

Opinion No. 56.
Cemetery Districts—Permanent Care and Improvement Funds—Powers of Trustees of Cemetery Districts.

HELD: The trustees of a cemetery district do not have the authority or power to establish a permanent care and improvement fund.

January 27, 1954.

Mr. Irving C. Pearson
County Attorney
Deer Lodge County
Anaconda, Montana

Dear Mr. Pearson:

You have requested my opinion concerning the establishment of a "Permanent Care and Improvement Fund" by a public cemetery district. You advised me that a public cemetery district was organized in your county under the provisions of Chapter 2, Title 9 of the Revised Codes of Montana of 1947.

The fiscal policy for such cemetery districts is fixed by Section 9-209, R.C.M., 1947, as amended by Chapter 93, Laws of 1951. This statute makes it the duty of the trustees to prepare an annual budget for submission to the Board of County Commissioners. A two mill levy on the property of the district may be levied on the property of the district for the maintenance and operation of the cemetery. In a recent opinion of this office, 25 Opinions of Attorney General, No. 44, it stated that "the appropriations in a cemetery district budget are limited by the revenue from the tax and any operational

income from the cemetery." No provision is made in the Public Cemetery District Act for a permanent care and improvement fund. However, a cemetery association incorporated under the provisions of Chapter 1, Title 9, R.C.M., 1947, may establish a permanent improvement fund as Section 9-120, R.C.M., 1947, grants such a power to cemetery corporations.

A cemetery district is limited in its powers by the statutes under which it is created and such limitation is well expressed in 10 Am. Jur. 488, where the text states:

"The powers of a cemetery association or corporation are limited by the statute under which it is organized and incorporated."

It is therefore my opinion that the trustees of a cemetery district do not have the authority or power to establish a permanent care and improvement fund.