Opinion No. 123

Cemetery District—Cemetery County Commissioners, Authority of

Held: A cemetery district cannot maintain a cemetery outside of the county and outside of the district.
A portion of one county cannot be annexed within an existing cemetery district in another county.

June 30, 1948

Mr. E. Gardner Brownlee
County Attorney
Ravalli County
Hamilton, Montana

Dear Mr. Brownlee:

You have submitted the following for my opinion:

1. Can a cemetery district maintain a cemtery outside of the county and outside of the district?

2. If the foregoing question is answered in the negative, is there any way that a portion of the north end of Ravalli County can be annexed within the existing cemetery district in Missoula County?

In answering your inquiry it is well to examine the "Public Cemetery Districts Act," which is incorporated in Chapter 16, Laws of 1945. The first section of said Act provides:

> "Section 1. There is hereby deemed and declared a public cemetery district act for the State of Montana. **A cemetery district may contain the entire territory embraced within a county or any portion or subdivision thereof."** (Emphasis supplied).

The foregoing provision limits the area of a public cemetery district to the entire territory within a county.

Section 8 of the Act limits the power and authority to maintain a cemetery or cemeteries to the district itself.

Section 9, provides for the levy by the board of county commissioners of an anual tax upon the property within the cemetery district.

The legislature, having limited the area of a public cemetery district to the entire territory within one county, or a portion or subdivision of the county, a board of county commissioners would have no extra territorial power or authority beyond the limits of their own county. The power and authority of a board of county commissioners is only such as is granted by the legislature.

I can well understand the desires of the people concerned, but we must take the law as the legislature has given it to us. Our Supreme Court has held repeatedly, so that it is almost an axiom,

> "The fact that contemplated action may be in the best interest of the county is not an admissable argument. The doctrine of expediency does not enter into the construction of the statutes."
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> Franzke v. Fergus County, 76 Mont. 150, 158, 245 Pac. 962 State ex rel. Blair v. Kuhr, 86 Mont. 377, 283 Pac. 758 Judith Basin County ex rel. Vralstad v. Livingston, 89 Mont. 438, 298 Pac. 356.

Therefore, I agree with you that both of your questions must be answered in the negative.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General