

Opinion No. 2**Cemetery Districts — Use of Cemetery District Funds for Private Cemetery Prohibited—Gifts**

HELD: Funds of a cemetery district must not be used to support and maintain a cemetery owned by a fraternal organization.

The trustees of a cemetery district have the power and authority to accept or refuse to accept a private cemetery as a gift.

February 7, 1955.

Mr. Robert J. Webb
County Attorney
Madison County
Virginia City, Montana

Dear Mr. Webb:

You have requested my opinion as to whether the funds of a public cemetery district may be expended on a fraternal cemetery. You also asked if a cemetery district must accept a private cemetery which is offered as a gift.

Section 9-208, R.C.M., 1947, defines the powers of a cemetery dis-

trict in the following manner:

"Said district may maintain a cemetery or cemeteries within said district; may hold title to property by grant, gift, devise, lease, or any other method; and perform all acts necessary or proper for the carrying out of the purposes of this act, including the selling or leasing of burial lots."

The above-quoted statute contemplates that the cemetery district funds shall be used for the maintenance of the cemeteries over which the trustees of the district have control. Such conclusion is not expressly stated, but the implication is clear and is in accord with the general policy that public moneys shall be expended for public purposes only. *Stanley vs. Jeffries*, 86 Mont. 114, 284 Pac. 134.

That a cemetery owned by a fraternal organization would benefit if tax funds were available for the support and maintenance of such a cemetery is obvious. Such use of public funds would violate Section 1, Article XIII of the Montana Constitution which provides:

"Neither the state, nor any county, city, town, municipality, nor other subdivision of the state shall ever give or loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or a joint owner with any person, company or corporation, except as to such ownership as may accrue to the state by operation or provision of law."

22 Opinions of Attorney General 95, No. 56, recognized that payments from public monies to a private cemetery would violate the above section of the Constitution.

In answering your second question as to whether a cemetery district must accept as a gift a private cemetery, it is necessary to consider the consequences if such a gift must be accepted. Section 9-209, R.C.M., 1947, as amended by Chapter 93, Laws of 1951, limits the levy on a cemetery district to two mills. The funds raised by this levy must be

used for the maintenance of the cemeteries and if the district is compelled to accept as a gift every cemetery, then the funds might be insufficient to maintain all the cemeteries in a proper manner. Section 9-208, R.C.M., 1947, authorizes the acceptance of a gift by a cemetery district. In *Baird vs. Baird*, 125 Mont. 122, 232 Pac. (2d) 348, the court said concerning the gift of personal property:

" . . . The giver has the legal right to make and the donee has the corresponding legal right to accept a gift. Upon his acceptance of the gift the donee acquires the property so transferred . . . "

The same requirement of acceptance applies to real property as in 16 Am. Jur. 523, the text states:

"In order to complete the delivery of a deed, whether such delivery is actual or constructive, and to make the instrument operate as a convenience of title, an acceptance on the part of the grantee is essential. In other words, if the grantee in a deed refuses to accept it, the instrument is not in contemplation of law delivered, although the grantor has done all on his part that is required to consummate delivery, and title does not pass by virtue thereof . . . "

It is therefore my opinion that funds of a cemetery district must not be used to support and maintain a cemetery owned by a fraternal organization.

It is also my opinion that the trustees of a cemetery district have the power and authority to accept or refuse to accept a private cemetery as a gift.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.