

the end of any fiscal year to such fund.

2. Cash on hand of the cash balances which are not impressed with trusts and which have not been transferred to the permanent care and improvement fund must be considered together with other income in determining the amount to be raised by taxation for the budget of a cemetery district.

3. The two mill tax levy for cemetery districts, provided in Section 9-209, R.C.M., 1947, as last amended in Chapter 4, Laws of 1955, is a maximum levy and the Board of County Commissioners may levy an amount less than two mills if such reduced levy together with other income will meet the expenditures and appropriations of the budget of the cemetery district.

4. It is advisable and the public interest will be protected if cemetery district funds remain on deposit in the office of the county treasurer in the county where such cemetery district is located.

October 27, 1955.

Mr. Chester L. Jones
County Attorney
Madison County
Virginia City, Montana

Dear Mr. Jones:

You have requested my opinion concerning the maximum budgets for cemetery districts. You advise me that cemetery districts have deposited funds realized from donations, sale of lots and other similar sources, in private banks. You ask if these funds must be considered in determining the levy which is made on cemetery districts for the annual budget of the district. You also ask if the deposit of the funds in private banks is proper.

Under Sections 9-208 and 11-1006, R.C.M., 1947, a cemetery district is authorized to accept any gift, donation, grant, devise or bequest of real or personal property. The use of such gifts or donations is prescribed in Section 11-1005, R.C.M., 1947, which provides that any gift or donation shall be used for the particular purpose for which the same was

Opinion No. 40

**Cemetery Districts — County Budget
Law Applicable to Cemetery
Districts**

HELD: 1. The trustees of a cemetery district, under the provisions of Chapter 165, Laws of 1955, must provide for a permanent care and improvement fund for such cemetery district and must provide by resolution for the transfer to the trustees of such fund not less than fifteen nor more than forty per cent of the moneys received from the sale of cemetery lots designated as perpetual care lots by the cemetery district. The trustees of the district may transfer unexpended moneys of the cemetery district remaining at

given. This section also states that if no particular purpose is mentioned, then the gift shall be used for general support, maintenance or improvement. In your letter you did not state whether funds which have been donated to the cemetery district were impressed with a trust. Obviously, under the above quoted statutes the terms of the trust must be observed but any funds, the use of which is not limited, may be used for the operation and maintenance of the cemeteries of the district.

Chapter 4, Laws of 1955, amended Section 9-209, R.C.M., 1947, by making the county budget system applicable to the budgets of cemetery districts. In determining the sources of income available for expenditure under the county budget system, Section 16-1902, R.C.M., 1947, makes it the duty of the clerk to tabulate "the estimated receipts from all sources other than taxation for each . . . institution for the current fiscal year . . . the surplus or unencumbered treasury balances at the close of such last fiscal year and the amount necessary to be raised by taxation . . ."

That the cash balance on hand at the close of a fiscal year must be used to reduce the next levy is stated in subsection 3 of Section 16-1904, R.C.M., 1947, in the following language:

"The board shall then determine and fix the amount to be raised for each fund by tax levy by adding together the cash balance in the fund at the close of the fiscal year immediately preceding and the amount of the estimated revenues, if any to accrue thereto during the current fiscal year, as before ascertained and determined, and then deducting the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined and fixed by said board, the amount remaining being the amount necessary to be raised for the fund by tax levy during the current fiscal year; . . ."

As was heretofore observed, gifts which are impressed with a trust and are to be devoted to a specific purpose are not included in the cash

balance which reduces the tax levy for a new fiscal year. A cash reserve of not to exceed one-third of the appropriations in the district's budget is authorized by Section 16-1904, R.C.M., 1947.

The establishment of a permanent care and improvement fund for the use of a cemetery district was authorized by our legislature in Chapter 165, Laws of 1955. This statute makes it the duty of the trustees of cemetery districts to provide by resolution for the fund and to allocate not less than fifteen nor more than forty per cent of the moneys received from the sale of cemetery lots for the perpetual care of such lots. Also, any unexpended balance remaining at the end of a fiscal year may, by two-thirds vote of the trustees, be transferred to the permanent care fund. By the setting aside of cash balances in this manner, the cemetery district will be assured of annual income which must be considered in the preparation of the annual budget, but the corpus of the trust will not be considered as cash on hand in determining the amount to be raised by taxation, within the two mill levy limitation, for the annual budget of the cemetery district.

Your inquiry concerning the use of private banks as depositaries for cemetery district funds is not specifically prohibited by statute. However, public moneys are customarily deposited with the county treasurer and to vary from this practice is not advisable, as it would increase the risk of loss of funds. Chapter 94, Laws of 1951, provides for the submission of a claim to the Board of County Commissioners for the pro rata share of the taxes collected for cemetery districts. After such claim has been approved, it is made the duty of the county clerk to issue a trust fund warrant payable to each district. This statute does not specifically authorize the deposit of the moneys in private banks. Chapter 165, Laws of 1955, permits the deposit of the permanent care and improvement fund of a cemetery district in private banks, but such bank must be authorized to act as a trust company in Montana. It would thus appear that the use of a private bank must be specifically authorized before such bank may be a depository.

It is therefore my opinion that the trustees of a cemetery district, under the provisions of Chapter 165, Laws of 1955, must provide for a permanent care and improvement fund for such cemetery district and must provide by resolution for the transfer to the trustees of such fund not less than fifteen nor more than forty per cent of the moneys received from the sale of cemetery lots designated as perpetual care lots by the cemetery district. The trustees of the district may transfer unexpended moneys of the cemetery district remaining at the end of any fiscal year to such fund.

It is also my opinion that cash on hand of the cash balances which are not impressed with trusts and which have not been transferred to the permanent care and improvement fund must be considered together with other income in determining the amount to be raised by taxation for the budget of a cemetery district.

It is also my opinion that the two mill tax levy for cemetery districts, provided in Section 9-209, R.C.M., 1947, as last amended in Chapter 4, Laws of 1955, is a maximum levy and the Board of County Commissioners may levy an amount less than two mills if such reduced levy together with other income will meet the expenditures and appropriations of the budget of the cemetery district.

It is therefore my opinion that it is advisable and the public interest will be protected if cemetery district funds remain on deposit in the office of the county treasurer in the county where such cemetery district is located.

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