

OPINION: NO. 89-565

Mr. Lloyd E. Eagan, Secretary
Louisiana State Board of Embalmers
P.O. Box 8757
Metairie, La. 70011

Dear Mr. Eagan:

In your request for an opinion of the Attorney General you ask the following questions:

- 1) After a transfer of cemetery property between individuals whether by act of sale, donation or succession, can a cemetery authority require payment to their perpetual care fund;
- 2) Can a cemetery authority require that the owner receive in writing permission to transfer ownership of property located within its cemetery, prior to an act of sale, donation or succession; and
- 3) Can a cemetery authority require payment to their perpetual care fund for a marker provided by a monument company or the Veterans Administration?

R.S. 8:204 is pertinent to the questions providing as follows:

A cemetery authority may make, adopt, amend, added to, revise, repeal or modify, and enforce rules and regulations for the use, care, control, management, restriction and protection of all or any part of its cemetery, including without limitation the following;

- (1) It may restrict and limit the use of all property within its cemetery;
- (2) It may regulate the uniformity, class and kind of all markers, monuments and other structures within the cemetery and its subdivisions;
- (3) It may regulate or prohibit the erection and/or installation of monuments, markers, effigies, structures and foundations within the cemetery;
- (4) It may regulate or prevent the introduction or care of plants or shrubs within the cemetery;

(5) It may prevent interment in any part of the cemetery of human remains not entitled to interment and prevent the use of interment spaces for purposes violative of its restrictions or rules and regulations;

(6) It may regulate the conduct of persons and prevent improper assemblages in the cemetery, and

(7) It may make and enforce rules and regulations for all other purposes deemed necessary by the cemetery authority for the proper conduct of the business of the cemetery, for the transfer of any interment space or the right of interment, and the protection and safeguarding of the premises, and the principles, plans, and ideals on which the cemetery is conducted.

In addition to the broad power of regulation under the above-quoted provision, there are specific statutes relative to acquisition of cemetery property which should be considered in regard to your questions which states as follows:

R.S. 8:308(A): After completing the map or plat, a cemetery authority may sell and convey interment spaces, subject to such rules and regulations as may be then in effect or thereafter adopted by the cemetery authority, and subject to such other limitations, conditions and restrictions as may be inserted in the instrument of conveyance of such cemetery spaces.

R.S. 8:310: All interment spaces the use of which has been conveyed by deed or certificate of ownership are indivisible except with the consent of the cemetery.

R.S. 8:314: A record shall be kept by each cemetery authority of the ownership of each interment space in the cemetery conveyed by it and of all transfers thereof. No transfer of any interment space heretofore or hereafter made, or of any right of interment, shall be complete or effective until actually recorded in the official records of the cemetery authority."

The purchase and transfer of a lot in a cemetery is not the same as acquiring title to real estate, for the purchaser only acquires a privilege to make interments exclusively of others, and the rights of ownership are subject to the rules and regulations governing the cemetery. 14 Am. Jur 2d Cemeteries, Sec. 25; 14 C.J.S. Cemeteries Sec 25. In Leleux v. Viator, 55 So. 2d 662 (La. App 1951), the Court states the use of burial grounds cannot be likened to the use of other immovables since the property is not controlled by the same rules that apply to other property and particularly noted that there was no evidence that the document held by plaintiff met the requirement of the association having charge of the cemetery. This is similar to the ruling in Schaefer v. West Lawn Memorial Cemetery, 352 P. 2d 744 (1960) where the Court observed that conveyance of a cemetery is a right in realty which is sui generis, and the right is subject to reasonable rules and regulation by the cemetery association.

The legislature has given the cemetery authorities broad powers to make and enforce rules and regulations "for the transfer of any interment space or the right of interment", R.S. 8:204(7), and to sell interment spaces subject to "such rules and regulations as may be then in effect or thereafter adopted by the cemetery authority and subject to such other limitations, conditions and restrictions as may be inserted in the instrument of conveyance of such cemetery spaces." R.S. 8:308(A).

It must be concluded the rules and regulations of the cemetery authority will control the use, purchase and transfer of interment spaces. Of course, the rules and regulations cannot be contrary to state law or arbitrary and capricious, and to determine if a rule or regulation is reasonable will have to be considered individually on the facts and circumstances of each situation.

We will consider your questions based upon an assumption that there is a rule upon which the inquiries are sought although a determination, if a rule is reasonable should be considered in connection with all other rules of the cemetery insofar as they may be related.

With regard to your first question, we cannot say it would be an unreasonable rule for a cemetery to require an additional payment for perpetual care upon transfer by the original purchaser, and it is not violative of state law. We find in Abra-May Cemetery Sales Co. v. Degel Yehudo Cemetery Corp, 223 A.2d 507 (1966), the Court upheld a regulation by Degel Yehudo Cemetery requiring that plots must be offered to it for repurchase at the original price prior to resale to a third party, and if a resale to a third party, 20% of the gross proceeds must be paid over to the permanent maintenance fund. This was subsequently increased to 25%. The Court found, as a general principle, amended cemetery regulations increasing charges in proportion to costs are enforceable against prior plot owners, and a contribution of 25% of the proceeds of resales towards care and maintenance is reasonable. Thus, we do not think it would be unreasonable to require a

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percentage of the proceeds from a sale be paid by successive purchasers, and that the amount paid by the original purchaser for perpetual care be only as long as he or his heirs held the title in order to compensate for rising costs of perpetual care on the part of the cemetery.

In answer to your second question, the cemetery cannot arbitrarily interfere with transfers by the owner of cemetery interment spaces, but as stated previously, the purchase in a cemetery is only acquisition of a privilege, and the cemetery may restrict and limit the use of all property within the cemetery and prevent the use of interment spaces for purposes violative of its restrictions or rules and regulations. While we do not believe a cemetery can prevent transfer of ownership by requiring written permission to effectuate a transfer by sale, donation or succession, we do believe that they can require exacting documentation reflecting a transfer and proof that the party in receipt is one and the same as that to whom the transfer was made. Additionally, the cemetery might also require certain payments, as discussed above, for perpetual care, change of title or other reasonable costs entailed by a change in ownership before they recognize the transfer, but not written permission to transfer the title unless, of course, there is a requirement that it be offered back to the cemetery before a sale to another.

On your final question, we find nothing unreasonable in the requirement for payment to a perpetual care fund for a marker donated by the Veterans Administration. Daily Monument Co. v. Crown Hill Cemetery Assn., 176N.E. 2d 268 (1961). In Frank v. Clover Leaf Park Cemetery Assn., 137 A. 2d 605 (1957) the right of a lot owner to furnish a marker, even if not purchased from the cemetery, was recognized provided it conformed to the specifications, and it was held defendant had not proved price was excessive for installation and maintenance. Obviously, the fact that a marker is donated by the Veterans Administration can be subject to a perpetual care charge for it is not likely that the Veterans Administration is going to supply the necessary perpetual care. It certainly would be reasonable for a cemetery to require markers be installed to conform to uniform specifications, and that a payment for perpetual care be in an amount sufficient to meet everyday increasing costs that may not be available at the cost paid by the donor for the original marker. Thus, reasonable payment for perpetual care for a donated marker would be a valid regulation.

We hope this sufficiently answers your questions. If we can be of further assistance, please do not hesitate to contact us.

Sincerely yours,
WILLIAM J. GUSTE, JR.
Attorney General

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BY:

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8-A-3 - CEMETERIES
Rules and regulations of the
cemetery authority must not be
contrary to state law and must
be reasonable.