2010 STATE AUDITOR'S LOCAL GOVERNMENT CONFERENCE

Cemetery Seminar Presentation

presented by
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- **Acquisition or appropriate of Land** **517.01**
  Township may procure lands by conveyance
  purchase, or eminent domain appropriation

- **Public Road to Cemetery** **517.02**
  Petition by 25 interested persons
  by gift, purchase, eminent domain

- **Levy and taxes for expenses** **517.03**
  Authority to tax

- **Vote on establishment of Cemetery** **517.04**
  required when tax is to be levied or
  written application of any six electors

- **Notice of Election - ballots** **517.05**
  deadline - form - manner

- **Cemetery Plat** **517.06**
  must lay out lots, avenues and paths
  make regulations and rules
  cut grass and weeds at least 2/year

- **Sale of Cemetery Lots** **517.07**
  Reasonable price - provide a deed
  Notice of intestate heirs
  Notice by heirs of transfer
  Manner in which Board may reclaim lot
  Board may specify time limit no less than
  20 (30) nor more that 50 years renewable when
  lot must be used.

- **Expenditure of proceeds - exception** **517.08**
  sale of lots proceeds for improving grounds
  may be used to acquire new land by unanimous
  vote - *may* build fences.

- **No levy on lots** **517.09**
  lots can not be levied or executed upon

- **Title to burial grounds vest in trustees** **517.10**
  Board has legal title to all public cemeteries

- **Care of Cemetery** **517.11**
  mandatory care of cemetery, repair of headstones
  may enclose with fence or hedge and maintain
  May levy tax not to exceed ½ mill in any one year

- **Regulate hours of access to cemeteries** **517.12**
  to protect against vandalism
  minor misdemeanor criminal violation

- **Additions to cemetery grounds** **517.13**
  right of eminent domain appropriation
  not to exceed 10 acres, not within 50 feet of
  a dwelling house. May levy ½ mill for 5 years

- **Public cemetery on township lines - joint** **517.14**
  joint township cemetery
  provides for joint cemeteries
  levying power 1/4 mill per year

- **Cemetery endowment fund** **517.15**
  created with: gifts, devises, bequests
  Sir-charge, general fund money
  agreement w/purchase of burial lot

- **Tax levy for buildings - bond issue** **519.19**
  township owns burial lot with cemetery assc.
  May levy 5 mill tax for buildings

- **Appointment of Directors** **517.20**
  may appoint 3 directors - 1,2 &3 year terms

- **Abandonment or discontinuance of cemetery** **517.21**
  -removal of bodies and stones
  detrimental to public health trustees may order

discontinuance of cemetery and provide for the removal and reinterment to a suitable public ground in vicinity - notice to next of kin for removal

- **Public sale of cemetery** **517.22**
  may dispose of at public sale, notice in two newspapers - must remove all remains, stones and monuments

- **Disinterment of body** **517.23**
  - application of surviving spouse
  - order of probate court application of other party
  - party may file application to oppose disinterment

- **Form of Application** **517.24**
  - applicant will assume financial responsibility
  - 18 years of age and sound mind
  - the relationship of applicant to decedent
  - place where remains will be reintered
  - names of intestate heirs
  - court must have hearing / preponderance of the evidence
  - no hearing required if everyone waives

- **Writ of mandamus** **517.25**
  Court shall issue writ of mandamus requiring trustees or other officers to disinter the remains or grant permission for others to disinter.

- **Removal of dead** **517.26**
  on complaint of householder in the township, that remains laid in cemetery are offensive, trustees shall inter remains in vault or receptacle - after 3 days neglect judge may order householder to inter remains at expense of board and charge for service.

- **Transfer of cemeteries to board of trustees** **517.27**
  a public cemetery not in control of a municipal corporation with title vested in an association or religious society, used *exclusively* for cemetery purposes, the township *shall* accept and maintain said grounds.

- **Abandonment of cemetery owned by municipal corporation** — **517.28**
  failure to keep cemetery enclosed for a period of two year, five freeholders may petition probate court for order of abandonment or removal

- **Neglect of order by municipality shall cause execution sale** — **517.29**

- **Trustees may erect monument commemorating members of armed forces** — **517.30**
  majority vote of board - limited to $5,000.00 expenditure of funds

- **Care of monument** — **517.31**
  Trustees may expend funds to maintain monument

- **Enclosure of Cemetery** — **517.32**
  Board of Trustees must maintain enclosure of all abandoned public cemeteries where the board of county commissioners have enclosed with a substantial fence of stone, iron or posts or boards.

INDIGENT BURIALS

A. Indigent Burials

1. Statute – 9.05, *(previously numbered as Section 5101.521) Burial or cremation of body at expense of township or municipal corporation:*

When the body of a dead person is found in a township or municipal corporation, and such person was not an inmate of a correctional, benevolent, or charitable institution of this state, and the body is not claimed by any person for private interment or cremation at the person's own expense, or delivered for the purpose of medical or surgical study or dissection in accordance with section 1713.34 of the Revised Code, it shall be disposed of as follows:

a) If the person was a legal resident of the county, the proper officers of the township or municipal corporation in which the person's body was found shall cause it to be buried or cremated at the expense of the township or municipal corporation in which the person had a legal residence at the time of death.

b) If the person had a legal residence in any other county of the state at the time of

death, the superintendent of the county home of the county in which such body was found shall cause it to be buried or cremated at the expense of the township or municipal corporation in which the person had a legal residence at the time of death.

c) If the person was an inmate of a correctional institution of the county or a patient or resident of a benevolent institution of the county, the person had no legal residence in the state, or the person's legal residence is unknown, the superintendent shall cause the person to be buried or cremated at the expense of the county.

Such officials shall provide, at the grave of the person or, if the person's cremated remains are buried , at the grave of the person's cremated remains, a stone or concrete marker on which the person's name and age, if known, and date of death shall be inscribed.

A political subdivision is not relieved of its duty to bury or cremate a person at its expense under this section when the body is claimed by an indigent person.

2. Interpretation of the Statute:

A. First, note that R.C. 517.06, *Cemetery plat,* requires that the township "shall" make "suitable provision...in the cemetery for persons whose burial is at the expense of the township.

B. *Ohio Attorney General's Opinion 1996-026*:

1. There is no general obligation on the township to pay for all the burials of all its residents; instead, the following factors must be present in order for there to be public payment of burial expenses:

a. The body of a dead person is found in a township or municipal corporation;

b. The deceased person was not an inmate of a correctional, benevolent, or charitable institution of Ohio;

c. The body is not claimed by any person for private interment at the claimant's own expense;

d. The body is not delivered for the purpose of Medical or surgical study or dissection.

If the above four factors are present, the township is responsible for burial expenses if the person was a legal resident of the township at the time of his death.

However, if the deceased person was a legal resident of a village or other municipal

corporation located with the township, the obligation to pay burial expenses for the deceased rests with the village or other municipal corporation.

2. There is no clear definition of "*legal residence*;" The definition given in the opinion is "a physical presence in a particular location coupled with the choice to make that place home, or the place with which a person is most intimately connected.

a. Therefore, a resident could be hospitalized or in a nursing home outside of the township, and still be a legal resident of the township; must intend for the hospital or nursing home to become the permanent residence.

Ohio Attorney General's Opinion 1995-012

A. If the body of a dead person is claimed by any person for private interment at the claimant's expenses pursuant to R.C. 5101.521, then no political subdivision has any obligation under R.C. 51.01.521 to pay any expenses relating to the burial of the person.

B. If the body of a dead person is claimed as a loved one by an indigent person pursuant to R.C. 5101.521, then a political subdivision is not relieved of any duty it may have to bury the person at the expense of the subdivision in accordance with R.C. 5101.521.

C. Whether a particular individual is claiming the body of a dead person "for private interment at his own expense" pursuant to R.C. 5101.521 or is an indigent person simply claiming the body, without the intent or ability to pay for private interment, is a question of fact.

Factors to be considered in determining if the claimant is indigent include;

a) the ready availability of real or personal property owned;
b) employment benefits; pensions; annuities; social security; unemployment compensation;

c) inheritances; number and age of dependents; outstanding debts; obligations and liabilities; and

d) any other relevant considerations concerning the financial condition of an individual.

1. R.C. 5101.521 permits a political subdivision to cooperate with an indigent person who claims the body of a loved one by causing the decedent to be buried at the expenses of the political subdivision in a manner that, to the extent reasonably possible within appropriate financial limitations, is consistent with the preferences and sensibilities of the claimant.

2. **R.C. 5101.521 *does not* authorize an indigent person to claim a body, make independent arrangements for a private funeral, and have the bill sent to the political subdivision, nor does it require a political subdivision to pay a bill submitted in such circumstances.**

MAINTENANCE, REPAIR REPLACEMENT OF HEADSTONES

1. **Statutory Law**

   a. **R.C. 517.11, *Care of Cemetery:***

The board of township trustees shall provide for the protection and preservation of cemeteries under its jurisdiction...The board may enclose such cemeteries with a substantial fence or hedge, and shall keep any such fence or hedge in good repair. It may re-erect any fallen tombstones, regardless of the cause of the falling, in such cemeteries.

   b. **R.C. 517.21, *Abandonment or discontinuance of cemetery – removal of bodies and stones:***

When a public or private cemetery has been abandoned, or when the board of township trustees...are of the opinion that the further use for burial purposes of a cemetery will be detrimental to the public welfare or health, and a cemetery in the near vicinity is open for public use, the board, trustees...may order that the abandoned cemetery or the cemetery whose further use for burial purposes is believed to be detrimental to the public welfare or health be discontinued and provide for the removal of all remains buried in that cemetery, for the removal of all stones and monuments marking the graves of that cemetery, for the reinterment of the remains, and for the re-erection of those stones and monuments in suitable public ground..., all of which shall be paid for from the township treasury...

   c. **R.C. 517.22, *Public sale of cemetery:***

The board of township trustees..., after notice has first been given..., may dispose of, at public sale, and convey any cemetery under their control that they have determined to discontinue as burial grounds, but possession of the cemetery shall not be given to a grantee until after the remains buried in that cemetery, together with stones and monuments have been removed...

2. **Ohio Attorney General Opinions:**

   a. **A board of township trustees has a duty pursuant to R.C. 517.11 to repair and re-erect monuments in a cemetery which has been vandalized. 1975 Op. Att'y Gen. No. 75-083**