

**OPINION NO. 89-058****Syllabus:**

1. Control and management of a union cemetery may be shifted from a union cemetery board to the combined boards of township trustees and municipal legislative authorities by appropriate action at any joint meeting provided for by R.C. 759.34 or R.C. 759.35; a board of township trustees which participates in the control and management of a union cemetery through joint meetings under R.C. 759.35 may contribute financially to the maintenance and operation of the cemetery.
2. Pursuant to R.C. 759.39, a board of township trustees may withdraw totally from the control and management of a union cemetery subject to consent from the remaining participating governments; a board of township trustees which has withdrawn from a union cemetery under R.C. 759.39 has no authority to continue to expend public funds on the cemetery.

---

**To: Russell B. Wiseman, Crawford County Prosecuting Attorney, Bucyrus, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, July 26, 1989**

I have before me your request regarding the administration and financing of a union cemetery. Specifically, you ask:

1. May a Board of Township Trustees cease participation on a Union Cemetery Board where the cemetery is entirely situated within a municipality within their Township?

2. If a Board of Trustees ceases participation on such a Union Cemetery as set forth in question 1, may it legally contribute financially to the maintenance and operation of such cemetery?

Before addressing these questions, I find it helpful to review the statutory framework governing union cemeteries. Union cemeteries are authorized by R.C. 759.27, which provides, in pertinent part, that "[t]he legislative authorities...of one or more municipal corporations and the boards of township trustees of one or more townships, when conveniently located for that purpose, may unite in the establishment and management of a cemetery...." R.C. 759.31 provides that, "[a] cemetery owned in common as provided in section 759.27 of the Revised Code, shall be under the control and management of the board of township trustees and the legislative authorities of the municipal corporations...." Pursuant to R.C. 759.34, the governing bodies of the participating townships and municipalities must meet jointly each May to determine the rate of tax to be levied for support of the union cemetery.<sup>1</sup>

In addition to the funding authority provided in R.C. 759.34, the provisions of R.C. 759.35 and R.C. 759.36 provide two methods of management and control of a union cemetery.<sup>2</sup> The governments participating in the cemetery may choose to exercise control directly through joint meetings, as authorized by R.C. 759.35, which states that:

The boards of township trustees of townships or the legislative authorities of municipal corporations which have a cemetery owned in common as provided in section 759.27 of the Revised Code may at any time call a joint meeting of such legislative authorities and boards on a reasonable notice given by either, for the purpose of making joint rules and regulations for the government of the cemetery, or changing them, and making such orders as are found necessary for the application of moneys arising from the sale of lots, taxes, or otherwise.

In the alternative, R.C. 759.36 provides that:

At any joint meeting provided for by section 759.35 of the Revised Code, or at the joint meeting provided for by section 759.34 of the Revised Code, by a majority vote of all present counting members of the legislative authorities of municipal corporations and of boards of township trustees, the meeting *may elect a board of cemetery trustees* consisting of three members, of which one or more must be a member of each of the separate boards of township trustees and legislative authorities which comprise the union cemetery association represented by the joint meeting. (Emphasis added.)

---

<sup>1</sup> The participating townships and municipalities also have discretionary authority under R.C. 759.341 to create a union cemetery tax district, for which the governing bodies acting jointly would become a taxing authority independent of the individual participating governments. Your letter does not indicate that the township and municipality involved in your questions have exercised this option. I assume, for purposes of this opinion, that the township and municipality levy the tax referred to in R.C. 759.34 separately within their respective jurisdictions. See 1956 Op. Att'y Gen. No. 6907, p. 590 (syllabus, paragraph two).

<sup>2</sup> See 1929 Op. Att'y Gen. No. 426, vol. I, p. 679 (syllabus, paragraph two) ("joint cemetery may be operated by the trustees of such township[s] jointly or by a board of cemetery trustees"). Although the holding of 1929 Op. No. 426 applies to joint township cemeteries, joint township cemeteries were, and still are, governed by the statutes governing union cemeteries. See R.C. 517.14 (expressly incorporating R.C. 759.27 to 759.48 for purposes of governing joint township cemeteries). Since the General Code sections analyzed by 1929 Op. No. 426 are substantially the same as the current R.C. 759.35 and 759.36, the holding remains equally applicable to union cemeteries.

R.C. 759.36 further provides that a cemetery board has custody of the tax funds provided in R.C. 759.34 and authority to create a permanent endowment fund for maintenance and care of the cemetery. In addition, the "board of cemetery trustees shall have all the powers and perform all the duties exercised and performed by the director of public service of a municipal corporation under sections 759.09 to 759.14<sup>3</sup> of the Revised Code." R.C. 759.36 (footnote added).

In the situation you have described, one township and one city are involved in the operation and management of a union cemetery, which is located inside the city limits. Your letter indicates that the cemetery is administered by a three member union cemetery board, which I presume, for purposes of this opinion, was properly established pursuant to R.C. 759.36. Although the township and city provide funds for the maintenance of the cemetery, you indicate that the administrative costs of the cemetery board deplete most of this money. Since two of the cemetery board seats are currently vacant, you wish to consider alternative means of administration and funding.

I turn now to your first question, which asks: "May a Board of Township Trustees cease participation on a Union Cemetery Board where the cemetery is entirely situated within a municipality within their Township?" One method by which a board of township trustees might "cease participation" is found in R.C. 759.39, which states:

A municipal corporation or township united with other municipal corporations or townships in the establishment or control of a union cemetery, or both, may, by a resolution of the legislative authority of the municipal corporation or of the board of township trustees and *with the consent of the legislative authorities of the remaining municipal corporations* and the boards of the remaining townships, withdraw from the management and control of such cemetery and relinquish interest therein. Thereupon the cemetery shall be under the management and control of the remaining municipal corporations and townships. (Emphasis added.)

Clearly, R.C. 759.39 authorizes the board of township trustees to withdraw from the management and control of a union cemetery, if, and only if, the remaining governments participating in the cemetery consent. Such action would totally sever the township's interest in the cemetery.<sup>4</sup>

The board of township trustees might also seek to disband the union cemetery board without totally withdrawing from participation in the cemetery itself. As I discussed previously, a union cemetery board is one of two methods of governing a union cemetery. Since the cemetery board is formed at the discretion of the participating governments, R.C. 759.36, it follows that they may also subsequently exercise their discretion and disband the board. See, e.g., 1921 Op. Att'y Gen. No. 2071, vol. I, p. 387 at 390-91 (holding, with regard to a discretionary sewer district, that the authority to revoke a discretionary act "is an inherent or necessary implied right in matters involving the exercise of sound judgment"). Accord 1987 Op. Att'y Gen. No. 87-083 at 2-559 through 2-561. Although R.C. 759.36 does not provide any express procedure for disbanding the board, I note that

---

<sup>3</sup> I note that R.C. 759.31 provides that when a board of township trustees and a municipal legislative authority unite in the management of a union cemetery, "their authority over it and duties in relation thereto shall be the same as where the cemetery is the exclusive property of a municipal corporation." The authority and duties of a municipality in relation to an exclusively municipal cemetery are found at R.C. 759.02 through R.C. 759.18. The election of a cemetery board thus delegates to that board a portion of the authority vested in the united governing bodies by R.C. 759.31.

<sup>4</sup> Since, in your case, the township and the city are the only participants in the union cemetery, a withdrawal pursuant to R.C. 759.39 would also dissolve the union cemetery board and leave the city in exclusive control of the cemetery.

the general common law rule is that, in the absence of a contrary statute, a public body may take formal action "through a majority of a quorum consisting of a majority of the members." *In re Slavens*, 166 Ohio St. 285, 286, 141 N.E.2d 887, 888 (1957). Thus, at any joint meeting authorized under R.C. 759.34 or R.C. 759.35, a majority of a quorum of the members of the board of township trustees and the municipal legislative authority<sup>5</sup> may vote to disband the union cemetery board and to exercise management and control over the cemetery directly in joint meetings. This action would not relieve any of the participating governments of their rights and duties with regard to the union cemetery; it would simply alter the administrative structure.

In response to your first question, therefore, I find that a board of township trustees has no authority to withdraw unilaterally from participation on a union cemetery board formed pursuant to R.C. 759.36. However, a board of township trustees may withdraw totally from participation in a union cemetery, subject to the consent of the remaining governmental units, as provided in R.C. 759.39. Alternatively, a union cemetery board may be dissolved by a majority vote at a joint meeting of all participating governing bodies held pursuant to R.C. 759.34 or R.C. 759.35, after which the participating governing bodies may continue to govern the cemetery directly, pursuant to R.C. 759.35.

Your second question asks "[i]f a Board of Trustees ceases participation in such a Union Cemetery as set forth in question 1, may it legally contribute financially to the maintenance and operation of such a cemetery?" In answering this question, I am guided by the principle that public funds may be disbursed only by clear authority of law. *State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (1918); *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571, 572 (1916) ("authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise...").

Clearly, the board of township trustees has authority to expend funds on a union cemetery in which the township participates. R.C. 759.34 and R.C. 759.341 provide for the levy of a tax to support such a union cemetery. But if the board of township trustees withdraws totally from the union cemetery pursuant to R.C. 759.39, all interest in and control and management of the cemetery passes to the municipality. I find no authority in the provisions of R.C. 759.27 through R.C. 759.44, which govern union cemeteries, that would permit the township to continue to expend public funds on the cemetery after such withdrawal. Nor can I find such authority in R.C. Chapter 517, which governs township cemeteries generally. R.C. 517.11 provides that, "[t]he board of township trustees shall provide for the protection and preservation of cemeteries under its jurisdiction...." Pursuant to R.C. 517.10, this includes "title to, right of possession, and control of all public cemeteries located outside any municipal corporation...except such as are...under the control of any municipal corporation...." By withdrawing under R.C. 759.39, the township relinquishes all interest in the cemetery to the municipality, which is the sole remaining participant. Thus, I cannot construe the general authority of the township over cemeteries to include continued support of such a cemetery.<sup>6</sup>

I must now examine whether the township may continue to financially support the cemetery if the cemetery board is disbanded in favor of direct

---

<sup>5</sup> R.C. 759.37 provides that each member of each governing body shall have one vote in a joint meeting.

<sup>6</sup> I note that union cemeteries may be located either within or outside of municipal corporations. See R.C. 759.01 and R.C. 759.02 (municipality may own and regulate cemeteries within and outside of municipal limits); R.C. 759.31 (combined participating governments of a union cemetery have the same authority as a municipality with respect to cemeteries); see also n. 3 *supra*. Since withdrawal pursuant to R.C. 759.39 totally severs the township's ties to the cemetery, the location of the cemetery is immaterial to determining whether the township may continue financial support.

management under R.C. 759.35. As I stated in response to your first question, when the participating governments choose to manage the union cemetery directly by joint meetings pursuant to R.C. 759.35, their respective duties and authority with regard to the cemetery do not change. Thus a township which manages a union cemetery jointly with a municipality as provided in R.C. 759.35 retains its authority to contribute financially to the maintenance and operation of the union cemetery. The difference between management by such joint meetings and management by a cemetery board pursuant to R.C. 759.36 is primarily one of administrative structure. Rather than placing public moneys in a centralized fund in the custody of the cemetery board, *see* R.C. 759.36, each participating government would maintain its cemetery funds in its own treasury to be paid out as determined in the joint meetings for the administration of the cemetery. I note that previous opinions have held that the authority to control and manage may be delegated *only* as provided by statute. Thus, if the township and municipality choose to jointly manage the cemetery rather than to maintain a cemetery board pursuant to R.C. 759.36, the control and management must be exercised in joint meetings pursuant to R.C. 759.34 and R.C. 759.36. The township may not reduce its role to mere contribution of funds. *See* 1949 Op. Att'y Gen. No. 489, p. 213; 1915 Op. Att'y Gen. No. 717, vol. II, p. 1506 (union cemeteries may not be administered by municipal director of public services with proportionate share of expenses to be paid by townships).

It is, therefore, my opinion, and you are hereby advised, that:

1. Control and management of a union cemetery may be shifted from a union cemetery board to the combined boards of township trustees and municipal legislative authorities by appropriate action at any joint meeting provided for by R.C. 759.34 or R.C. 759.35; a board of township trustees which participates in the control and management of a union cemetery through joint meetings under R.C. 759.35 may contribute financially to the maintenance and operation of the cemetery.
2. Pursuant to R.C. 759.39, a board of township trustees may withdraw totally from the control and management of a union cemetery subject to consent from the remaining participating governments; a board of township trustees which has withdrawn from a union cemetery under R.C. 759.39 has no authority to continue to expend public funds on the cemetery.