



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

June 27, 1975

Opinion No. 75- 261

Mr. Sherman A. Parks, Attorney
Office of Secretary of State
The Statehouse - 2nd Floor
Topeka, Kansas 66612

Dear Mr. Parks:

You inquire concerning certain aspects of K.S.A. 17-1301 et seq., as those provisions relate to cemetery corporations.

First, you inquire whether the verified statement required to be filed by cemetery corporations under the provisions of K.S.A. 17-1312a(a) constitutes a matter of public record thereby open to public inspection or is to be held confidential under the terms of K.S.A. 17-1312(e).

K.S.A. 17-1312a(a) provides in pertinent part:

" . . . Each cemetery corporation shall prepare and forward to the secretary of state at the time it is required to make an annual report under the Kansas general corporation code, or if no such report is required then on January 1 in each year, a statement verified by the treasurer of said corporation describing the corpus and any accumulated income on the preceding December 31, or on the last day of its fiscal year if it does not use the calendar year in its accounts, in each permanent maintenance fund established by said corporation, the cost and the market value on said date of each security then held in each such fund and the income of and disbursements from each such fund during the calendar or fiscal year then ended. . ."

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Determination of whether a particular document is a record open to public inspection is governed by K.S.A. 45-201 which provides:

"All official public records of the state, counties, municipalities, townships, school districts, commissions, agencies and legislative bodies, which records by law are required to be kept and maintained, except those of the juvenile court which shall be open unless specifically closed by the judge or by law, adoption records, records of the birth of illegitimate children, and records specifically closed by law or by directive authorized by law, shall at all times be open for a personal inspection by any citizen, and those in charge of such records shall not refuse this privilege to any citizen."

The question surrounding the confidentiality of the verified statement arises by virtue of K.S.A. 17-1312(e). That statute provides:

"All information which the secretary of state shall gather or record in making an investigation and examination of any cemetery corporation shall be deemed to be confidential information, and shall not be disclosed by the secretary of state, any assistant, examiner or employee thereof, except to the attorney general when in the opinion of the secretary of state the same should be disclosed."

Accordingly, the question becomes whether the verified statement required by K.S.A. 17-1312a(a) constitutes information gathered while making an investigation or examination of a cemetery corporation which is held confidential by K.S.A. 17-1312(e) and otherwise exempted from disclosure by the express terms of K.S.A. 45-201.

The terms of K.S.A. 17-1313a(b), K.S.A. 17-1312b, and K.S.A. 17-1312c specifically utilize the words "examination or audit" in articulating certain specific duties of Secretary of State relative to cemetery corporations. Nowhere in K.S.A. 17-1312a(a) are similar terms employed.

The clear inference of this deletion from K.S.A. 17- those records held confidential by K.S.A. 17-1312(e) and which are compiled in the course of an investigation refers solely to information or records derived from an audit or examination pursuant to K.S.A. 17-1312a(b) or 17-1312b. In other words, there is by virtue of the public records law, K.S.A. 45-201, a presumption of public disclosure which attaches to all records required by law to be kept

unless within the purview of the listed exceptions or which are otherwise specifically held confidential. Since K.S.A. 17-1312a through K.S.A. 17-1312f were adopted by a single enactment by the Legislature, ch. 95, 1974 Session Laws, uniform definitions must be applied to those terms used throughout the Act. Accordingly, the privilege of confidentiality extended to the information gathered by the Secretary of State in the course of investigation, examination or audit is limited solely to that information gathered in an investigation or examination initiated by the Secretary of State pursuant to the powers granted by K.S.A. 17-1312(b). The verified statement required to be filed by K.S.A. 17-1312a(a) is not within the purview of K.S.A. 17-1312e and is therefore subject to the public inspection requirements of K.S.A. 45-201.

Next, you inquire as to the definition of the word "maintenance" in K.S.A. 17-1311. Specifically, you wish a categorization of the types of expenses which are permissible as "maintenance" for purposes of debiting those expenditures for the permanent maintenance fund. While the word "maintain" or "maintenance" has no precise legal significance in the construction of statutes, its meaning varies with the subject matter of the law and the purposes to be accomplished. Although the term is not specifically defined by this statute, nor anywhere in the remainder of Chapter 17, Article 13, of the Kansas Statutes, the conclusion holds that the Legislature intended the word "maintenance" to encompass those expenditures which relate directly to the upkeep of the cemetery. The apparent purpose of the permanent maintenance fund is to assure each purchaser that his plot or grave, whether it be for himself or family would be permanently preserved and maintained in a manner commensurate with public expectations. By necessity, the operation of a cemetery corporation involves corporate expenses apart from those which directly relate to the physical upkeep of the cemetery realty. It is unconceivable that the Legislature designed the permanent maintenance fund with the intent that all necessary corporate expenses would be derived from this fund. Theoretically, eighty-five percent (85%) of the purchase price of each plot is available to the cemetery corporation to meet non-maintenance related expenditures. For these reasons, it is the opinion of this office that the word "maintenance" includes only those expenditures which directly relate to the physical upkeep of cemetery grounds. Examples of these expenditures include, but are not limited to, the following: mowing, landscaping, repair, construction of avenues of ingress and egress, painting, tombstone repair and like expenses.

You also inquire as to various other aspects of K.S.A. 17-1311, and the requirement that fifteen percent (15%) of the sale price being placed in the permanent maintenance fund. Specifically, you pose the following:

"(a) May a cemetery place more than 15% in the permanent maintenance fund? (b) May the cemetery make a charge for permanent maintenance in addition to the 15% derived from the purchase price? (c) If

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the proceeds from donations and sale of markers, etc., are permitted to be deposited into the fund, do these monies become a part of the principal, and hence, subject to the requirements of K.S.A. 17-1311?"

It is our belief that all three questions may be answered in the affirmative. First, the requirement imposed upon the corporation to place fifteen percent (15%) of the purchase price in the permanent maintenance fund should be construed as a minimum. In this regard, there is no statutory obligation upon the corporation other than to the extent the corporation must place at least fifteen percent (15%) of the purchase price in the fund. In fact, K.S.A. 17-1311 specifically provides:

"Such corporation shall fix and set aside, within the state of Kansas, a percentage of the purchase price of each burial lot hereafter sold by it, or any payment thereon, not less than fifteen percent (15%) thereof, for the permanent maintenance of the cemetery within which said burial lot lies, but the total amount so set aside shall not be less than fifteen dollars (\$15) for each burial lot at the time of conveyance of such lot: . . ." [Emphasis supplied.]

It is our opinion the emphasized portion of the statute gives the cemetery corporation discretion to establish the percentage, which may be more than, but not less than fifteen percent (15%), to be deposited in the permanent maintenance fund.

Similarly, there is no indication that the Legislature intended the permanent maintenance fund to be the exclusive source for the care of the cemetery grounds. The purpose implicit in the creation of the fund is to insure that there is a continued source of revenue for the care and maintenance irrespective of the number of times ownership of the business may change. Its effect is largely to assure that there always exists a source of revenue for the owner to provide for the physical upkeep although income potential may decline due to an exhaustion of salable plots and graves.

As to the final questions, K.S.A. 17-1311 provides in pertinent part:

". . . The treasurer of such corporation may receive, acquire, and hold donations or bequests for said fund and may retain property so acquired without limitation as to time and without regard to its suitability for original purchase."

By those express terms, the treasurer is authorized to accept donations on behalf of the fund. No statutory language differentiates

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money in the permanent maintenance fund which is collected pursuant to the fifteen percent (15%) requirement from that acquired from voluntary contributions. Accordingly, monies accepted as or derived from contributions to the permanent maintenance fund become part of the principal of that fund and are thereby subject to the same investment limitations.

You also inquire as to whether a municipality is exempted by K.S.A. 17-1312f from the requirements imposed upon corporations by K.S.A. 17-1311. K.S.A. 17-1312f exempts municipalities from the operation of K.S.A. 17-1311a through K.S.A. 17-1311f as well as certain other statutes. The term is one which, in legal parlance, has acquired a definition of nearly uniform application throughout the Kansas statutes. The most preferable definition of a municipality is found at K.S.A. 10-101 which provides.

"'Municipality,' as used in this chapter and all acts amendatory thereto, unless otherwise expressed in such amendment, shall mean and include every corporation and quasi corporation empowered to issue bonds in payment of which taxes may be levied."

This substantially comports with your citation to K.S.A. 12-105a(a) which also undertakes to define the term. It is clear from a reading of K.S.A. 17-1312f that the definition of corporation applies to K.S.A. 17-1308 since both statutes were most recently adopted as part of the same act by the Legislature at Chapter 330 of the 1968 Session Laws. Accordingly, municipalities are exempted from the definition of corporation and the operation of K.S.A. 17-1308 by the proviso to K.S.A. 17-1312f.

The proviso to K.S.A. 17-1312f which exempts certain cemetery corporations from the operation of Sections 2 through 9 of Chapter 330 of the 1968 Session Laws breaks down into the following categories: (1) municipalities of this State; (2) non-profit organizations formed primarily for religious purposes and constituting an established church and which sells lots solely to members; and (3) to a cemetery existing on March 1, 1968, located in a county designated as urban, and owned and operated on said date by a non-profit organization. To be exempt from the registration requirements of K.S.A. 17-1312a, the cemetery corporation must possess all the characteristics enumerated in any one of the above categories.

The Ursuline Academy, Inc., seems the only corporation entitled to the exemption among those inquiries you have transmitted to this office.

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As to your last question, only cemetery corporations are subject to the examination and auditing requirements of K.S.A. 17-1312a.

Under K.S.A. 17-1312f, every individual, firm or other organization "selling or conveying land for cemetery purposes" is subject to the act. An individual, firm, or other organization engaged solely in the operation of a mausoleum, and which does not sell land for cemetery purposes, appears to be exempt from the act.

If further questions arise, please feel free to contact us.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS/HTW/ksn