



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

March 24, 1975

Opinion No. 75-137

Mr. Robert L. Pinet
County Attorney
Ottawa County Courthouse
Ottawa, Kansas 66067

Dear Mr. Pinet:

You have requested an opinion from this office concerning the following two (2) questions:

- (1) If an existing cemetery corporation has a permanent maintenance fund established in the amount of \$10,000 and then sells the cemetery itself to a second cemetery corporation, is it necessary for the second corporation to set up a separate \$10,000 permanent maintenance fund?
- (2) Is there any violation and, if so, what are the penalties in the event the first corporation established the cemetery prior to 1968 and has not ever established a maintenance fund in the amount of \$10,000, but in fact, has one of a much smaller amount?

I shall assume that the contract of sale between the two (2) corporations provides that the existing permanent maintenance funds is to be transferred as an asset of the selling corporation.

As to your first question, K.S.A. 17-1308 provides in pertinent part:

"Provided, that before any such corporation shall have power to sell or convey lands, acquired from and after the effective date of this act for the purpose of establishing or making an addition to any cemetery, it shall place and maintain ten thousand dollars (\$10,000) in the permanent maintenance fund established under the provisions of this act and an additional five hundred dollars (\$500) for each acre of land, or fraction thereof, in excess of twenty (20)

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acres acquired for such purposes; said deposits, prerequisite to selling or conveying lands, shall not be required to exceed thirty-five thousand dollars (\$35,000), but nothing herein shall be construed as affecting the requirements imposed on the permanent maintenance fund in K.S.A. 17-1311 and any amendments thereto: Provided further, That from and after July 1, 1969, no such corporation shall have power to sell or convey lands, acquired prior to the effective date of this act for the purpose of establishing or making an addition to any cemetery, until it shall comply with the requirements hereinbefore imposed on the permanent maintenance fund for lands acquired from and after the effective date of this act, but such compliance shall be required only as to such lands used to establish or make an addition to a cemetery and shall not be required as to land previously set aside for cemetery purposes if such corporation is maintaining a permanent maintenance fund and such fund at that time contains not less than ten thousand dollars (\$10,000).

[Emphasis added.]

The statute schematically divides cemetery realty into two (2) categories: land acquired before July 1, 1968, and that acquired after July 1, 1968. Under the first proviso, all cemeteries are prohibited from conveying any realty acquired after July 1, 1968, to either establish or make an addition to a cemetery until it sets up a permanent maintenance fund in compliance with the dollar amounts specified therein. Accordingly, there is nothing under the terms of this proviso which imposes the responsibility on the second purchasing corporation for establishing such a fund since the acquisition is neither to establish nor make an addition to a cemetery. Accordingly, the purchasing corporation need not establish a second \$10,000 permanent maintenance fund in addition to the one established by the first corporation.

As to your second question, the second proviso states that: all corporations are prohibited after July 1, 1969, from conveying or selling any land, acquired before July 1, 1968, and for the purposes specified above, until it complies with the requirements of the first proviso for all lands acquired after July 1, 1968. In other words, this portion of the second proviso merely limits the corporation's power to convey pre-July 1, 1968 realty until it complies with the requirements of the fund for post-July 1, 1968 realty.

The interpretation of the underlined section of the second proviso is critical for purposes of this question. This portion provides that compliance with the dollar requirements of the first proviso extends only to those lands acquired from and after July 1, 1968.

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The requirements of the first proviso are not imposed on land set aside prior to July 1, 1968 if the cemetery corporation is maintaining a fund of not less than \$10,000. Our interpretation of this final portion of the second proviso is that it exempts cemetery corporations acquiring land prior to July 1, 1968 from the \$500 per acre addition to the permanent maintenance fund required under the first proviso for any acreage in excess of 20 acres. In other words, after July 1, 1969, every cemetery corporation is required to establish a permanent maintenance fund in accordance with K.S.A. 17-1308. The only exception is cemetery corporations which acquired land in excess of 20 acres prior to July 1, 1968. In that case, the corporation is not responsible for the additional amounts specified for the excess acreage if it had an existing \$10,000 permanent maintenance fund established. Stated differently, a cemetery corporation which has not established such a fund after July 1, 1969, is in violation of K.S.A. 17-1308.

As to what are the potential penalties, K.S.A. 12-1312(d) provides in part:

"Any cemetery corporation which shall refuse or neglect to establish or maintain a permanent maintenance fund in accordance with the requirements of this act for each cemetery owned by it for a period of ninety (90) days, after demand to do so is made upon it by the secretary of state shall be deemed to have forfeited its franchise."

A failure on the part of the selling corporation to establish a \$10,000 permanent maintenance fund may result in liability for the above.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS/HW/ksn