



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

January 21, 1975

Opinion No. 75- 21

Mr. Bernard E. Nordling
City Attorney
City of Hugoton
Hugoton, Kansas 67951

Dear Mr. Nordling:

You advise in your letter of January 7, 1975, that the Hugoton Cemetery District is concerned with the disposition of certain burial plots which are held in the name of individuals no longer residing in Hugoton and with whom the cemetery district has had no contact for many years. You request an opinion as to the availability of a quiet title action for those lots previously sold and an opinion on how to avoid this situation from recurring in the future.

As to the latter question, K.S.A. 17-1330 provides in pertinent part:

"Whenever any such cemetery district or its predecessor in title shall have heretofore conveyed to any person or persons the right of interment upon any platted lot or designated piece of ground within the area of any cemetery in such district and the deed or conveyance thereto from such district or its predecessor in title or the predecessor of such title owner provides that the said lots shall be held subject to all the regulations of the board of directors of such cemetery district, and the owners thereof named in such deed or conveyance neglects or refuses to observe said regulations, for the period of ten (10) successive years, and said conveyance shall have been executed more than twenty-five (25) years prior to

the action of said board to reinvest title and no burials shall have been made on said lot within ten (10) years prior to the action of said board to reinvest title, said board of directors of such cemetery district may reinvest such district with the title to the portion of such cemetery lot not actually used for burial purposes, excepting, however, sufficient space for two (2) additional graves adjacent to any graves then on said lot . . ."

Thus, the deeds conveying the cemetery plots can be written expressly subject to those regulations and by-laws of the cemetery district as are promulgated by its board of directors and existing at the time the lots are purchased. Schaefer v. The Evangelical Lutheran St. Paul's Church et.al. 68 Kan 305, 74 P. 1119 (1904) Upon the occurrence of any violation and the lapse of the time periods specified in the statute, the directors could then initiate those steps necessary to reinvest title with the cemetery district. The procedure to be utilized when the purchaser remains a county resident is outlined in K.S.A. 17-1330. If the owner is a non-resident, the comparable provisions are found in K.S.A. 17-1335a.

As to the appropriateness of a quiet title action, the assumption will be made that the deeds to those lots previously conveyed were not made subject to the regulations and by-laws of the cemetery district or its predecessor in title and thereby not within the purview of K.S.A. 17-1330 et seq. It should be noted that K.S.A. 17-1330 et seq. expresses the legislative intent for the manner in which the title to cemetery plots is to be reinvested in the cemetery district. If recourse to this statutory procedure is available, my opinion is that this would be the best option to pursue.

In regard to your other question, K.S.A 60-1002 provides as follows:

(a) "An action may be brought by any person claiming title or an interest in personal or real property . . . against any person who claims an estate or interest therein adverse to him, for the purpose of determining such adverse claim."

According to the rule prevailing in nearly all jurisdictions, one who purchases and has conveyed to him a lot in a public cemetery does not acquire the fee to the lot, but only a right

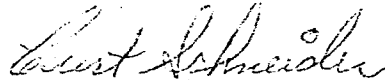
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of burial therein which has been variously designated as an easement, a license, or a privilege Marmheimer v. Wolff 187 N.E.2d 1 38 Ill. App. 2d 216 (1962); Antoniwicz v. Del Prete 166 N.E.2d 706 Sup. Jud. Ct. 1960); 14 Am. Jur. 2d Cemeteries § 25. Thus, the cemetery district retains and the purchaser acquires property rights to the lot which are legally protected. Although there is no reported Kansas cases in which the subject matter of a quiet title action was unused cemetery plots, the only established prerequisites for maintaining such an action in this state are that the plaintiff have actual possession or an interest in the legal title. Brown v. Brooks 142 Kan 556, 558, 51 P.2d 32 (1935); Dennis v. Smith 186 Kan 539, 352 P.2d 405 (1960) Under either criteria the cemetery district through its board of directors could bring such an action in this matter.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

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