



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
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AUG 15 2013
OPINION 13-0120

Hon. Gene Reynolds
State Representative, District 10
Louisiana House of Representatives
732 Main Street
Minden, LA 71055

8-A-3 CEMETERIES

La. C.C. Arts. 481, 3490, 3491
La. R.S. 8:1, *et seq.*; 8:651, *et seq.*; 8:671, *et seq.*; 14:101

The curation and possession of a grave marker that was not intentionally or criminally moved from a grave space does not constitute desecration. In addition, such possession and curation is not restricted by the Louisiana Cemetery Act. The law of possession and ownership of movable property applies to any such grave markers.

Dear Representative Reynolds:

You have requested an opinion from this office regarding the question of whether a public or private museum in Louisiana may hold in its collections a grave marker. In support of your opinion request, you have provided us with the following general background:

The Dorcheat Historical Association Museum ["Museum"] acquired, some time ago, a tombstone from a cemetery that was impacted in the late 1960's/early 1970's construction of Interstate 20 in North Louisiana. This tombstone had been in storage at Minden High School since the early 1970's when the road construction disturbed the cemetery. Upon the school's decision to rid itself of the tombstone recently, and with the permission and a letter of donation from the descendants of the individual named on the tombstone, the marker became part of the Dorcheat Historical Museum's permanent exhibit and collections. The continued exhibit and curation of this tombstone is important for the understanding and teaching of the history of this region, as the cemetery itself is now partially destroyed, on isolated private property, and in a dangerous location near the current I-20 corridor. Thus, having the tombstone in an accessible museum allows the public to safely learn about our parish history and early life in Louisiana.

It is with this basic scenario in mind that we here review the law related to the curation, possession, and permanent ownership of this grave marker.¹

¹ It is important to note that we here use the term "curation" to refer to the manner in which the subject grave marker is possessed by the Dorcheat Historical Museum. Curation is a derivative of "curate," which, in this context, means, "select, organize, and look after the items in (a collection or exhibition)." Catherine Soanes and Angus Stevenson, *CONCISE OXFORD ENGLISH DICTIONARY*, 11th ed., 351 (Oxford 2006).

As an initial matter, we must address the law related to desecration and cemeteries in general in order to determine whether the Museum's acquisition of this grave marker constitutes a violation of those laws. Desecration is dealt with under Louisiana law through the Criminal Code at La. R.S. 14:101. That law states:

Desecration of graves is the:

(1) Unauthorized opening of any place of interment, or building wherein the dead body of a human being is located, with the intent to remove or to mutilate the body or any part thereof, or any article interred or intended to be interred with the said body; or

(2) Intentional or criminally negligent damaging in any manner, of any grave, tomb, or mausoleum erected for the dead.

Whoever commits the crime of desecration of graves shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both.

Clearly, the curation of a grave marker does not fall under the provisions of La. R.S. 14:101(1), which prohibits the mutilation of human remains. No human remains are mutilated through the curation of a grave marker. It is further our opinion that La. R.S. 14:101(2) is inapplicable to this situation. Although this provision may have applied to those who disturbed the cemetery during the I-20 construction in the first instance – assuming that the disturbance was done intentionally (of which we have no knowledge) – it certainly cannot be said to apply to the situation in your opinion request. This provision of the law applies to those who would intentionally damage the grave marker. The curation of a marker can hardly be said to be damaging to the marker, especially when it has already been removed from its original location.

There is little jurisprudence in Louisiana interpreting the anti-desecration law. However, in 1913, a Louisiana court did consider, in dicta, the purpose of a predecessor to the current law. In *Reichelt v. St. Vincent De Paul Cemetery Ass'n*, the court noted that,

[t]his statute has not the slightest application to the case at bar. It is aimed exclusively at the misdeeds of vandals and ghouls and cannot, even by straining its language, be made to cover the acts of persons proceeding within their legal and contract rights.²

We agree with this assessment of the historic as well as the current law of desecration – a view shared by other states' courts in recent years – and here opine that the curation of a grave marker, in the absence of the intentional or criminal removal of the marker from its place of repose atop a grave, does not constitute desecration under Louisiana

² 10 Teiss. 100, 102 (La. Ct. App. 1913).

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law.³ In fact, as set forth below, such action by the Dorcheat Historical Museum is likely characterized as the Museum acting "within [its] legal and contract rights."⁴

On the whole, the provisions of the Louisiana Cemetery Act are also inapplicable to the current scenario. The Louisiana Cemetery Act is located at La. R.S. 8:1, *et seq.*, and it sets forth the general law related to the protection and operation of cemeteries in the State.⁵ The only portion of this law that even remotely bears any resemblance to the scenario at hand is Chapter 10, which deals with the law related to human remains. As with La. R.S. 14:101, La. R.S. 8:653 prohibits certain acts that result in the disturbance of a grave. However, the focus of this law as well as the entirety of the Chapter (La. R.S. 8:651, *et seq.*), is on protecting the integrity, and setting forth the law related to who can control the disposition, of human remains. In La. R.S. 8:653, there is a prohibition against disturbing a burial container (i.e., a coffin, casket, vault, or the like), but there is no prohibition against curating a grave marker. In fact, grave markers are not mentioned at all in Chapter 10. Thus, it is our opinion that there are no restrictions in the Louisiana Cemetery Act that prohibits the curation of a grave marker.

Because there are no special statutes in Louisiana that prohibit the possession or curation of a grave marker when that marker, as here, has not been obtained by intentionally damaging a grave space, we must look to the general law related to the possession and ownership of movables.⁶ In Louisiana, the ownership of a thing cannot be lost by any means other than voluntary transfer or by acquisitive prescription.⁷ From the facts available to us herein, we cannot say that the descendants of the owner of the subject grave marker ever lost ownership to the marker by way of acquisitive prescription. In this regard, we refer to the possession of the marker by Minden High School for some period of time. If the school possessed the marker with the intent to own it and otherwise met the requirements for acquisitive prescription of movables under La. C.C. Art. 3490 or La. C.C. Art. 3491, then, as with any other movable, the descendants lost their ownership and the School had every right to transfer the grave marker to the Dorcheat Historical Museum. On the other hand, if the School did not acquire ownership of the grave marker, the fact that the Museum acquired the marker with the knowledge and permission of the descendants of the marker's owners is certainly suggestive that it has the authority to possess the marker.

³ For other states' views, see e.g., *State of Tennessee v. McClain*, 2010 WL 3244897 (Tenn. Cir. Ct. App. 2010) (At issue in this case was \$60,000.00 worth of cemetery damage occasioned by five men on an apparent drunken bender – a scenario that easily qualifies as desecration.) and *Huntsman v. State*, 971 N.E.2d 215 (In.Ct.App. 2012) (In this case, the defendant pled guilty to having dug five feet of dirt from above a grave of a recently-deceased individual, "...with the intent of attempting to resurrect..." the deceased. *Id.* at 1-2. While digging, the defendant also urinated in the grave. Again, this scenario is clearly desecration).

⁴ *Reichelt, supra*, at 102.

⁵ Exempted from the purview of this law is the Louisiana Unmarked Human Burial Sites Preservation Act, La. R.S. 8:671, *et seq.* This law is not applicable to this matter.

⁶ A grave marker would be classified as a movable under Louisiana law. Basically, movables are things that can be moved from one place to another. *Bailey v. Kruithoff*, 280 So.2d 262 (La.App. 2 Cir. 1973).

⁷ La. C.C. Art. 481.

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In other words, because there is no special law in Louisiana governing the possession or ownership of a grave marker that has been separated from its grave through some mechanism other than intentional or criminal acts of the current possessor, it is our opinion that the grave marker is no different from any other movable property in Louisiana and that it may be possessed and curated (or even owned) by a museum pursuant to the law related to the possession and ownership of movables. In the case of the Dorcheat Historical Museum grave marker, it is simply an added benefit to the Museum's ability to possess the grave marker that it possesses the marker with the permission of the descendants of the individual named on the grave marker. We are aware of no law that has been violated by the Museum's actions in this matter.

We hope this sufficiently answers your inquiry; however, if we may be of further assistance please do not hesitate to contact our office.

Sincerely yours,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

By:



RYAN M. SEIDEMANN
Assistant Attorney General

JDC/RMS/tp

cc: Lucy L. McCann, Director, Louisiana Cemetery Board
Charles R. "Chip" McGimsey, Ph.D., Louisiana State Archaeologist

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