

**OPINION NO. 2003-040****Syllabus:**

Pursuant to R.C. 517.04-.05, a board of township trustees that has used moneys from the township's general fund to purchase real property for a township park may not use a portion of that property for a township cemetery unless the question of the establishment of the cemetery is submitted to a vote of the electors of the township at a regular annual election and a majority of the votes cast at the election is in favor of the establishment of the cemetery.

---

**To: Jeffrey H. Manning, Lorain County Prosecuting Attorney, Elyria, Ohio**  
**By: Jim Petro, Attorney General, December 23, 2003**

You have requested an opinion concerning the authority of a board of township trustees to establish a township cemetery. By way of background, you state that a board of township trustees used moneys from the township's general fund to purchase real property for a township park.<sup>1</sup> When making this purchase, the township trustees did not consider establishing a township cemetery on a portion of the park property. However, after purchasing the park property, the township trustees decided that they would like to establish a township cemetery on a portion of the property.

You indicate that you are aware that, pursuant to R.C. 517.04, prior to purchasing real property for cemetery purposes, a board of township trustees must submit the question of the establishment of a cemetery to a vote of the electors of the township at a regular

---

<sup>1</sup>Various statutes authorize a board of township trustees to acquire real property for the establishment of parks. *See, e.g.*, R.C. 505.26; R.C. 505.261; R.C. 755.12; R.C. 755.16; *see also* R.C. 511.11. You have informed us that the board of township trustees has not purchased the park property jointly with another governmental entity, *see, e.g.*, R.C. 755.16, and that the park property is not under the control of a park district, *see, e.g.*, R.C. 511.241; R.C. 1545.14. Thus, the ownership and control of the park property is vested solely in the board of township trustees. *See* R.C. 503.01; R.C. 505.26; R.C. 505.261; R.C. 511.11; R.C. 755.12. *See generally* 1976 Op. Att'y Gen. No. 76-071 (syllabus, paragraph one) (“[a] board of township trustees is not required by R.C. Chapter 511 to establish a township park district and a board of park commissioners as a prerequisite to the development of a park on its own initiative, either unilaterally pursuant to R.C. 505.26 or R.C. 755.12 or by joint action with one or more other subdivisions pursuant to R.C. 755.16”).

annual election. Because the township trustees did not do this before purchasing the park property, you wish to know whether the board of township trustees may establish a township cemetery on a portion of the park property without submitting the question of the establishment of the cemetery to a vote of the electors of the township.<sup>2</sup>

Boards of township trustees are creatures of statute and have only such authority as is expressly provided by statute or as may exist by implication. *See In re Petition for Incorporation of the Village of Holiday City*, 70 Ohio St. 3d 365, 369, 639 N.E.2d 42 (1994); *Trustees of New London Township v. Miner*, 26 Ohio St. 452, 456 (1875); 1983 Op. Att’y Gen. No. 83-039 at 2-147. Authority for a board of township trustees to purchase real property for cemetery purposes is set forth in R.C. 517.01.<sup>3</sup> This statute provides that, “[t]he board of township trustees may accept a conveyance of, or *purchase*, and enclose, improve, and protect lands in one or more places within the township *as it deems necessary and proper for cemetery purposes*.” (Emphasis added.)

However, pursuant to R.C. 517.04, before a board of township trustees may purchase real property for cemetery purposes, the board must submit the question of the establishment of a township cemetery to the electors of the township. R.C. 517.04 provides:

*Before a purchase ... of land for cemetery purposes is made ..., except where funds may be available for such purchase ... of land for cemetery purposes under [R.C. 517.08],<sup>4</sup> the question of the establishment of such cemetery, on the order of the board of township trustees or the written application of any six electors of the township, shall be submitted to a vote of the electors of such township at a regular annual election. Such order or application shall specify as nearly as possible the proposed location of the cemetery, and the estimated cost thereof, including enclosing and improving it. (Emphasis and footnote added.)*

If a majority of the votes cast at the election is in favor of the establishment of the township cemetery, “the board of township trustees shall procure the lands for that purpose and levy taxes as provided by [R.C. 517.03].” R.C. 517.05.

R.C. 517.04 and R.C. 517.05 thus provide that, except as provided in R.C. 517.08, before a board of township trustees may purchase real property for cemetery purposes, the question of the establishment of a cemetery must be submitted to a vote of the electors of the

---

<sup>2</sup>A member of your staff has informed us that the board of township trustees does not own or partly own a cemetery in the township. *See, e.g.*, R.C. 517.01; R.C. 517.14; R.C. 517.27; R.C. 759.19; R.C. 1715.04; *see also* R.C. 517.10. A portion of the real property purchased by the board of township trustees thus will be used to establish a township cemetery, rather than as an addition to an existing township cemetery. *See, e.g.*, R.C. 517.08; R.C. 517.13.

<sup>3</sup>It is our understanding that the township in question has not adopted the limited home rule form of township government under R.C. Chapter 504, and this opinion does not address the powers of townships acting under this chapter. In addition, this opinion will not consider a township’s authority under R.C. 759.27-.43 (union cemeteries) since the cemetery will not be established under R.C. 759.27, which authorizes a board of township trustees and the legislative authority of one or more municipal corporations to unite in the establishment and management of a union cemetery.

<sup>4</sup>R.C. 517.08 authorizes a board of township trustees to use proceeds from the sale of cemetery lots to acquire additional real property for cemetery purposes.

township at a regular annual election and a majority of the votes cast at the election must be in favor of the establishment of the cemetery. Accordingly, except as provided in R.C. 517.08, a board of township trustees may not purchase real property for cemetery purposes unless the question of the establishment of the cemetery is submitted to a vote of the electors of the township at a regular annual election and a majority of the votes cast at the election is in favor of the establishment of the cemetery. *Trustees of Paris Township v. Cherry*, 8 Ohio St. 564 (1858); 1971 Op. Att'y Gen. No. 71-062; 1943 Op. Att'y Gen. No. 6350, p. 508; see 1971 Op. Att'y Gen. No. 71-038 (syllabus, paragraph two).

With respect to your specific inquiry, the township owns park property on which the township trustees wish to establish a township cemetery. Prior to purchasing the park property, the board of township trustees did not submit the question of the establishment of a cemetery on a portion of the park property to a vote of the electors of the township. As explained above, pursuant to R.C. 517.04, before "township trustees are authorized to purchase lands to establish a cemetery, there must be an election." 1943 Op. Att'y Gen. No. 6350, p. 508, at 511. Because the township trustees failed to submit the question of the establishment of a cemetery on a portion of the park property to a vote of the electors of the township before purchasing the park property, it might be argued that the trustees are now foreclosed from using the park property for cemetery purposes.

It is our view, however, that the township trustees are not foreclosed from using a portion of the park property for cemetery purposes. When interpreting statutes, "the purpose in every instance is to ascertain and give effect to the legislative intent." *Carter v. City of Youngstown*, 146 Ohio St. 203, 65 N.E.2d 63 (1946) (syllabus, paragraph one); *accord State v. Hooper*, 57 Ohio St. 2d 87, 88, 386 N.E.2d 1348 (1979); *Henry v. Cent. Nat'l Bank*, 16 Ohio St. 2d 16, 242 N.E.2d 342 (1968) (syllabus, paragraph two). A review of R.C. 517.04 discloses that the General Assembly intended to make a township's exercise of its authority to establish and operate a township cemetery contingent upon receiving a favorable vote from the township electors on "the question of the establishment of such cemetery." As explained in 1943 Op. Att'y Gen. No. 6350, p. 508, at 511:

The wording of [G.C. 3445 (now R.C. 517.04)] is clear and unambiguous. Before the township trustees are authorized to purchase lands to establish a cemetery, there must be an election.... It seems to me that it could be said the fundamental or underlying reason for the submission to the township electorate of the question of whether or not lands should be purchased is two-fold. *First, to give said electors the right to determine whether it is necessary to establish a cemetery. Second, if it is so determined, to thereby authorize the levying of a tax against the township property.* (Emphasis added.)

The intent of the General Assembly is to ensure that the electors of a township vote favorably on the establishment of a township cemetery before its establishment. If a favorable vote from such electors is received prior to the establishment of the cemetery, the intent of the General Assembly is accomplished and there is no circumvention of R.C. 517.04.

In your particular situation, the real property in question was purchased for park purposes. Thus, at that time, there was no need for the board of township trustees to submit the question of the establishment of a township cemetery on a portion of the property to the electors of the township since the board was not seeking to establish and operate a cemetery. Now that the board of township trustees wishes to establish and operate a township ceme-

tery, the board is required to comply with R.C. 517.04 and submit the question of the establishment of a township cemetery on the park property to the township electors.

We are of the opinion that, if a board of township trustees has purchased real property for another purpose and subsequent circumstances warrant using the property for a township cemetery, it seems logical that the board should be able to use the property for cemetery purposes when the township electors have voted favorably on the establishment of the cemetery. *See generally State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 470, 423 N.E.2d 105 (1981) (a power may be fairly implied where it is reasonably related to the duties of the public agency); *Federal Gas & Fuel Co. v. City of Columbus*, 96 Ohio St. 530, 541, 118 N.E. 103 (1917) (a public body "is naturally and necessarily vested with a wide discretion to do such incidental things as are reasonably and manifestly" in the public's interests to perform its duties, provided such things are not prohibited by statute), *appeal dismissed*, 248 U.S. 547 (1919).

Moreover, nothing in R.C. 517.04 or any other statute indicates a legislative intent to prohibit a board of township trustees from establishing and operating a township cemetery on township park property when the board receives a favorable vote from the electors of the township on the establishment of the cemetery on the park property. Absent such an intention, a board of township trustees may establish a township cemetery on township park property, provided that, prior to the establishment of the cemetery, the board receives a favorable vote from the electors of the township on the establishment of the cemetery.

Based on the foregoing, it is my opinion, and you are hereby advised that, pursuant to R.C. 517.04-.05, a board of township trustees that has used moneys from the township's general fund to purchase real property for a township park may not use a portion of that property for a township cemetery unless the question of the establishment of the cemetery is submitted to a vote of the electors of the township at a regular annual election and a majority of the votes cast at the election is in favor of the establishment of the cemetery.