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RE: Cemetery Bequests

Dear Trustees:

The issue requested to be researched is the liquidation of cemetery bequests.

In order to understand the answer that I am giving it is necessary to describe some terminology. Black's Law Dictionary defines "bequest" as "the act of giving property, or a clause in a will". A bequest may be one of three types. The bequest may be charitable, meaning that it is given to a charitable organization and may be in the form of money or property (real or personal). A bequest may be conditional which means the property given by the will is tied to a condition whose continuation depends on the occurrence or nonoccurrence of the particular event. The bequest also may be a general bequest, which means it is payable out of the general assets of an estate without conditions.

A certificate of deposit is a banker's certificate acknowledging the receipt of money and promising to repay the depositor. It is a contract with the bank and the depositor, which usually pays interest. It is in essence a financial instrument paying a guaranteed rate either fixed or variable.

The permanent cemetery fund is defined as a fund authorized by the state auditor. It is as spelled out in township law as a fund created for the purposes of maintaining, improving, and beautifying township cemeteries and burial lots in township cemeteries. This fund was created for this limited purpose with the approval of the State of Ohio Auditor's Association. This fund has money in it from various sources. It is as specified on page G10 of the township law handout. This fund may have funds in it from the township general fund. This fund may have monies in it from trusts. This fund may have monies in it from bequests.

It is my understanding the township now has monies that have been invested in a certificate of deposit paying interest. The key in this case is not the certificate of deposit but the source of the monies that make up the certificate of deposit. Where did the money come from and is the money tied to any conditions. If the money came by bequest with the conditions then that money can only be used as the conditions outline. The fact that it is tied in a certificate of deposit for investment does not matter. Monies placed in a cemetery fund does not change the fact that they could be from a bequest source rather than the general fund. For example, if you have a permanent cemetery fund with \$20,000 in it and \$10,000 of that money came from a bequest with the condition it is only to be used for cemeteries and for hiring of singers to sing at the cemetery services then that bequest money of \$10,000 cannot be used for any other purposes of the cemetery except as the conditions so define. The fact that the money is in a permanent cemetery fund does not change the nature of the monies or the source. If the monies in the permanent cemetery fund are from bequests of several wills with no conditions, for example, if the

money came from the will of John Doe payable to the township trustees for cemetery work then this bequest has no condition on it other than to be for cemetery work it can be expended for any purpose as long as it deals with the cemetery.

There may also be bequests given to the township that are not even tied to a cemetery. For example, if John Doe in his will gives \$30,000 to the township with no mention of what it is to be used for it is just a simple bequest then it can be used for any purposes of the township not just cemeteries. This bequest should be deposited in the general fund.

Your specific question is that you have a certificate of deposit, which I understand is made up of several past cemetery bequests. It is the duty of your township before expending these funds that the township understand the terms of those individual bequests. If that is necessary and you know the name of the person who gave you the monies then you need to check their will to know what the conditions are, if there are any conditions. If you do not have a copy of the will then I would assume the person possibly died in Hardin County and you may have to go to the Probate Court of Hardin County and try to secure as many of the wills as you can. You may have those documents already on file. The fact that it is invested in a certificate of deposit for the cemetery and you only spend the interest is not crucial to any legal analysis. If the bequest money making up the certificate of deposit has no conditions on it, other than it was given to the township and the township invested it in this financial instrument and has historically only spent the interest, then this money consisting of principal and interest can be liquidated for any purpose so long as it is possibly tied to the cemetery. Note, if the bequest does not have restrictive cemetery language, then, theoretically, could be spent for any purpose of the township. A bequest in a will does not mean that automatically the money can only be used for cemetery purposes. A bequest is nothing more than a clause in a will giving property, either money form, personal property, or real estate property to the donee, in this case the township. You need to know the specific language of the bequest to know if it is only tied to cemeteries. Even if the bequest is general, meaning the money is given to the township to be used for any purpose or if it is given to the township with a condition it only be used for cemeteries and you have historically put it into a certificate of deposit and only spent the interest, it, nevertheless, is a township decision whether to invade the principal instead of just using the interest. It would take a vote of the township trustees and the majority decision would control.

Bear in mind, some bequests may permit an entity to spend only the interest regardless of purposes. In these cases the principal is to remain intact.

Lastly, since you referenced Page G-10, you should understand the difference between a bequest and trust funds. Trust funds are controlled by a trust. The trust may still be in being if it is created in a deceased's will, this is called a Testamentary Trust. If the monies are placed with the township in trust, then you have to look to the trust purposes, which is a living contractual agreement or legal document that still exists even though the person giving it has long since died. This Testamentary Trust may still be on file with the Probate Court of the county of the deceased. If the person was a Hardin County resident when he died and left a Testamentary Trust, the will with this trust in it is probably in the Probate Court of Hardin County. If this person happened to live in Hamilton County when he died, and his estate was probated there because he was a resident of Hamilton County then a copy of his will with the Testamentary Trust would be located in the probate court of that county or it may be filed in the Hardin County Probate Court. The trust controls again the expenditure of the funds and its language determines whether you can invade the principal or whether you can spend only the interest.

As far as my understanding of this question, you are only interested in the issue of the bequest. If the township cannot establish whatsoever how these monies were placed in the cemetery fund except that they are bequests and you do not know of the conditions thereof a conservative approach would be to spend only the interest off this investment of monies and leave the principal intact. This would avoid any potential violation of the terms of the bequest. If the township is able to ascertain the bequest clause or the will clause from the late person who gave the money then it may have more insight on how it may spend the money.

In conclusion, it is my advice, absent knowing where the monies came from, with what conditions the township again should spend only the interest without invading the bequest principal. In fact, the monies in a certificate of deposit renders no bearing on this advice or decision. Remember, the certificate of deposit is nothing more than an interest-bearing contract with the financial institution. The source of the monies is the key to whether you may spend it broadly or narrowly, not how you have it invested presently.

Hopefully, this letter on the issue of your cemetery bequest has helped you to guide you in making a decision. Should you need any further information, feel free to contact me.

Sincerely,

Bradford W. Bailey
Hardin County Prosecutor