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BRADFORD W. BAILEY
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The question presented by the trustees of Cessna Township is two-fold: 1) can the town accept a bequest from an adjoining landowner to expand a cemetery, and 2) can an inactive cemetery be reopened.

The answer to the first question is in the affirmative. Pursuant to Ohio Revised Code §9.20, a township or the trustees of a township may receive by gift, devise, or bequest moneys, lands, or other properties, for their benefit or the benefit of any of those under their charge and may hold and apply the moneys, lands, or properties according to the terms of the gift, devise, or bequest. Clearly, Mr. W is entitled to deed over his land to the township as a gift in order to expand the cemetery. However, an issue may arise with the township *giving* Mr. W deeds to plats in the new addition, as these customarily are only available for sale.

Instead it would be prudent to have Mr. W “sell” the parcel of land in question to the township in exchange for the however many plats he should seek to acquire. This way there is no appearance of impropriety. While such actions will accomplish the same goal—a transfer of the property for a conveyance of the plat deeds—the letter of the law is followed with the “sale” approach. The transfer would be exempt from conveyance fees because the property is being transferred to either a political subdivision of the State of Ohio or its agents depending on how title is taken. It is unfortunate that you have to go through all of these extra hoops but I feel it would be questionable to do an outright exchange. The plats will serve as consideration for the purchase so no actual money needs to be exchanged. The only costs associated with this transfer should be the recording fee and, if necessary, the cost of surveying the land to determine the proper land description.

It is also important to note that the lands acquired from Mr. W must not be more than 10 acres and may not be within 50 yards of a dwelling house. ORC §517.13.

The second question presented by the trustees is more complex in its analysis, but ultimately is also answered affirmatively. In the letter signed by Wesley Potter, he states that the cemetery is “inactive”. The ORC does not appear to recognize the concept of an “inactive” cemetery. A cemetery is either active or abandoned. To be abandoned, the remains of all those buried must be removed, as well as all grave markers and monuments, and interred at a different location at the townships expense. It does not seem from Mr. Potter’s letter that these steps have been taken and thus the cemetery would not appear to be abandoned. In §517.32, there is mention of the county commissioners enclosing an abandoned cemetery in which the bodies have not all been removed. From Mr. Potter’s letter I am unable to determine if this has in fact happened with the Cessna Cemetery. I could find no information

as to the reopening of an abandoned cemetery. It seems that a township may prohibit future interments if the board determines that such a prohibition is necessary for the regulation, preservation and protection of the cemetery. *See* OAG 99-047.

It is my belief that because the cemetery appears to still be in an “active” state, an addition to the cemetery would be in accordance of the law. Furthermore, the trustees could refuse to issue any additional plats in the old or original portion of the cemetery but could sell the lots acquired from the transfer with Mr. W. With this new land the trustees will be able to plat and document who owns which lot and will not run the chance of disturbing the interred and thus eclipsing the risks of endangering the public health or offending the public sensibilities.

In conclusion, Mr. W may sell the parcel of land (so long as it is under 10 acres and not within 50 feet of a dwelling house) to the township for consideration of the plats he desires. Additionally, the township may expand the cemetery and commence selling plats in the new addition while refusing to inter anyone in the older section.

Sincerely,

Bradford W. Bailey
Hardin County Prosecutor