

Abandoned Cemeteries: What Are Your Obligations?

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Golden Rule of Township Law

► "It is settled that . . . the [township] trustees can exercise only those powers conferred by statute, or such others as are necessarily to be implied from those granted."

Trustees of New London Township v. Miner, 26 Ohio St. 452, 456 (1875).

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NON SEQUITUR

...SO AFTER RETIRING, HE SAID IT'S TIME TO FOLLOW HIS BLISS, WHICH, UNBENANNET TO HE, WAS JUGGLING SAMURAI SWORDS

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Ohio Cemetery Stats

Ohio by the numbers:

- ▶ 4,117 registered cemeteries
- ▶ 1,309 townships
- ▶ Townships maintain over 2,400 of those cemeteries
- ▶ Average of almost 2 cemeteries per township



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Township Cemetery Responsibility

- ▶ R.C. 517.03 - may levy a tax for the "expenses of the purchase or appropriation, and the enclosing, care, supervision, repair, and improving of lands for cemetery purposes, and of maintaining and improving entombments..."
- ▶ R.C. 517.06 - shall have the cemetery laid out in lots, avenues, and paths; and have a plat of the lots made, to be carefully kept by the Fiscal Officer; shall cut grass and weeds at least twice per year; may enact rules and regulations for care of lots, burials, etc.
- ▶ R.C. 517.07 - shall sell cemetery lots at a reasonable price
- ▶ R.C. 517.073 - may enact a resolution providing for reentry of unused plots if certain circumstances are met

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More Township Cemetery Responsibility

- ▶ R.C. 517.11
 - ▶ "shall provide for the protection and preservation of cemeteries under its jurisdiction"
 - ▶ "may enclose cemeteries...with a substantial fence or hedge, and shall keep any such fence or hedge in good repair"
 - ▶ "may re-erect any fallen tombstones... [and] may purchase, maintain, and improve entombments..."
 - ▶ "may levy a tax to meet any costs incurred..., not to exceed one-half mill in any one year, upon all the taxable property of the township."
- ▶ R.C. 517.12 - may enact rules governing hours of access; must publish notice of such rules
- ▶ R.C. 517.15 - may create a permanent cemetery endowment fund
- ▶ Boards have a duty to repair and re-erect monuments and tombstones where necessary to keep in good repair. OAG Ops. No. 75-083.
- ▶ R.C. Chapter 1721 - may appoint cemetery watchpersons; enforce cemetery rules and regulations

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R.C. 517.10 - Title Vested in Board of Trustees

- ▶ Title to and control is vested in the board of trustees
- ▶ All dedicated public cemeteries located outside any municipality
- ▶ Any grounds for burial, even if not dedicated as a public cemetery
- ▶ Not those owned or under the care of:
 - ▶ Religious or benevolent society
 - ▶ Incorporated company or association
 - ▶ Municipal authorities
- ▶ Additionally, the township shall accept transfer of a cemetery from a cemetery association or religious organization. R.C. 517.27

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Title Vests Automatically

- ▶ Cemetery "had been neglected and had fallen into disarray" and had become a place for criminal activity.
 - ▶ 18,000 interred in Wesleyan Cemetery of Cincinnati
 - ▶ "If not the City, then who?"
 - ▶ City suggested that the cemetery volunteers handle maintenance
 - ▶ State ex rel. Petro v. Cincinnati, 2007-Ohio-1858 (1st Dist.)
- ▶ Defunct private mausoleum association; unable to locate successor association trustees; last known interment December 12, 1920; disrepair
 - ▶ Mausoleum located in unincorporated area
 - ▶ Used by the public
 - ▶ Not being cared for by mausoleum association
 - ▶ OAG Ops. No. 17-040

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R.C. 517.21 - Abandoned Cemeteries

- ▶ Public or private cemetery
- ▶ If a cemetery is abandoned, or if the township or cemetery association determines that further use of a cemetery for burial purposes will be "detrimental to the public welfare or health," and a nearby cemetery is open for public use
- ▶ Board may order the use of abandoned or detrimental cemetery be discontinued

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R.C. 517.21 - Abandoned Cemeteries (cont.)

- ▶ Board to provide for:
 - ▶ Removal of all remains buried in that cemetery;
 - ▶ Removal of all stones and monuments marking graves;
 - ▶ Reinterment of remains; and
 - ▶ Re-erection of stones and monuments in suitable public cemetery nearby
- ▶ Paid for from township treasury
- ▶ Prior notice required...

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Required Notice

- ▶ Before providing for the removal of any remains from an abandoned cemetery, the township must give notice:
 - ▶ To family, friends, or next of kin, if known, of the discontinuance order and time within which removal must be made (not less than 30 days);
 - ▶ Stating that it is desired that the removal be made by family, friends, or next of kin
- ▶ After 30-day period, if removal has not been made, the township or cemetery association may remove and reinter the remains

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517.22 - Public Sale of Cemetery

- ▶ (Former) cemetery grounds may be sold and conveyed IF:
 - ▶ Township determines to discontinue use as a cemetery
 - ▶ Possession transfer only after all remains, stones, and monuments have been removed under R.C. 517.21
 - ▶ Publish notice in newspaper of general circulation

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Cemeteries - Abandoned

- ▶ Absence or neglect by prior owner/caretaker; no longer "owned or under the care of" prior owner/caretaker - Wesleyan Cemetery in *State ex rel. Petro v. Cincinnati* case.
- ▶ All or practically all remains were removed; none have been buried in many years; was so long neglected as to lose identity as a cemetery - OAG Ops. No. 53-2978
- ▶ No longer known, recognized, or respected as a cemetery
- ▶ Maybe where change in use - permanently changed to uses that are inconsistent with a cemetery, becoming impossible to use it for cemetery purposes

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Cemeteries - Not Abandoned

- ▶ Interments weren't made for many years; many remains had been removed; but many remains still there; use still consistent with that of a graveyard - *City of Newark v. Crane*, 92 Ohio St. 537 (1915)*
- ▶ Failed to keep properly fenced
- ▶ Dug, or allowed others to dig, gravel from surface of cemetery
- ▶ Installed water pipes, fountains, electric lines, cement walkways - provided improvements aren't inconsistent with use as cemetery

▶ Fact-specific

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Additional Responsibilities

- ▶ County Enclosure of Abandoned Cemetery
 - ▶ If the county has enclosed with a fence all abandoned cemeteries still containing remains, the township must keep the fence in good repair, remove weeds at least once/year, and pay the cost of maintaining. R.C. 517.32
- ▶ Road to Abandoned Cemetery
 - ▶ If the petition process is followed under R.C. 517.02, the township shall provide a public road to an abandoned township cemetery
 - ▶ The township shall construct, resurface, reconstruct, and improve the public road as needed. OAG Ops. No. 15-006

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R.C. 4767.10 - Cemetery Grant Program

- ▶ R.C. Law effective October 2018
- ▶ Administered by Ohio Department of Commerce - Division of Real Estate & Professional Licensing
- ▶ \$100,000 fund; funded through \$1 of each burial permit fee
- ▶ No for-profit cemeteries
- ▶ Township cemeteries are eligible
- ▶ Can apply every other year for 1 grant of up to \$1,000.
 - ▶ Operators of 5 or more registered cemeteries may apply each year.
- ▶ May apply for over \$1,000, but must provide proof of matching funds & impact statement with proof of extenuating circumstances
- ▶ Questions?
 - ▶ CemeteryGrants@com.state.oh.us
 - ▶ (614) 466-5384

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Indigent Burial Fund

- ▶ Reinstates the local government indigent burial reimbursement program
- ▶ Appropriates \$1 million to reimburse local government entities for the cost of providing burials or cremations to indigent deceased persons
- ▶ Up to \$1,000 for an adult and \$750 for a child.
- ▶ Use it or lose it!
- ▶ H.B. 166 - 2019 Budget Bill
- ▶ Effective October 17, 2019

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Pending Legislation

- ▶ H.B. 444 - Township Omnibus Bill
- ▶ Introduced 12/12/19
- ▶ Regarding cemeteries -
 - ▶ Townships are required to take control of cemeteries from religious or benevolent organizations without stipulation.
 - ▶ What about providing cemetery records or cemetery funds?
 - ▶ Nothing to prevent a cemetery from being transferred simply because the organization wishes to stop caring for it.
- ▶ OTA working on including minimum standards regarding the transfer of cemeteries, including to clarify the process by which an organization may transfer a cemetery to a township.

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Questions?

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Sources

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- ▶ <https://ohiotownships.org/ohio-townships-map>
- ▶ <http://historichouston1836.com/cemetery-humor-part-3/>
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