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Opinion No. 65-3-L

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REQUESTED BY: THE HONORABLE LLOYD FERNANDEZ  
Greenlee County Attorney

OPINION BY: ROBERT W. PICKRELL  
The Attorney General

QUESTION: May the county own land for a cemetery,  
or hold land as trustee of a cemetery  
for a non-incorporated community in the  
county under provisions of A.R.S. § 11-  
251.

ANSWER: See body of opinion.

The above question must be broken down into two separate questions for purposes of clarity, namely:

- (1) May the county own land for a cemetery, and
- (2) May the county hold land as a trustee for a non-incorporated community for cemetery purposes?

Answer to Part (1):

A county derives its power and authority from the following authority: Arizona Constitution, Article 12, Sec. 4:

"The duties, powers, and qualifications of such officers shall be as prescribed by law."

A.R.S. § 11-201. Powers of County:

"The powers of a county shall be exercised only by the Board of Supervisors or by agents and officers acting under its authority and authority of law. It has the power to:

1. Sue and be sued.
2. Purchase and hold lands within its limits. (Emphasis supplied).

3. Make such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers.
4. Make such orders for the disposition or use of its property as the interests of the inhabitants of the county require. (Emphasis supplied).
5. Levy and collect taxes for purposes under its exclusive jurisdiction as are authorized by law."

A.R.S. § 11-251. Powers of Board

"The board of supervisors, under such limitations and restrictions as are prescribed by law, may:

"26. Bury deceased indigents and mark their graves with a stone, giving the name, age and date of death.

\* \* \*

"29. Do and perform all other acts and things necessary to the full discharge of its duties as the legislative authority of the county government."

It appears clear from the foregoing statutes that there is both express and implied authority for a county to purchase and own land and to use the land "as the interest of the inhabitants of the county require." When the foregoing sections are read together with A.R.S. § 11-251 (26), the obligation to bury deceased indigents and mark their graves, it is our opinion that the intention of the Legislature includes the authority for the county to own a cemetery for this purpose.

Answer to Part (2):

It is well established that the powers of the county are entirely derivative. In James G. Hart v. Bayless Investment & Trading Co., 85 Ariz. 379, 346 P.2d 1101, the court said:

"The law-making powers of county are entirely derivative, and board of supervisors can exercise only those powers specifically ceded to it by the Legislature. As early as 1916 in State v. L. H. Buckstegge, 18 Ariz. 277, 158 Pac. 837, the Arizona Supreme Court said: 'County supervisors can exercise no powers except those specifically granted by statute and in the manner fixed by statute.'"

A review of the powers of a county fails to reveal any authority, express or implied, which would authorize a county

to act as trustee for a cemetery. In fact just the contrary is indicated. A.R.S. § 9-240 (11) authorizes cities and towns to create cemeteries. In the event of disincorporation, A.R.S. § 9-102 requires the county board of supervisors to sell all of the real and personal property of the corporation and deposit the proceeds in the County Treasury for improvements of roads in the area of the former town. If the Legislature had intended a trustee situation this would have been a logical place to have indicated such intention.

It is, therefore, our conclusion that a county, through its board of supervisors, cannot act as trustee of a cemetery for a non-incorporated community.

Respectfully submitted,

  
ROBERT W. PICKRELL  
The Attorney General

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