyahoga County 1961) (church’s proposal to build on its land a memorial described as “a thing of beauty” erected in memory of those buried in the churchyard, namely, “early settlers of the city, friends of the church, veterans of our country’s wars and many others named and unnamed”).

The terms “monument” and “memorial” may also in some circumstances be used to refer to individual grave markers. *See, e.g.,* R.C. 517.21 (referring to “all stones and monuments marking the graves” of a cemetery); R.C. 5901.34 (upon petition, the board of county commissioners must procure for veterans buried in a township or municipal corporation within the county a suitable and durable grave marker “for the purpose of permanently marking and designating the grave for memorial purposes”); *Daily Monument Co. v. Crown Hill Cemetery Ass’n*, 114 Ohio App. 143, 144, 176 N.E.2d 268 (Summit County 1961) (concerning alleged excessive charges for installation and maintenance care of “memorials placed on graves in the cemetery”); 1951 Op. Att’y Gen. No. 265, p. 102, at 105 (G.C. 2961 (now R.C. 5901.37) relates “mainly to the care of monuments and memorials to soldiers and sailors, but it can be construed to include the care of their graves as well”). Because you have informed us that your question pertains to monuments standing apart from graves and not to grave markers, this opinion does not address memorial grave markers.

197 (funding of a county veterans service commission). Townships and municipalities may provide burial plots and in some instances are required to care for graves.²

Specific provisions of Ohio law govern monuments dedicated to veterans. The statute with which you are concerned—R.C. 5901.37—expressly requires the board of county commissioners to perform certain functions pertaining to veterans monuments, as follows:

In any county having a cemetery or part of it set apart for the burial of veterans, or *containing a monument erected to their memory*, or *containing monuments and memorials erected by private or public expense to the memory of veterans*, the board of county commissioners shall care for and properly preserve that portion of the cemetery so set apart for the burial of such veterans, and *shall care for and properly preserve the monuments or memorials*, and the board shall pay all expenses incident to such care and preservation from the general fund of the county. (Emphasis added).

Use of the word “shall” indicates that the named responsibilities are mandatory. *See Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph 1) (“[i]n statutory construction, the word ‘may’ shall be construed as permissive and the word ‘shall’ shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that they receive a construction other than their ordinary usage”).

R.C. 5901.37 was initially enacted in 1904 and at that time stated that the county commissioners “are authorized and required” to care for the veterans cemetery and “also to care for and properly preserve such monument or monuments and memorials” erected by private or public expense to the memory of soldiers or sailors. 1904 Ohio Laws 434 (S.B. 94, passed Apr. 23, 1904). The statute has since been amended several times, and all versions have applied to

² A county, acting through its veterans service commission, is authorized upon the request of a veterans organization or group of veterans in a municipal corporation or township to provide a plot for indigent veterans in a cemetery in the municipal corporation or county and to pay the costs from the county general fund. R.C. 5901.16 The expenses of caring for the graves of veterans interred in the plot are borne by the municipal corporation or township. R.C. 5901.17. Counties, municipalities, and townships are all given authority to contract with a cemetery association for a plot for the burial of veterans and to pay the costs of purchase and maintenance from their respective treasuries. R.C. 5901.22. If no burial plot is provided, the county, municipal corporation, or township may purchase a space for the grave of a veteran and provide for maintenance, with costs paid from the subdivision’s treasury. R.C. 5901.24. In addition to these grants of authority, R.C. 5901.35 states that the board of county commissioners “shall provide for the proper care of the graves of all veterans, and of confederate soldiers, sailors, and marines buried in lots used exclusively for the benefit of veterans and confederate soldiers, sailors, and marines in cemeteries or burying grounds.” *See, e.g.*, 1951 Op. Att’y Gen. No. 265, p. 102; 1947 Op. Att’y Gen. No. 2511, p. 622.

monuments and memorials erected by private or public expense and have imposed a mandatory duty upon the board of county commissioners to care for and preserve those veterans monuments. *Id.*; *see also* G.C. 2961. Our research has disclosed no authority restricting the operation of R.C. 5901.37 to only certain cemeteries or certain monuments within those cemeteries.

Ohio law provides for various types of cemeteries, including township, municipal, and private cemeteries.³ However, there is no provision for a county cemetery. *See* 1920 Op. Att’y Gen. No. 1680, vol. II, p. 1136, at 1137. Therefore, when R.C. 5901.37 speaks of a “county having a cemetery” the reference cannot be to a county cemetery. Instead, it must be to a county in which there is located a cemetery of the named sort—that is, “a cemetery or part of it set apart for the burial of veterans, or containing a monument erected to their memory, or containing monuments and memorials erected by private or public expense to the memory of veterans.” R.C. 5901.37. The language of R.C. 5901.37 thus appears to encompass, within a particular county, every cemetery that contains a monument erected by private or public expense to the memory of veterans, and to indicate that the board of county commissioners is financially responsible under R.C. 5901.37 for the care and maintenance of veterans monuments in all cemeteries within the county.

In statutory construction, the goal is to determine the intent of the legislature. *See Henry v. Central Nat’l Bank*, 16 Ohio St. 2d 16, 242 N.E.2d 342 (1968) (syllabus, paragraph 2) (“[t]he primary purpose of the judiciary in the interpretation or construction of statutes is to give effect to the intention of the General Assembly, as gathered from the provisions enacted, by the application of well-settled rules of interpretation, the ultimate function being to ascertain the legislative will”). When the language of a statute is ambiguous, it is appropriate to consider various factors that aid in its construction, including the object sought to be attained, other laws upon the same or similar subjects, the consequences of a particular construction, and the administrative construction of the statute. R.C. 1.49; *see also* R.C. 1.47 (“[i]n enacting a statute, it is presumed that: . . . (C) A just and reasonable result is intended”). If a general provision conflicts with a special provision, the statutes should be construed, if possible, so that effect is given to both. R.C. 1.51. In the case of irreconcilable conflict, the special provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail. *Id.*

³ Townships and municipalities are authorized to establish and manage cemeteries, or to unite in the establishment and management of joint or union cemeteries and the establishment of union cemetery districts. R.C. Chapter 517; R.C. Chapter 759; R.C. 1715.04; R.C. 4767.01(B). Cemeteries may be organized and operated by associations or by religious and benevolent organizations. R.C. 759.42; R.C. 1715.02-.04; R.C. Chapter 1721; R.C. 4767.02. Family cemeteries are also recognized under Ohio law. R.C. 4767.02; 2007 Op. Att’y Gen. No. 2007-005.

With these principles in mind, we turn to your questions pertaining to the duty of caring for veterans monuments located in cemeteries. To make a thorough analysis of your question, it is necessary to examine statutes pertaining to the care and maintenance of cemeteries and to the erection and maintenance of veterans monuments to determine how the statutes interact and the various responsibilities are allocated.

Care and Maintenance of Cemeteries and Monuments

Ohio law provides for various types of cemeteries, as previously discussed, and the owners or operators of each cemetery are, in general, responsible for the care and maintenance of the cemetery grounds and the graves within the cemetery.⁴ The general responsibility of caring

⁴ For example, a township has the title to, right of possession, and control of all public cemeteries located outside a municipal corporation, except cemeteries that are owned by or under the care of a religious or benevolent society, an incorporated company or association, or a municipal corporation. R.C. 517.10; 1999 Op. Att’y Gen. No. 99-047, at 2-295 to 2-296; 1954 Op. Att’y Gen. No. 4163, p. 423; *see also* R.C. 517.15 (board of township trustees may create permanent endowment fund for maintenance of township cemeteries); R.C. 5705.121 (township may establish a cemetery fund). The board of township trustees is required to provide for the protection and preservation of cemeteries under its jurisdiction. R.C. 517.11; 2007 Op. Att’y Gen. No. 2007-001, at 2-3 (“[w]hen a board of township trustees assumes sole or joint control and management of a public cemetery, the board has a duty to provide for the care and maintenance of the cemetery”); 1954 Op. Att’y Gen. No. 4163, p. 423, at 428; *see also* R.C. 1715.04; 1994 Op. Att’y Gen. No. 94-053. There are also joint township cemeteries, in which responsibilities for maintenance are allocated among the participating townships. R.C. 517.14; R.C. 1715.04.

Similarly, a municipality is given title to and right of possession of public cemeteries located within its boundaries (whether dedicated as public cemeteries or used by the public but not dedicated) except those owned by or under the care of a religious or benevolent society or an incorporated company or association. R.C. 759.08. A municipality has authority to protect and maintain any cemeteries it owns. *See* R.C. 759.03 (“[t]he legislative authority of a municipal corporation owning a public burial ground or cemetery, whether within or without the municipal corporation, . . . may regulate such burial grounds and cemeteries, the improvement thereof, . . . and protect such burial grounds and cemeteries and all fixtures thereon”); R.C. 759.09 (“[t]he director of public service [of a city] shall take possession and charge, and have the entire management, control, and regulation of public burial grounds and cemeteries located in or belonging to the city, subject to its ordinances. . . . The director shall direct all the improvements and embellishments of such grounds and lots, protect and preserve them . . .”); R.C. 759.12, .15 (permanent fund for city cemetery); R.C. 759.19 (village may transfer to township real property acquired for cemetery purposes); *see also* Ohio Const. art. XVIII, § 3; 1994 Op. Att’y Gen. No. 94-049 and 1991 Op. Att’y Gen. No. 91-062 (responsibility for maintenance and care of a public

for a cemetery appears to include the authority to care for monuments within the cemetery. *See, e.g.,* 1975 Op. Att’y Gen. No. 75-083, at 2-328 to 2-329 (“[t]he protection and preservation of monuments and tombstones is an integral part of the care of a cemetery”); note 1, *supra*.

In contrast, the provisions of R.C. 5901.37 governing the care and maintenance of veterans monuments impose a specific duty and financial obligation upon the board of county commissioners. R.C. 5901.37 gives the board of county commissioners a clear statutory directive that the board “shall care for and properly preserve the monuments or memorials [erected by private or public expense to the memory of veterans].” This language is contained in the chapter of the Revised Code that is addressed to the assistance of indigent veterans and the burial of veterans. It is a specific provision addressed to a certain type of monument that the General Assembly has found worthy of particular regard and protection.

The specific provisions of R.C. 5901.37 thus establish an exception to the general provisions making municipalities, townships, and private cemeteries responsible for cemetery maintenance. *See* 2003 Op. Att’y Gen. No. 2003-034, at 2-284 to 2-285 (in case of conflict, specific statutes concerning real property used by a township for cemetery purposes prevail over general provisions pertaining to all township real property); *see also* 1913 Op. Att’y Gen. No. 626, vol. II, p. 1428, at 1429 (G.C. 2958 (now R.C. 5901.34), which provides for the board of county commissioners to furnish grave markers for veterans, places a limitation upon the authority of private cemeteries to prescribe rules for the adornment of cemetery lots and placement of monuments).

cemetery located in a village is vested in the village, unless the village has transferred title to the township). There are also union cemeteries, in which powers and duties (including care and maintenance) are allocated among the participating subdivisions. *See* R.C. 759.27, .30, .31.

Private cemeteries are subject to applicable provisions of state law. *See, e.g.,* R.C. Chapters 1721 and 4767. A cemetery company or association is responsible for the maintenance of its cemetery. *See* R.C. 1721.06 (“[a]fter paying for its land, a cemetery company or association shall apply all its receipts and income . . . exclusively to laying out, preserving, protecting, and embellishing the cemetery and avenues within it or leading to it, to the erection of buildings necessary or appropriate for cemetery purposes, and to paying the necessary expenses of the cemetery company or association”); *see also* R.C. 1721.09 (a cemetery company or association may prescribe rules for erecting monuments in the cemetery); R.C. 1721.12; *cf.* R.C. 1721.08 (a cemetery company or association, by deed in fee simple, may sell and convey to a nonprofit corporation land to be used for the erection and maintenance of “a public monument or memorial to any distinguished deceased person”; the land “shall thereafter be exclusively owned, held, and controlled” by the nonprofit corporation “for the interment of such a deceased person, and for the erection and maintenance thereon of such monument or memorial, and for no other purpose”).

This exception is consistent with the fact that, although entities other than the county have authority to maintain veterans monuments located in cemeteries, they are not given the clear duty to do so. In particular, the chapter of the Revised Code authorizing a board of township trustees to own and control cemeteries provides authority for the township to “erect a suitable monument to commemorate the members of the armed forces who died in the service of the United States or of this state,” and to spend up to five thousand dollars for that purpose. R.C. 517.30. With regard to the maintenance of this veterans monument, R.C. 517.31 states:

In any township in which the board of township trustees has erected a memorial monument as provided by [R.C. 517.30], or in which the citizens thereof have erected such a monument, either upon the public grounds of such township or upon grounds therein donated or procured by the citizens for such use, and have caused such grounds to be enclosed, *the board may take charge of such monument, grounds, and enclosure, and keep them in repair. For such purpose the board may appropriate and expend such sum of money as required from the townships funds.* (Emphasis added.)

A board of township trustees is thus given authority to erect a veterans monument within a cemetery and to take charge of the repair and maintenance of the monument, or to take charge of the care and maintenance of a monument erected by the citizens, either upon public grounds or upon grounds procured from a private source. The township’s authority to repair and maintain the monument is not, however, a mandatory duty. Rather, use of the word “may” indicates that the determination to undertake care and maintenance is discretionary. *See Dorrian v. Scioto Conservancy Dist.* (syllabus, paragraph 1); 1985-1986 Ohio Laws, Part I, 370, 372 (Am. Sub. S.B. 139, eff. Jul. 24, 1986) (*inter alia*, amending R.C. 517.11 to substitute “may” for “shall” in providing that the board of township trustees may enclose cemeteries under its jurisdiction with a substantial fence or hedge, and stating as its purpose “to allow, rather than to require, a board of township trustees to enclose cemeteries under its jurisdiction with fences”). Therefore, if the township does not exercise its authority to repair a veterans monument in a cemetery within the township, it appears that the responsibility would fall upon the county, which has a mandatory duty under R.C. 5901.37.⁵

⁵ R.C. 517.11 requires a board of township trustees to provide for the protection and preservation of cemeteries under its jurisdiction and states that the township “may recover damages for injuries . . . to any tomb or monument” in such a cemetery. R.C. 517.11 also states that the board “may re-erect any fallen tombstones” and may levy a tax to meet its costs. It has been found under this provision that a township is responsible for repairing and re-erecting monuments. 1975 Op. Att’y Gen. No. 75-083 (syllabus) (“[a] board of township trustees has a duty pursuant to R.C. 517.11 to repair and re-erect monuments in a cemetery that has been vandalized,” when the township has title to the cemetery under R.C. 517.10); 1964 Op. Att’y Gen. No. 1151, p. 2-229 (syllabus, paragraph 1) (“[b]oards of township trustees have a duty to repair and re-erect monuments and tombstones in public cemeteries within their jurisdiction,

Similarly, the chapter of the Revised Code governing private cemetery companies and associations includes R.C. 1721.11, which authorizes a cemetery company or association to take charge of veterans monuments, as follows:

A cemetery company or association may act either as a soldiers' monumental association or as a cemetery association, and, as it elects, *may take charge of the management of cemetery grounds, or monuments especially erected in honor of soldiers or seamen who have died in the service of the state or of the United States* or both. (Emphasis added.)

As with the township statute, the authorization to take charge of veterans monuments is express but discretionary.⁶

when the repair or re-erection is necessary to 'keep it in good repair' within the meaning of [R.C. 517.11]”). Nothing in R.C. 517.11 qualifies this duty of care. 1975 Op. Att’y Gen. No. 75-083, at 2-329.

The language of R.C. 517.11 does not, however, directly address veterans monuments. It appears, therefore, that R.C. 5901.37, which specifically governs veterans monuments, may reasonably be read as qualifying any duty of care under R.C. 517.11 and permitting a township to decline to repair a veterans monument, leaving that responsibility to the county under R.C. 5901.37. In such circumstances, any damages received for injury to the monument should be directed to the county to be applied to the repair of the veterans monument.

A similar analysis applies also with respect to the authority of a municipal corporation to recover damages for injuries to veterans monuments in cemeteries over which it has jurisdiction. *See, e.g.,* R.C. 759.10 (“[t]he director of public service [of a city] shall, when necessary, institute suits in the name of the city to recover the possession of burial grounds, remove trespassers therefrom, and recover damages for injuries thereto or to any tombstone or monument therein”).

⁶ The mention in R.C. 1721.11 of “a soldiers’ monumental association” was enacted as a reference to a body established under a chapter of the General Code entitled “Soldiers’ Monuments.” *See* G.C. 14822-14853. That chapter was not included when the General Code was replaced by the Revised Code in 1953. The reason given at that time was that the statutes were deemed not to be of such a general and permanent nature as to warrant codification and official numbering. Thus, it is not clear what authority a cemetery company or association currently has to act as a soldiers’ monumental association. However, it appears that R.C. 1721.11 continues to authorize the cemetery company or association to take charge of veterans monuments. This authority is consistent with R.C. 1721.06, which permits a cemetery company or association to use its resources to embellish the cemetery, and R.C. 1721.12, which permits a cemetery company or association to accept gifts, grants or devises for various purposes including the building, repair, and maintenance of monuments.

R.C. 717.01(M) authorizes a municipal corporation to “[c]onstruct monuments or memorial buildings to commemorate the services of soldiers, sailors, and marines of the state and nation.” It contains no express provisions regarding repair or maintenance. A municipality clearly has authority to repair and maintain property it owns, including a veterans monument it constructs. *See, e.g.*, R.C. 715.01 (municipal corporation may acquire property and “may hold, manage, and control” it); R.C. 715.21 (“[a]ny municipal corporation may hold, improve, protect, and preserve public grounds, parks, park entrances, free recreation centers, and boulevards”). Further, as previously discussed, a municipal corporation has authority to protect and maintain any cemeteries it owns. *See* R.C. 759.03; note 4, *supra*. *See generally* Ohio Const. art. XVIII, § 3. However, no specific provision mandates that the municipality take charge of the maintenance of a veterans monument in a cemetery over which it has jurisdiction. Like townships and cemetery companies or associations, municipalities thus have no express statutory duty to maintain veterans monuments located in cemeteries, although they do have general responsibility for cemetery maintenance. Hence, it appears that the provisions of R.C. 5901.37 would apply to a memorial constructed in a cemetery by a municipality under R.C. 717.01(M) or other authority.

It may well be, as a practical matter, if a veterans monument is located in a private cemetery or in a cemetery under the jurisdiction of one or more townships or municipal corporations, that the private cemetery or political subdivision with jurisdiction will maintain the monument as part of its general maintenance of the cemetery. If, however, there is a need for care or preservation of a veterans monument that is not receiving proper attention, R.C. 5901.37 requires that the county provide care and proper preservation.⁷

⁷ There may be some question as to whether an exception to this general rule exists under R.C. Chapter 345 or R.C. 511.08-.17. These provisions authorize a municipal corporation, township, or county (R.C. Chapter 345) or a township (R.C. 511.08-.17) to construct a veterans memorial or monument, and also provide for the creation of a board of trustees to care for the memorial or monument on an ongoing basis. *See* R.C. 345.01-.02 (permitting the taxing authority of a municipal corporation, township, or county to levy taxes or issue bonds for purchasing a site and erecting a memorial to commemorate the services of members and veterans of the armed forces, or for operating and maintaining a memorial, or both); R.C. 345.08-.14 (providing for the creation of a memorial board of trustees to oversee the erection and operation of the memorial and authorizing the board to spend tax moneys, donations, and other moneys in the memorial fund for this purpose); R.C. 511.08, .09, .11, .14 (authorizing one or more townships to erect and furnish a memorial building or to erect and maintain a monument, statue, or memorial to commemorate the services of soldiers, sailors and marines, and to issue bonds, accept donations, and acquire property for these purposes); R.C. 511.15-.16 (providing that after construction the ownership of the memorial and any related property is transferred to a court-appointed board of permanent memorial trustees with authority to pay out moneys from the township memorial fund).

This does not mean that the county is totally without discretion in making expenditures under R.C. 5901.37. Rather, the language of R.C. 5901.37 providing that the board of county

The memorials erected under these provisions may be (and commonly are) buildings with auditoriums or recreational facilities that are available for rent, but they may be other types of memorial structures erected as commemorations. *See* R.C. 345.13 (establishing requirements that apply “[w]hen such memorial is a building”); R.C. 511.08. Various provisions govern funding. *See, e.g.*, R.C. 511.16 (the board of permanent memorial trustees may receive donations and rental fees, which are placed in the township memorial fund and paid out on the authority of the board of permanent memorial trustees; amounts required for maintenance are placed in the budget of the township and certified to the county budget commission). Responsibility for maintenance is given to the memorial board of trustees with jurisdiction over the memorial. R.C. 345.12 (giving the memorial board of trustees express authority to provide for the maintenance of the memorial); R.C. 345.14(A) (requiring the memorial board of trustees to “[c]onduct, maintain, and operate a soldiers’ memorial, for the benefit of the entire county, for community, civic, and patriotic purposes”); R.C. 511.16 (“[t]he board of permanent memorial trustees shall provide for the maintenance of the township memorial building, monument, statue, or memorial and shall always keep the memorial in such condition that it will fulfill the purpose for which it was constructed”); 1933 Op. Att’y Gen. No. 976, vol. II, p. 952, at 955 (“a township memorial building . . . is to be maintained by a board of ‘permanent trustees’ appointed by the common pleas court”).

The statutes neither provide that the memorial should be located in a cemetery nor prohibit that location. If a monument were constructed under these provisions and located in a cemetery, maintenance by the memorial board of trustees would be required, and it could be argued that the express duty of maintenance provided in R.C. Chapter 345 and R.C. 511.08-.17 would prevail over the provisions of R.C. 5901.37. *See* 1956 Op. Att’y Gen. No. 6462, p. 314 (with regard to a memorial building erected by a county under R.C. Chapter 345, the memorial board of trustees is required to use operating revenues for maintenance to the extent they are available, and the board of county commissioners is authorized but not required to expend county funds for maintenance; the memorial at issue was a building not located in a cemetery and the opinion did not mention R.C. 5901.37); *see also* R.C. 345.18 (all sections of the Revised Code inconsistent with or prohibiting the exercise of the authority conferred by R.C. 345.01-.17 “shall be deemed to be inoperative for the purpose of such sections”).

We counter this argument, however, with the proposition that, for the reasons set forth in this opinion, the provisions of R.C. 5901.37 control whenever a veterans monument is located in a cemetery. Thus, if the need for maintenance should occur with regard to a veterans monument that was constructed under R.C. Chapter 345 or R.C. 511.08-.17 and located in a cemetery, the county would be required by R.C. 5901.37 to provide maintenance of the veterans monument to assure that the memory of deceased veterans is preserved and proper respect is shown.

commissioners “shall care for and properly preserve the [veterans] monuments” gives the board authority to determine, in each instance, what sort of preservation is “proper.” *See, e.g., Random House Webster’s Unabridged Dictionary* 1550 (2001) (including among definitions of “proper”: “adapted or appropriate to the purpose or circumstances; fit; suitable”). Clearly the statute requires that monuments memorializing veterans be preserved. However, if in particular circumstances the board determines that a specific monument is excessively lavish or that aspects of the monument require inordinate effort or expense, the board may decide that a lesser level of maintenance is adequate for “proper preservation” in that instance. Although R.C. 5901.37 requires respect and care for veterans monuments, it cannot be read as authority for a township, municipality, or private body to erect a lavish monument that needs constant expensive care and impose upon the county unreasonable expenses of care and maintenance.

The conclusion that a veterans monument located in a township, municipal, or private cemetery may receive care and preservation from the county results from the broad language appearing in R.C. 5901.37, coupled with the fact, discussed above, that Ohio law does not provide for county cemeteries. It is consistent with the provisions of R.C. 5901.16 and R.C. 5901.22 permitting a veterans burial plot to be located in any cemetery within the county. *See also* R.C. 5901.24.

Further, the conclusion that the board of county commissioners is financially responsible for the care and maintenance of veterans monuments in all cemeteries within the county, including private and township cemeteries and cemeteries located within municipal corporations, conforms with the provisions of R.C. Chapter 5901 that make the county and its veterans service commission the unit with basic responsibility for the welfare of indigent veterans and their proper burial. *See* R.C. 5901.16-.32. It is consistent with the provisions of R.C. 5901.34 making the county responsible for providing grave markers to memorialize veterans, and with the provisions of R.C. 5901.32 requiring the county to apply to the United State government for a headstone for a deceased indigent veteran. It reflects the same allocation of responsibilities made by R.C. 307.66, which requires the board of county commissioners, upon request, to make appropriations to military bodies and veterans’ organizations to aid in defraying the expenses of Memorial Day observations, while giving townships and municipal corporations the option of making such appropriations. This conclusion thus carries out the intention of veterans statutes to give the county responsibility for assuring that continuing honor is paid to veterans and that the monuments that memorialize them are treated with proper respect. *See generally* 1951 Op. Att’y Gen. No. 265, p. 102, at 105.

Conclusion

For the reasons discussed above, it is my opinion and you are advised that under R.C. 5901.37, the board of county commissioners is required to pay from the county general fund the

The Honorable Joseph R. Burkard

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expenses necessary to care for and properly preserve veterans monuments located in all cemeteries within the county, including private and township cemeteries and cemeteries located within municipal corporations.

Respectfully,

A handwritten signature in black ink that reads "Nancy H. Rogers". The signature is written in a cursive, flowing style.

NANCY H. ROGERS
Attorney General