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RE: Cemetery Question

Dear Township Trustees:

Your questions to my office are what obligation do the trustees have to move the grave of someone who has been buried? Further if this person was buried in the correct grave do the trustees have to move the body just because the family wants it moved to another location? Further, your question asks can this be done by resolution and do we have to state how long they have to make this request and set a dollar amount for such action?

The subject, which we are talking about, is the disinterment of a body buried in a township cemetery. I am assuming for the sake of argument that this is a township cemetery. The Ohio legislature addressed this issue and modified the law in this area extensively in November of 1995 and October 1999. The law I'm going to be talking about in the next couple paragraphs explains the trustees' obligation and that of the persons making application to move the body. It also answers the questions I believe that you have asked me. To be able to answer these questions one has to look at **§517.23** of the **Ohio Revised Code** and **§517.24** of the **Ohio Revised Code**. Questions you need to be asking and need to know are who is making the request to disinter the body. A surviving spouse has certain rights that are different from any other individual. If the person requesting to move the body is not the surviving spouse then another procedure for third parties has to be followed. It doesn't matter whether the third party is a son, daughter, relative or whatever they are not considered a surviving spouse. Further if the surviving spouse does not request the body be moved, does not mean that a third party or other relative may not make application, but their procedure is entirely different from a surviving spouse.

Under **Ohio Revised Code §517.23(A)** it states that the board of township trustees [whom] have the control and management of a cemetery (here I am assuming township cemetery) **SHALL** disinter or grant permission to disinter any remains buried in the cemetery in either of the following circumstances:

(1) If the surviving spouse of the decedent is 18 years of age or older, within 30 days after the filing of an application of the surviving spouse made in accordance with division (A) of **§517.24** of the **Ohio Revised Code** and payment by the applicant of the reasonable cost and expense of disinterment.

Ohio Revised Code §517.24(A) states as follows.

(2) An application by surviving spouse for disinterment under **§517.23** of the **Ohio Revised Code** shall be in writing and shall state that the applicant is the surviving spouse of the decedent, that the applicant is 18 years if age or older and of sound mind, the disease of which the decedent died, and the place at which the remains shall be re-interred. The application shall be subscribed and verified by oath.

The above two sections of state law (**§517.23 - 517.24**) indicate the rights and procedure of a surviving spouse in detail. The surviving spouse must file a document with the board of trustees, label it an application, it must be in writing, it must state that the applicant in question is the surviving spouse of the decedent, it must state the applicants age and date of birth, it must state that the applicant is of sound mind, next it must state that the specific disease of which the decedent died, and it must state the place in which the remains shall be re-interred (what is the new resting place of the deceased i.e. cemetery name, plot, and number) this application must sworn be in front of a notary, [the standard notary clause is sufficient] and be sworn under oath. Further, the application has to be accompanied with the reasonable costs of disinterment.

For a surviving spouse the application must state this information and he must have paid the reasonable amount of cost and expense of disinterment. Once that is done then within 30 days the board of trustees do not have a choice but to allow the disinterment. The trustees under **§517.23(A)** shall disinter or grant permission to disinter the remains buried in the cemetery. What this means in simple terms is the township itself can charge for this service the reasonable costs and expenses and do it itself but it must do so within 30 days of the application. If the township does not wish to do this then it shall allow it to happen by another source such as a funeral home or other arrangements. However, you must again have proof that the payment has been made. So, therefore, if someone other than the township is being used to disinter the body it is not out of line for the board of trustees to request proof of payment to the third party source. Further, the information required in the application is mandatory. The reasons to know what disease the decedent died from is because there is some law that would prevent the body being disinterred if the decedent died from a very serious communicable disease. The township government cannot stop the surviving spouse from doing this procedure. The only choices the township can do is determine whether the application is proper, whether the money has been paid either to themselves or to a third party, and they must permit this to be done (by themselves or a third party) within 30 days of the application.

If the person making the request is anyone but a surviving spouse then different procedures apply under **§517.23(A)(2)**. These other parties have to get an order of the Probate Court issued under division **§517.24(B)** of the **Ohio Revised Code**. The person who applied for that court order must prove the payment of reasonable costs and expenses of disinterment.

Under **§517.24(B)(1)** it states: a person who is 18 years of age or older and of sound mind who is not the surviving spouse of the decedent involved may obtain a court order under this division for disinterment of the remains of the decedent. Any person who is 18 years of age or older and of sound mind including, but not limited to, the person who assumed financial responsibility for the funeral and burial expenses of the decedent, and who wishes to obtain a court order for the disinterment of the remains of the decedent may file an application in the probate court of the county in which the decedent is buried requesting the court to issue an order for the disinterment of the remains of the decedent.

The application shall be in writing, subscribed and verified by oath and contain the following information: (a) If applicable, a statement that the applicant assume financial responsibility for the funeral and burial expenses of the decedent; (b) If division (B)(1)(a) of this section is inapplicable relative to the applicant, a statement that the applicant did not assume financial responsibility for the funeral and burial expenses of the decedent; (c) A statement that the applicant is 18 years of age or older and of sound mind; (d) The relationship of the applicant to the decedent; (e) A statement of the place at which the remains will be re-interred; (f) The name, the relationship to the decedent, and the address of the decedent's surviving spouse, of all persons who would have been entitled to inherit from the decedent under **Chapter 2105** of the **Revised Code** if the decedent had died intestate, and, if the decedent had a will, of all legatees and devisees named in the decedent's will.

Further, this particular applicant has notification requirements that must be given by affidavit and publication which are defined under **Ohio Revised Code §517.24** under the **Revised Code** specifically under **(B)(2)(a)-(d)**. Under **Ohio Revised Code §517.24(B)(3)** the Probate Court shall conduct a hearing to determine whether to issue this order for disinterment of remains of the decedent.

This procedure when it is not a surviving spouse entails an application with certain contents previously mentioned which must be filed with the Probate Court, again, stating all that information I mentioned above. Once the Probate Court issues that order then again the township trustees can disinter the body themselves after getting up front the expenses or they may grant an appropriate third party permission to disinter providing they have proof who that third party is and the expenses for disinterment have been paid. The procedure for anyone other than a surviving spouse is much more complicated, time consuming, and expensive. It would be advisable for that person to have a lawyer representing their interest as you are going to have hearings in a court of law and have to handle and conduct the hearing according to the legal procedures. You will have to handle evidence. Then the proper notices

would have to be given. Before the board of trustees would even honor such a court order from Probate Court it would be advisable for them to contact my office to verify the procedures done are done correctly. There is no time period under this avenue of third parties in which to allow the disinterment. In other words, you do not have to do it in 30 days. The 30-day rule only applies to applicants that are surviving spouses.

Now to answer the questions you specifically directed to me. Do the trustees have an obligation to move the grave of someone that has been buried in the correct grave but merely the family wants to move it to another location? The trustees cannot block disinterment. The application can be made and, if it is done by a surviving spouse upon proper application, the trustees must grant the disinterment or allow someone else to do it. They must disinter the body once the expenses are paid or grant a third party the permission to disinter the body within 30 days of the proper application. If the application is not by a surviving spouse but by another party it must be pursuant a Probate Court Order and, again the trustees would want to verify that the procedure was done right before granting the disinterment or doing the disinterment themselves. If the disinterment is by a third party, the trustees want to make sure the other source is paid in advance for reasonable costs.

Do you have to set a dollar amount for such action? The statute permits you reasonable costs and expenses of disinterment. Therefore, it would not be unwise to ask other people and cemeteries what their costs are for disinterment and adopt maybe an average or a reasonable figure in light of that so you have a figure to compare yours by and to cite to show your costs are reasonable. No matter what I would advise the township if there is time involved in doing this to keep hourly time records of the number of people who are doing this and the wages incurred plus other costs (i.e. fuel, equipment rental, etc.) because that would be one way to show your accurate expenses.

One thing is for sure, the board of township trustees do not have the right to say no upon a proper application submitted to them for disinterment of a body. The reason people want to do this is not the trustees concern. If the application is proper and the finances are in order the disinterment will happen. The only other choice you get is whether you do the work of the disinterment or allow another third party to do the disinterment of the body buried in a township cemetery. An incomplete or faulty prepared application is not a valid application. The trustees at a meeting may accept the application upon motion and voting on the motion.

Hopefully this memorandum assists you in getting your questions answered on what procedures to follow.

Sincerely,

Bradford W. Bailey
Hardin County Prosecutor