

## SYLLABUS:

Under Section 759.08, Revised Code, when, through incorporations or annexations a township-owned cemetery becomes located in a village, title to and right to possession of such cemetery vests in the village, regardless of whether a deed to said cemetery is given to the village by the board of township trustees. Opinion No. 3170, Opinions of the Attorney General for 1962, issued on July 27, 1962, and Opinion No. 1339, Opinions of the Attorney General for 1929, page 2010, approved and followed.

Columbus, Ohio, February 6, 1963

Hon. Harry Friberg  
Prosecuting Attorney  
Lucas County  
Toledo, Ohio

Dear Sir:

I have your request for an opinion which reads as follows:

“A question has arisen with regard to responsibility for maintaining a township cemetery recently annexed to a village along with other lands contiguous to the cemetery. It has been claimed that once the township cemetery property is annexed to a village, the title to the property is vested in the municipality. The authority for such argument is ‘Ohio Township Handbook’ published by the Auditor of State, dated 1960, at page 133, wherein the following question and answer are set forth:

“19. Q. If a township cemetery is located in an area that becomes incorporated or in an area that is annexed to a municipality does the cemetery become the property of the municipality and the trustees lose control of the management of such?

“A. Yes. Section 759.08, R. C., vests title to public cemeteries located in a municipality in which such cemetery or burial ground is located. No deed from the township trustees is necessary to vest the title in the municipality, though a deed is often given.’

“From a study of this section and the cases annotated thereunder, it does not seem to me to follow that title to cemetery property is vested in the village upon annexation. In *King vs. Shelby*, 40 App. 195, (one of the annotated cases) the court said the township trustees had authority to deed cemetery property to the city where the property

is within the city's limits but this does not seem to be to be the same thing the Auditor of State has said, above quoted.

"We therefore request your opinion as to whether title to township cemetery property is vested in a village when the said property is annexed to a village. In the case we propose, the village does not wish to accept the cemetery property.

The relevant statutory provision is Section 759.08, Revised Code, which reads as follows:

"The title to and right of possession of public cemeteries and burial grounds located within a municipal corporation and set apart and dedicated as public cemeteries or burial grounds, and grounds used as such by the public but not dedicated, except those owned or under the care of a religious or benevolent society, or an incorporated company or association, are hereby vested in the municipal corporation in which such cemetery or burial ground is located."

Also significant is Section 517.10, Revised Code, which clearly limits the authority of a board of township trustees as to cemeteries to those located outside of municipal corporations. Said Section 517.10 reads as follows:

"The title to, right of possession, and control of all public cemeteries located outside any municipal corporation, which have been set apart and dedicated as public cemeteries, and any grounds which have been used as such by the public, but not expressly dedicated as a cemetery, 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 municipal corporation, shall, severally be vested in the board of township trustees."

A similar question was considered in Opinion No. 3170, Opinions of the Attorney General for 1962, issued on July 27, 1962, the first paragraph of the syllabus reading, in part, as follows:

"When under Section 503.07, Revised Code, a new township is established out of the portion of a township comprising a city, the city, under Section 759.08, Revised Code, takes title to cemetery property owned by the original township but lying entirely within the borders of the city; and under Section 759.08, Revised Code, the cemetery

is operated by the director of public service of the city.  
\* \* \*

Although Opinion No. 3170, *supra*, dealt with a city, there would be no difference in result with a village is involved, since Section 759.08, *supra*, specifically states that title should vest in the "municipal corporation."

A similar question also came before one of my predecessors in Opinion No. 1339, Opinions of the Attorney General for 1929, page 2010. In that opinion it was held:

"Where a public cemetery operated by township trustees under the provisions of Section 3451, General Code, becomes located within the boundaries of a village, it becomes the property of said villiage through the terms of Section 4174, General Code, even though the township trustees failed to give a deed to said property to the village before their term expired."

Section 3451, General Code, is now Section 517.10, Revised Code. Section 4174, General Code, was not codified into the Revised Code, because its provisions are included in the language of Section 759.08, *supra*. Said Section 4174 dealt only with graveyards and burial grounds being owned by the vilages in which they were located.

It appears well settled, therefore, that by operation of Section 759.08, *supra*, public cemeteries and burial grounds previously located outside a municipal corporation and owned by a township become the property of the municipal corporation when the boundaries of the municipal corporation are extended to include such cemeteries or burial grounds. Furthermore, whether or not the municipal coroporation does not wish to accept the cemetery property is irrevelant. Title to such cemetery property vests in the municipal corporation by operation of law (Section 759.08, *supra*).

In conclusion, therefore, it is my opinion and you are advised that, under Section 759.08, Revised Code, when, through incorporations or annexations a township-owned cemetery becomes located in a village, title to and right to possession of such cemetery vests in the village, regardless of whether a deed to said cemetery is given to the village by the board of township trustees. Opinion No. 3170, Opinions of the Attorney General for 1962, issued on

July 27, 1962, and Opinion No. 1339, Opinions of the Attorney General for 1929, page 2010, approved and followed.

Respectfully,  
WILLIAM B. SAXBE  
Attorney General