



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

December 22, 1975

ATTORNEY GENERAL OPINION NO. 75-468

The Honorable Elwill M. Shanahan
Secretary of State
2nd Floor - State Capitol Building
Topeka, Kansas 66612

Attn: Mr. Sherman Parks

Re: Corporations--Cemeteries--Audit and Examination

Synopsis: A corporation which is engaged in the sale or conveyance of land for cemetery purposes subject to ch. 330, L. 1968, and which is cancelled as a corporation organized under the Kansas general corporation code for failure to file a timely annual report under K.S.A. 17-1510, remains a business entity, whether an individual proprietorship, partnership or other firm, and as such constitutes a "corporation" as defined by K.S.A. 17-1312f which is subject to examination and auditing by the Secretary of State under K.S.A. 17-1312a, including the registration requirements thereof.

* * *

Dear Secretary Shanahan:

K.S.A. 17-1312f states in pertinent part thus:

"The provisions of sections 2 through 9 of this act [see ch. 330, L. 1968] shall apply to and be controlling upon every individual, firm, partnership or other organization hereafter selling or conveying land for cemetery purposes, and for this

The Honorable Elwill M. Shanahan
Page Two
December 22, 1975

purpose the term 'corporation' except where the context clearly indicates a different meaning shall mean and include such individuals, firms, partnerships or organizations"

You advise that a corporation was organized under the Kansas general corporation code, to sell or convey land for cemetery purposes. As a result of its failure to file a timely annual report, its articles of incorporation were cancelled in accordance with K.S.A. 17-1510, and remain cancelled as of this date.

The question presented is whether, in view of this cancellation, the Secretary of State has authority to require registration and to conduct an audit and examination of the cemetery corporation books and accounts as provided by K.S.A. 17-1312a. Subparagraph (b) thereof states thus:

"Whenever and as often as he deems it necessary, the secretary of state, or an employee designated by the secretary of state, may audit or otherwise examine any cemetery corporation books and accounts. Whenever such an audit or examination is so made, the cemetery corporation shall pay to the secretary of state a fee of fifty dollars (\$50) for each day or part of a day required for such audit or examination."

The clear intent and purpose of K.S.A. 17-1312f is to make the act applicable to every business entity, whether it be an individual proprietorship, a partnership, or corporate entity, engaged in selling or conveying land for cemetery purposes. The examination requirement of K.S.A. 17-1312a must be construed to be co-extensive with that declared purpose. Every business entity, be it an individual, firm, partnership or corporation, must register, if it is engaged in the sale or conveyance of land for cemetery purposes. A corporate business entity which is so engaged does not become exempt from the act merely by changing the legal form of the organizational entity by which it does such business. Thus, the fact that an organization is no longer legally incorporated as a corporation under the Kansas general corporation code does not exempt it from the regulatory scope of this act. It remains, presumptively, as a noncorporate business entity, either a partnership, sole proprietorship or some other organization, engaged in activities subject to the act, and is thus under K.S.A.

The Honorable Elwill M. Shanahan
Page Three
December 22, 1975

17-1312f a "corporation" which is subject to the examination and auditing requirements of K.S.A. 17-1312a.

Accordingly, it is my opinion that the organization in question, if continuing to engage in the sale or conveyance of land for cemetery purposes, is subject to the examination and auditing requirements of K.S.A. 17-1312a, and that the Secretary of State is authorized and empowered to require registration and to conduct an examination and audit of its books and accounts.

I have referred the other items in your letter of October 3, 1975, to my staff for further consideration.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj