

Opinion No. 71
Cemetery Districts —
Maximum Budgets — Permanent
Care and Improvement Fund

HELD: The maximum budget of a cemetery district is limited to the cash on hand, operational income, income from the permanent care and improvement fund, and the proceeds of a tax levy which must not exceed two mills.

April 17, 1956

Mr. R. E. Towle
 State Examiner
 State Capitol Building
 Helena, Montana

Dear Mr. Towle:

You requested my opinion concerning the maximum budget for a public cemetery district. In considering the problem, it is necessary to observe that Section 9-209, R.C.M., 1947, was last amended by Section 1 of Chapter 4, Laws of 1955. This section now reads as follows:

"The board of cemetery trustees shall annually present a budget to the board of county commissioners at the regular budget meetings as prescribed by law. The board of county commissioners must annually, at the time of levying county taxes, fix and levy upon all property within said cemetery district, sufficient to raise the amount certified by the board of cemetery trustees to be raised by a tax on the property of said district. The tax so levied shall not exceed two (2) mills on each dollar of taxable valuation on the property of said district. Expenditures made, liabilities incurred, or warrants issued by or in behalf of any cemetery district in excess of the annual budget presented to the board of county commissioners as provided herein and the amount appropriated for and authorized to be expended for each item in the budget shall not be a liability of the cemetery district. Insofar as the same can be made applicable, the county budget system, sections 16-1901 to 16-1911 of the Revised

Codes of Montana of 1947, shall govern the operation of cemetery districts created under this act."

The above quoted statute makes the county budget law specifically applicable to the budgets of cemetery districts. Section 16-1904, R.C.M., 1947, furnishes the guide to the county commissioners in determining the appropriations that may be made for a budget. This section provides in part as follows:

" . . . the total expenditures authorized to be made from any fund, . . . shall not, in any event, exceed the aggregate of the cash balance in such fund at the close of the fiscal year immediately preceding, the amount of estimated revenues to accrue to such fund, . . . and the amount which may be raised for such fund by a lawful tax levy during the fiscal year."

In applying the above rules to the budget of a cemetery district, it must be concluded that the cash on hand from the previous fiscal year, the estimated revenues from operation, and the amount received from a tax levy constitute the limit for the maximum budget of a cemetery district. A similar conclusion was reached in 24 Reports and Official Opinions of the Attorney General, No. 40. Subsequent to this latter opinion, the Legislature in 1955 enacted Chapter 165, Laws of 1955, which provides for a permanent care and improvement fund. This statute requires the transfer to the fund of not less than fifteen or more than forty per cent of the moneys received from the sale of cemetery lots designated as perpetual care lots by the public cemetery district. The income from this fund must be used for the care of the lots so designated. An additional source of revenue is thereby given to the cemetery district and will result in an increase in the operational income.

It is to be noted that the imposition of the two mill levy authorized in Section 9-209, R.C.M., 1947, as amended, is not limited by the facts there may be operational income or cash on hand. The two mill tax is a

lawful tax within the meaning of Section 16-1904, R.C.M., 1947, previously quoted, and may be levied in full by the county commissioners if necessary to meet the appropriations of the cemetery district budget. Also, appropriations under the budget may never exceed the anticipated sources of revenue under Section 16-1906, R.C.M., 1947, no expenditures can be made in excess of the detailed appropriations and if such expenditures are made, they will not be a liability of the cemetery district but the obligation of the official incurring such expenditure.

It is therefore my opinion that the maximum budget of a cemetery district is limited to the cash on hand, operational income, income from the permanent care and improvement fund, and the proceeds of a tax levy which must not exceed two mills.

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