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interest in a burial lot is of a somewhat peculiar nature. As a general rule, one who purchases and has conveyed to him a lot in a public cemetery does not acquire the fee to the soil, but only a right of burial therein, which has been variously designated as an easement or as a license or privilege * * *"

See also:

14 C. J. S. Cemeteries, § 20.

The latest act governing cemeteries is the Acts of 1939, Ch. 142, as amended and found in Burns' (1950 Repl. and 1963 Supp.), Sections 21-1001 *et seq.*, and known as "The Indiana General Cemetery Act," discloses that the owner of such cemetery may sell and grant "burial rights therein, which shall not thereafter be transferred or assigned without the written consent of the owner of the cemetery." (Acts of 1939, Ch. 142, Sec. 6, Burns' [1950 Repl.], Section 21-1006) Thus, the language of the later statute governing the management of the cemeteries is in harmony with the foregoing-quoted Opinion of the Attorney General (1949 O. A. G., No. 91, *supra*) and the case authority therein cited to the effect that rather than evidencing the sale of real estate, or an interest therein, the so-called cemetery deed evidences merely the ownership of a burial right.

I am, therefore, of the opinion a person owning no taxable property, but owning a cemetery lot, would not be a "freeholder" within the meaning of the qualifications required for candidates for office of school trustee under the comprehensive plan for the reorganization of schools for DeKalb County, Indiana.

OFFICIAL OPINION NO. 54

November 18, 1963

Hon. William A. Berning
State Representative
409 Standard Building
Fort Wayne, Indiana

Dear Representative Berning:

This is in response to your request for my Official Opinion

with respect to a question which can be condensed into the following language:

Does a statutory conflict exist relative to the duties of a township trustee or a county department of public welfare to furnish local hospital and medical aid to an indigent Indiana resident injured in an out-of-state highway accident?

The facts giving rise to this question can be best understood from the following portion of your letter:

“* * * one John Doe, an indigent resident of Wayne Township, Allen County, Indiana, was injured on a public highway in the State of Michigan. Subsequently, following this accident on December 23, 1962 he was admitted to and cared for by Parkview Memorial Hospital who now makes a claim against both the Allen County Department of Public Welfare and the Wayne Township Trustee for services rendered the indigent. While both institutions admit the indigency of John Doe, a dispute has arisen between the two departments as to who should bear the responsibility under the pertinent Statutes, and we would like your advice and interpretation as to where the burden lies.”

Any conflict which might exist here would be between Acts of 1935, Ch. 116, Sec. 5, as amended and found in Burns' (1963 Supp.), Section 52-148 and Section 5a of the same Act as subsequently added, later amended, and as found in Burns' (1963 Supp.), Section 52-148a. The pertinent portion of Burns' 52-148, *supra*, reads as follows:

“The overseer of the poor in each township shall have the oversight and care of all poor persons in his township so long as they remain a charge, and shall see that they are properly relieved and taken care of in the manner required by law. He shall, in cases of necessity, promptly provide medical and surgical attendance for all of the poor in his township who are not provided for in public institutions; and shall also see that such medicines and/or medical supplies and/or special diets and/or nursing as are prescribed by the

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physician or surgeon in attendance upon the poor are properly furnished.”

Burns’ 52-148a, *supra*, in its present form, reads as follows :

“In the event any indigent person is injured or in the event any indigent person who is a nonresident of this state becomes ill in any township of this state, the overseer of the poor in such township shall immediately report such matter to the department of public welfare of the county in which such township is located, which department shall promptly provide medical and hospital care for such indigent person. The cost of any such medical and hospital care so furnished shall be borne by the county of the legal residence of the indigent, or if he has no legal residence in any county of this state by the county in which such township is located; and shall be paid out of any money appropriated to the county welfare department. For the purpose of this act the term indigent person shall mean a person without financial resources to pay for such medical and hospital care.”

In 1962 O. A. G., page 14, No. 5, a rather full and complete analyzation is made of the duties created by the foregoing statutory sections. That Opinion, at page 16, contains the following language :

“Before your questions can be answered, it is necessary that we distinguish the responsibilities established by Burns’ 52-148 and 52-148a, *supra*. Although they may appear to be in conflict, they are really quite definite in their outline of medical and surgical assistance which is to be given by the several township trustees and by the several county departments of public welfare. The persons to be aided fall into three definite groups.

“First, there is the group of resident poor persons who need medical and surgical attendance not resulting from injury. These persons are covered by Burns’ 52-148, *supra*, and payment for their care is made the charge of the township trustee.

"The second group is composed of persons who are nonresidents of this state and who become ill in any township. These persons are covered by Burns' 52-148a, *supra*, and the cost of their medical and hospital care is assigned to the county in which they are found. The section places the duty upon the township trustee to notify the county department of public welfare. Pregnancy is not included within this classification, but its cost is to be borne by the township trustee. See: 1961 O. A. G., page 341, No. 55, dated October 6, 1961.

"The third group is composed of *any* indigent persons who are injured. Their medical and hospital care is charged to the county of their legal residence, if they be residents of Indiana, and payment is made out of money appropriated to the county welfare department. If they are nonresident indigent persons, then the cost is charged to the county in which the township of injury is located. The type or manner of injury is not a factor in determining the responsibility."

The foregoing Opinion, however, said nothing with regard to out-of-state injuries to Indiana residents because no such question was presented for answer.

Burns' 52-148a, *supra*, was added to our poor relief laws by Acts of 1957, Ch. 267, and as originally enacted, read in part as follows:

"* * * In the event any indigent person is injured on any public highway *in any township of this State*, the overseer of the poor in such township shall immediately report such matter to the Department of Public Welfare of the county in which such township is located, which Department shall promptly provide medical and hospital care for such indigent person * * *"
(Our emphasis)

In 1957 O. A. G., page 272, 277, No. 58, it was said:

"1. Acts of 1957, Ch. 267, *supra*, is concerned only with indigent persons who are involved in accidents occurring on highways in the State of Indiana, and who require hospital and medical care."

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Following the issuance of the aforesaid Official Opinion, Burns' 52-148a was amended by Acts of 1961, Ch. 223, Sec. 1, as quoted above. In its present and amended form, the aforesaid section begins as follows:

“In the event any indigent person is injured or in the event any indigent person who is a nonresident of this state becomes ill *in any township of this state * * **”
(Our emphasis)

Thus, we see that the section is no longer limited in its coverage to indigent persons injured on any public highway, but has rather been broadened so as to include any indigent person who has been injured, regardless of the cause. In addition, the amended section has also been made applicable to any nonresident person who becomes ill.

However, the amended section still contains one limitation, the same being, “in any township of this State.” It is particularly noted that this limiting clause is used only once, and does not immediately follow the provision relating to indigent persons who may be injured. Rather, the limiting phrase is inserted so as to follow the provision relating to nonresident indigents who become ill.

The failure of the General Assembly to insert the same limiting clause more than once in the short phrase does not indicate a legislative intent to make the limitation applicable to a nonresident indigent who becomes ill, but inapplicable to any indigent who is injured. On the contrary, the use of the clause in this section indicates an intent to make the limitation applicable in each instance, without being repetitious.

This conclusion is further strengthened by the title to Acts of 1961, Ch. 223, which reads, in part, as follows:

“AN ACT to amend the law concerning poor relief as it relates to indigent persons who are injured *or* become ill * * *” (Our emphasis)

The title reads in the alternative, as does the amended act itself, and the limitation was intended to apply in either alternative situation.

On the other hand, Burns' 52-148, *supra*, contains no limitation clause with respect to "any township of this State." The effect of that section is simply to place upon each township trustee the oversight and care of poor persons in his township so long as they remain a charge, and to furnish them with medical and surgical attendance. The section makes no statement whatsoever concerning a place of injury.

Burns' 52-148a, *supra*, is an exception to Burns' 52-148, *supra*, and applies only to cases specifically coming within the provisions of that exception. Since this indigent person was injured in Michigan, and not in Indiana, Burns' 52-148a, *supra*, is not applicable to him. The liability for his care must therefore be governed by Burns' 52-148, *supra*.

It is therefore my opinion that care of an indigent resident of an Indiana county and township injured in a foreign state and hospitalized in his local county falls upon the trustee of his township under Burns' 52-148, *supra*, and not upon the department of public welfare of his county under Burns' 52-148a, *supra*.

OFFICIAL OPINION NO. 55

November 19, 1963

Mr. Arthur Campbell, Commissioner
Department of Correction
804 State Office Building
Indianapolis 4, Indiana

Dear Mr. Campbell:

This is in response to your request for an Official Opinion regarding the Acts of 1947, Ch. 300, Sec. 4a, as added by the Acts of 1963, Ch. 200, Sec. 1, as found in Burns' (1963 Supp.), Section 52-1134a, which reads as follows:

"Any person who is an inmate of any penal or correctional institution of the state of Indiana, while in a parole or leave status, and is found to be in need of emergency medical, surgical or hospital care, shall be provided such emergency care the same as though he