in my opinion air ceases to be intake air and becomes return air when it begins to go back in the general direction of the place from whence it came.

In the problem which you put, while the mining corporation might not be violating the letter of the law, they are ignoring its intention. The fact that some of the workmen are on the down side of the air subjects them to a possible hazard in the event of fire around the motor or transformer. I would think that the mining corporation would be amenable to a suggestion that the motor or transformer be placed on the return side of the air beyond the last working place where men are regularly employed because the increased hazard to the lives and physical well being of the men would possibly cause some concern to the compensation insurance carriers.


Mr. Ross F. Lockridge,
Chairman, New Harmony Memorial Commission,
Indiana University Foundation Building,
Bloomington, Indiana.

Dear Sir:

Receipt is acknowledged of your inquiry, which is as follows:

"The old Harmony Society, better known as "The Rappites, or George Rapp and Associates," that settled the famous colony in Posey County on the lower Wabash in 1814—now New Harmony—still holds title to the old Rappite Cemetery in the heart of the town. It is a very interesting place—some three acres square, surrounded by a brick wall, placed there by the Rappites themselves, nearly fifty years after they left, from bricks taken from their great church, after it was destroyed by a storm. Two hundred thirty Rappites are buried there, but there is no sign of marker or mound—all grassed over just as they left it. It is a very
significant unit of New Harmony and must be made a part of our Memorial there.

The last surviving trustee of the Harmony Society, John S. Duss, of Amherst, Pennsylvania, has indicated a desire to place this ground in the legal ownership of the State of Indiana, through some of its official agencies; and I think he has full legal and corporate power to do it. He wants official advice as to just how to do it. Can he deed it to the New Harmony Memorial Commission, that was created by the last Legislature? We are preparing memorial plans for action by the coming Legislature. Please give us an official opinion with full advice and direction so that this matter can be closed up as soon as possible."

From certain other papers which you have submitted it appears that this society was never incorporated under the laws of the State of Indiana but was a part of a legal association organized under the laws of Pennsylvania; that this association was dissolved in 1905 and, so far as is shown, no disposition was made of this cemetery. It further appears that certain attempts have been made to transfer this property by deed but that the record title was regained by George Rapp and associates in 1846 and has remained in them since that date. It is further disclosed that the society in 1874 transferred certain real estate which it owned to The Inhabitants of Harmony Township, Posey County, Indiana. One of the conditions contained in this deed was that the grantees would care for and protect said cemetery. The deed also contained a reversionary clause in case said condition was not complied with. It is impossible for me to determine from the land descriptions submitted whether or not this cemetery was, in fact, conveyed to the grantees in that deed but I am assuming that it was not.

I call your attention to chapter 101 Revised Statutes of Indiana 1852, which deals with lodges, churches and societies. Although section 13 of that Act gives the trustees of such an association the power to sell or dispose of the association's property, section 22 specifically provides:

"No burying ground specified in this Act shall pass or be held contrary to the intent or meaning of this section (statute) by virtue of any subsequent devise,
purchase, descent or conveyance of the donor.” (Our italics.)

Burns’ Indiana Statutes Annotated 1933, sec. 25-1524.

The word “pass” means “to convey or transfer, as by will, deed, or other instrument of conveyance so as to vest the title or interest in another.”

47 C. J., 1373.

It is also to be noted that this association was dissolved in 1905 and that “the last surviving trustee” is not now a trustee and has not been since the dissolution, and therefore has no authority over this property as such trustee.

As a general rule, “upon a dissolution of a voluntary association, unless otherwise provided by its rules, its property would be distributed pro rata among its members.”

5 C. J., 1339-4.

Therefore, it is my opinion that the John S. Duss mentioned in your letter, as a former trustee of this association, could not convey a good legal title to this property. It follows generally that he could not convey it to your association but, specifically, he could not so convey it, in any event, for the reason that your commission has no power to accept such a conveyance.

Section 2, chapter 326, Acts 1937 (Senate Joint Resolution No. 9), recites as follows:

“It shall be the duty of the commission to take official charge of the New Harmony memorial movement, and to make such surveys, estimates and plans as may be necessary to provide for the state to take over and assume jurisdiction of certain units and areas in and about the town of New Harmony for permanent memorial purposes. The commission shall submit a report of its plans and proposals to the general assembly of 1939 and shall determine whether in its judgment aid should be requested from the Congress of the United States, in the prosecution of the proposed enterprise.”

Regarding your question as to how title can be obtained to this property, it is evident that it would be impracticable,
if not impossible, to obtain conveyances from those members of the society who may still be living. And even if deeds could be procured, their right to convey might seriously be questioned.

It may be suggested that the state could obtain a good title by exercising its power of eminent domain. However, the rule is:

“The general power of condemnation conferred by statute is not applicable to cemetery property, especially if the cemetery is a public one, and that express authorization is necessary for the exercise of eminent domain against such property.”


It is, therefore, my further opinion that the most efficacious way of securing this title would be by legislative action authorizing the state to condemn this property.

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TEACHERS' RETIREMENT FUND BOARD: Status of teachers who have retired under previous law. Status of teachers who have been under previous law but who have not had sufficient years of service to retire. Right of teachers who are not eligible to retire under old law to qualify under amended act.

October 28, 1938.

Mr. Robert B. Houghan,
Executive Secretary,
Teachers' Retirement Fund Board,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter calling attention to the provisions of chapter 109 of the Acts of 1937, p. 906, and requesting an official opinion in answer to the following questions:

Question 1. In your opinion do the provisions of the Act as amended in 1921 remain in effect after July 1, 1939, thereby making it optional with members to select the new amendment or continue under the old law.