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June 17, 2014

Dudley Township Trustees  
Marcy Jennings, Fiscal Officer  
15334 TR 199  
Kenton, Ohio 43326

RE: June 12, 2014 E-mail from Trustee Nathan Brooks regarding cemetery issues.

Dear Ms. Jennings:

Questions submitted are the following:

1. What is the township's responsibility regarding headstones in a township cemetery? See the following:
2. When stones are knocked over and damaged, does the township have monetary responsibility for these or is it a family problem? It is the township's duty.
3. If a contractor (mower/gravedigger) damages a stone, whose responsibility is it to repair the stones? The township has the responsibility.
4. If it is a matter of vandalism whose responsibility to fix the stones? The township has the responsibility.

There is a mandatory duty on the township trustees under ORC §517.11 to control and handle the care of cemeteries, replace and re-erect fallen monuments and carry out such other work as is necessary

to restore the cemetery to a safe condition. Specifically, ORC §517.11 provides that “the board of township trustees shall provide for the protection and preservation of cemeteries under its jurisdiction.” This section further provides that: “the board shall enclose such cemeteries with a substantial fence or hedge and shall keep it in good repair.” Furthermore, ORC §517.11, authorizes the board of trustees to levy a tax not to exceed ½ mill in any one year upon all of the taxable properties of the township if the township does not have sufficient funds to make the necessary repairs.

Clearly the board of trustees under ORC §517.11 has a duty to re-erect any fallen tombstones, regardless what caused them to fall. The Ohio Attorney General in opinion 75-083 held a board of township trustees has a duty pursuant ORC §517.11 to repair and re-erect monuments in a cemetery that has been vandalized. Further, Ohio Attorney General Opinion 75-083 held that the duty to repair and re-erect monuments and tombstones in cemeteries within their jurisdiction is necessary to “keep it in good repair” within the meaning of 517.11 of the ORC.

In conclusion, it is the responsibility of the trustees to repair and fix headstones in cemeteries, it does not matter who knocked them over. It is not the family’s responsibility, but the township trustees. It does not matter whether it was vandalized; it is still the township trustees’ responsibility. However, if the trustees have evidence and it can be established who damaged the property, children have liability through their parents for their actions of vandalism. If you can prove an adult vandalized, you also have a right to recover directly from the adult. Note, it is still the township responsibility to fix or repair the stones but the township can look to individuals for reimbursement if it can be proven. Absent any proof regarding who did the vandalism, the expense must be borne by the township without any hope of reimbursement to make these necessary repairs.

Additionally, if you have an individual under contractual agreement that damages the stone, you have a basis for litigation against them to reimburse the township for the repair. Just because they are your agent under contract does not mean you bear the sole financial responsibility without seeking reimbursement if you can legally establish that they damaged the property. In carrying out their contract, the contractors must do so without negligence.

The Ohio Revised Code clearly understands that you may not have financial resources under your general fund to fund these duties. Therefore, it is expressly states the township has the authority to put a tax levy on for this purpose. I can say from looking at previous attempts by other townships this is a type of tax levy that seems to pass quite frequently. It appears the citizens of most townships do want their cemeteries taken care of and are willing to vote a tax levy in place for the necessary funds to carry out this duty. Attached is the ORC §517.11 and Ohio Attorney General's Opinion 75-083. Should you have any further questions, feel free to contact me.

Sincerely,

Bradford W. Bailey, #0017814  
Hardin County Prosecuting Attorney

enclosure(s)  
BWB/jp