November 5, 2012

The Honorable William T. Goslee
Logan County Prosecuting Attorney
117 East Columbus Avenue, Suite 200
Bellefontaine, Ohio 43311

SYLLABUS: 2012-038

A board of township trustees does not have authority to permit a private entity or person using private funds to erect a freestanding memorial to deceased or injured motorcyclists in a township cemetery.

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OPINION NO. 2012-038

The Honorable William T. Goslee
Logan County Prosecuting Attorney
117 East Columbus Avenue, Suite 200
Bellefontaine, Ohio 43311

Dear Prosecutor Goslee:

You have requested an opinion whether a board of township trustees has the authority to permit a private entity or person using private funds to erect a freestanding memorial to deceased or injured motorcyclists in a township cemetery.[1]

In some instances, the term "memorial" may refer to inscriptions and accompanying engravings on an individual grave marker. *See* R.C. 5901.34 (a grave marker "shall be placed on the grave … for the purpose of permanently marking and designating the grave for memorial purposes"); 2008 Op. Att'y Gen. No. 2008-027, at 2-284 to 2-285 n.1. However, we understand your question to pertain to a memorial that stands apart from an individual grave marker. Consequently, this opinion addresses a board of township trustees' authority to permit a private entity or private person using private funds to erect a freestanding memorial to deceased or injured motorcyclists in a township cemetery.

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[1] Your opinion request asks whether a board of township trustees or "any other body politic acting on its behalf" may allow a private entity using private funds to erect a memorial to deceased or injured motorcyclists in a township cemetery. We have limited this opinion to a consideration of whether a board of township trustees has this authority. We have done so because a board of township trustees is the only township entity, other than a board of permanent memorial trustees, that may have the authority to allow the building of a memorial in a township cemetery. *See generally* R.C. Chapter 511 (memorial buildings; halls; parks); R.C. Chapter 517 (cemeteries).

A board of permanent memorial trustees is created by a court of common pleas after a soldier's memorial building is completed. R.C. 511.15. The purpose of a board of permanent memorial trustees is to maintain a township soldier's memorial, monument, or statue. R.C. 511.16. A board of permanent memorial trustees does not have the authority to allow a private entity to erect a memorial to motorcyclists in a township cemetery.

As a creature of statute, a board of township trustees has only those powers expressly granted to it by statute or necessarily implied therefrom. *Drees Co. v. Hamilton Township*, 132 Ohio St. 3d 186, 2012-Ohio-2370, at ¶13; 1995 Op. Att'y Gen. No. 95-005, at 2-25; 1991 Op. Att'y Gen. No. 91-035, at 2-184. Accordingly, we must determine whether a board of township trustees has express or necessarily implied authority to permit a private entity or person using private funds to erect a memorial in a township cemetery. *See* 1987 Op. Att'y Gen. No. 87-066, at 2-409. For that purpose, we must examine the pertinent provisions of R.C. Chapters 511 (memorial buildings; halls; parks) and 517 (cemeteries).

The authority to build and maintain a memorial on township property is vested in a board of township trustees. *See generally* R.C. 511.08 (petition to build a township memorial); R.C. 511.09 (soldier's memorial fund to be placed in township treasury); R.C. 511.11 (authority of board of township trustees to acquire private or public lands for the purpose of building a memorial); R.C. 511.12 (authority of board of township trustees to prepare plans and enter contracts for the construction of memorial building, monument, statue, or memorial). A board of township trustees may accept gifts of land, money, or other property for the purpose of "aiding the objects and purposes of the memorial building, monument, statue, or memorial and the endowment thereof." R.C. 511.11.

However, the authority of a board of township trustees to build a memorial is limited to a memorial that commemorates members of the armed services. *See* R.C. 511.08 (petition presented to a board of township trustees to build a memorial building, monument, statue, or memorial is for the purpose of building a memorial to commemorate the services of soldiers, sailors, and marines); R.C. 511.12 ("[t]he board of township trustees may prepare plans and specifications and make contracts for the construction and erection of a memorial building, monument, statue, or memorial, for the purposes specified and within the amount authorized by [R.C. 511.08]"); R.C. 511.14 ("[t]here shall be provided in a memorial building, erected under [R.C. 511.08 to R.C. 511.17, inclusive], suitable apartments, of sufficient dimensions, to commemorate the soldiers, sailors, and marines of the township who lost their lives while in the service of the United States, and the names of such soldiers, sailors, and marines shall be inscribed on suitable tablets in the building or on the monument, statue, or memorial so erected"); R.C. 511.17 ("[u]nder such reasonable rules and regulations as the board of permanent memorial trustees prescribes, the memorial building constructed under [R.C. 511.08] shall be open and free for use as a meeting place by all organizations and allied organizations of present and former soldiers, sailors, and marines").[2] The authority given to a board of township trustees in R.C.

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[2] Although R.C. 511.11 does not explicitly restrict the acceptance of donations for the purpose of building a memorial honoring fallen members of the armed services, provisions in R.C. Chapter 511 concerning memorials must be read *in pari materia*. *See Blair v. Bd. of Tr. of Sugarcreek Twp.*, 132 Ohio St. 3d 151, 2012-Ohio-2165, 970 N.E.2d 884, at ¶18 ("[a]ll provisions of the Revised Code bearing upon the same subject matter should be construed harmoniously unless they are irreconcilable").

The language of R.C. 511.08, R.C. 511.12, and R.C. 511.14 makes it clear that a memorial authorized by R.C. 511.11 shall commemorate members of the armed services. Thus, when read in

Chapter 511 to construct a memorial does not include the authority to permit a private entity using private funds to build a freestanding memorial to deceased and injured motorcyclists on township property.

An examination of the statutory authority of a board of township trustees with respect to township cemeteries under R.C. Chapter 517 leads to a similar conclusion. A board of township trustees has several powers with respect to the establishment and maintenance of a township cemetery. Included among those powers is the authority to appropriate or otherwise acquire land within a township for cemetery purposes. R.C. 517.01. A board of township trustees must provide a public road to access a township cemetery when a petition for the construction of such a road is submitted pursuant to R.C. 517.02. In order to defray the costs of acquiring, maintaining, and improving land for a township cemetery, a board of township trustees may levy a sufficient tax. R.C. 517.03. A board of township trustees is required to divide a township cemetery into lots and have a plat of the lots created. R.C. 517.06. In addition, a board of township trustees may make and enforce rules and regulations for the division, care, and allotment of the lots, as well as, rules and regulations for burial, interment, reinterment, or disinterment. *Id.*

A board of township trustees may sell cemetery lots for burial purposes. R.C. 517.07. Proceeds from the sale of the lots in a township cemetery shall be used by a board of township trustees for the care of the cemetery grounds or expansion of the township cemetery. R.C. 517.08. Title to land used for a township cemetery is vested in a board of township trustees. R.C. 517.10. A board of township trustees must provide for the care and protection of a township cemetery within its jurisdiction and may create a cemetery endowment fund for the care, maintenance, and beautification of a township cemetery. R.C. 517.11; R.C. 517.15.

Finally, a board of township trustees is authorized 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." R.C. 517.30. R.C. 517.31 authorizes a board of township trustees to take charge of a memorial monument erected by township citizens upon public grounds of the cemetery or upon grounds donated by township citizens. However, R.C. 517.31, by referencing the type of monument discussed in R.C. 517.30, is limited to a monument built to commemorate deceased members of the armed forces. Neither R.C. 517.30 nor R.C. 517.31 provides a board of township trustees authority to permit a private entity to erect a freestanding memorial to motorcyclists in a township cemetery. Thus, there is no authority in R.C. Chapter 517 for a board of township trustees to permit a private entity using private funds to build or install a freestanding memorial honoring deceased or injured motorcyclists in a township cemetery.

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the context of the other provisions of R.C. Chapter 511, it is evident that the General Assembly intended that gifts or donations accepted by a board of township trustees pursuant to R.C. 511.11 for the construction of a memorial shall be used for a memorial commemorating members of the armed services.

Having examined the pertinent statutory provisions of R.C. Chapters 511 and 517, we conclude that a board of township trustees does not have express statutory authority to permit a private entity or person using private funds to erect a freestanding memorial to injured or deceased motorcyclists in a township cemetery. Additionally, there is no basis in R.C. Chapter 511 or R.C. Chapter 517 upon which to conclude that a board of township trustees has implied authority to permit a private entity or person to erect such a memorial in a township cemetery. Thus, we conclude that a board of township trustees does not have express or implied authority to permit a private entity or person using private funds to erect a freestanding memorial to injured or deceased motorcyclists in a township cemetery.

The foregoing advice is limited to a board of township trustees' authority to permit the installation of a freestanding memorial to deceased or injured motorcyclists that is not associated with a grave marker on a particular burial lot. R.C. 517.07 permits the sale of cemetery lots for burial purposes. R.C. 517.06 authorizes a board of township trustees to establish and enforce rules and regulations concerning burials in a township cemetery. Nothing in the present law prohibits a board of township trustees from permitting a private person to memorialize a deceased person's hobbies, interests, or pursuits on a grave marker associated with an individual burial lot. Such a grave marker may include an inscription or engraving memorializing deceased or injured motorcyclists. However, any inscriptions or engravings would be subject to the rules and regulations established by a board of township trustees pursuant to R.C. 517.06.

In sum, it is my opinion, and you are hereby advised that a board of township trustees does not have authority to permit a private entity or person using private funds to erect a freestanding memorial to deceased or injured motorcyclists in a township cemetery.

Very respectfully yours,

MICHAEL DEWINE
Ohio Attorney General