

Subject

Associations -
Cemeteries -

Copy to

Establishment of

STATE OF KANSAS

Office of the Attorney General

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

VERN MILLER
Attorney General

November 25, 1974

Opinion No. 74- 374

Mr. Richard A. Euson
Dresie, Jorgensen & Wood
815 Union National Building
Broadway & Douglas
Wichita, Kansas 67202

Dear Mr. Euson:

I regret the delay in responding to your letter of August 13. I hope this belated reply will, despite the lapse of time, still be of assistance.

You inquire, as counsel for the Board of Trustees of Greely Township, concerning a cemetery owned and operated by the township since at least 1918, being the Mt. Hope, Kansas, cemetery. You advise that the plat to the first addition is certified by the county surveyor, and approved by the township trustees. The cemetery consists of four blocks of lots, which are laid out side-by-side, leaving five north-south roadway areas. None of these roadway areas have been dedicated to the public as such, and are not paved. The township wishes to replat the cemetery in order to add lots in the center of two unused roadway areas. You inquire, specifically, whether the Sedgwick County Board of County Commissioners has any jurisdiction in the matter.

It is your view that under K.S.A. 80-912, the township has complete jurisdiction to prepare the appropriate new plat and file it with the register of deeds without intervention, approval or disapproval by the county commission. K.S.A. 80-912 states in pertinent part thus:

"....[t]he lots of such cemetery shall be laid off in uniform size, not less than seven by fourteen feet, with alleys and streets, as the board of such township shall direct."

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The question presented is whether the plat is subject to approval under K.S.A. 1973 Supp. 19-2918, which commences thus:

"Whenever regulations governing the subdivision of land shall have been adopted under the provisions of this act, the owner or owners of any land located within the area governed by such regulations, subdividing the same into lots and blocks or tracts or parcels, for the purpose of laying out any subdivision, suburban lots, building lots, tracts or parcels.... shall cause a plat to be made which shall accurately describe the subdivision, lots, tracts or parcels of land giving the location and dimensions thereof.... All such plats shall be submitted to the county planning board or to the joint committee for subdivision regulation if such has been formed, which shall determine if the same conforms to the provisions of the subdivision regulations....*The register of deeds shall not file any plat for land located within any area governed by subdivision regulations as provided by law until such plat shall bear the endorsement hereinbefore provided.*" [Emphasis supplied.]

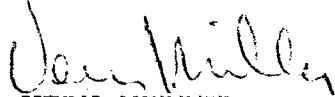
From the standpoint of planning and land use management, there would seem to be little occasion for vigorous controversy over the platting of additional lots in unused alleyways of an existing cemetery. Moreover, under K.S.A. 19-2921, subdivision regulations adopted under the authority of that 1965 act do not apply to "the existing use of any....land." The platting of additional burial plots within the area of an existing cemetery property would reasonably seem to be a continuation of the "existing use" of the land.

However, the requirement that every plat filed with the register of deeds bear the endorsement of the appropriate planning board is designed to assure enforcement of the subdivision regulations, and to permit that body to make the determination of the applicability of subdivision regulations to every plat which is proposed to be filed with the register of deeds. Thus, it is our opinion that although the township board is statutorily empowered to lay out the lots of the township cemetery, the plat thereof must satisfy all applicable laws before being

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filed with the register of deeds, including the requirement that every plat bear the endorsement of the county planning board before being filed.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Vern Miller".

VERN MILLER
Attorney General

VM:JRM:tp