

FILE

Subject

*Associations
Cemeteries Maintenance*

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STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

March 29, 1974

Opinion No. 74-107

Gaylord I. Maples
Marion County Attorney
P.O. Box 126
Marion, Kansas 66861

Dear Mr. Maples:

We have your request relative to the respective duties of the county and township boards for the care and maintenance of abandoned cemeteries. You question whether the Board of County Commissioners or the Township Board has "jurisdiction." In our opinion "jurisdiction" is concurrent. The obligation of the township is mandatory while that of the county board is discretionary after there has been a five year period without maintenance. We find no inherent conflict between the two enactments which would give rise to repeal by implication or otherwise vest total responsibility on one board or the other.

K.S.A. 80-916 provides:

"That from and after the passage of this act it shall be the duty of the township board of any township within the state of Kansas in which there is situated an abandoned cemetery to provide for the care of such cemetery and to provide for the proper and seasonable cutting of all weeds and grass therein at least twice each year; and for such purposes such township board shall appropriate and expend not more than \$50 per year for each such cemetery: Provided, That the first cutting be not later than June 1 and second cutting be not earlier than July 15 and not later than August 1."

K.S.A. Supp. 19-3106 provides:

"In any county in this state in which there is located a cemetery or other burial place in

which three or more human bodies have been interred, and which cemetery or burial place has been abandoned and not cared for for a period of at least five years, the board of county commissioners of said county is hereby authorized to provide for the care of such cemetery or burial place. For the purpose of providing funds for such care the board of county commissioners is authorized to make an annual tax levy not to exceed the limitation prescribed by K.S.A. 79-1947, on all taxable tangible property of said county. Said tax levy shall be in addition to all other levies authorized or limited by law, and shall not be subject to or within any aggregate tax levy limitation prescribed by article 19 of chapter 79 of the Kansas Statutes Annotated or acts amendatory thereof or supplementary thereto."

It has long been established in this state that both counties and townships are creatures of the legislature. Their powers and duties are established by state legislation. They operate simultaneously. Gratney v. Wyandotte County, 111 Kan. 160.

The establishment, care and regulation of cemeteries is a proper subject of governmental control owing to the fundamental social interest in their existence. 14 C.J.S. Cemeteries, § 22. As a general rule cemeteries are not deemed "abandoned" until they lose all indicia of such or as long as they are known and recognized as cemeteries by the general public. Andrus v. Remmert, 146 S.W. 2d 728, 136 Tex. 179. When a cemetery ceases to be acknowledged and cared for as such by the general public or a part thereof, it becomes "abandoned" in our opinion.

A strong public policy dictates that abandonment not occur. Both statutes set out above reflect this policy legislatively, and in our opinion a construction should be given which carries the policy forward.

K.S.A. 80-916 does not define what constitutes an "abandoned cemetery" within its meaning, but does obligate the township board to provide minimal care. In our view "abandonment" within the meaning of the statute occurs whenever conditions at the location are such that it is clear that it is no longer acknowledged and cared for as such by those to whom its care was formerly entrusted, and who clearly appears to have abandoned that trust.

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We are hopeful the foregoing will be of assistance.

Yours very truly,



VERN MILLER
Attorney General

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