



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

December 5, 1977

ATTORNEY GENERAL OPINION NO. 77-379

Mr. H. David Starkey
Thomas County Attorney
Post Office Box 408
Colby, Kansas 67701

Re: Corporations--Cemetery Corporations--Disorganization
of Township Cemetery and Creation of Cemetery District

Synopsis: (1) A township cemetery may disorganize itself and a
cemetery district may be formed (which includes territory
wherein lies a third class city) pursuant to K.S.A.
17-1345.

(2) Statutes governing cemetery districts created under
K.S.A. 17-1345 are governed by those statutes delineated
in K.S.A. 17-1346.

* * *

Dear Mr. Starkey:

You request my opinion concerning the procedure to be followed
to disorganize a township cemetery and then create a cemetery
district.

Your attention is directed to the provisions of K.S.A. 17-1345
which provides thus:

"Whenever a petition setting forth a
proposed cemetery district (which includes
territory wherein an existing township ceme-
tery is located) and a proposal to disorganize

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the existing township cemetery, signed by not less than fifty-one percent of the qualified electors of said proposed district, to be determined by an enumeration taken and verified for this purpose by some qualified elector of said proposed district, shall be presented to the board of county commissioners of the county in which lies the greatest portion of the territory comprising said district, in favor of such petition together with a resolution unanimously adopted and signed by the members of the township board of the township having such township cemetery which is to be disorganized stating that said township board agrees and consents to the disorganization of said township cemetery, it shall be the duty of the board of county commissioners at its next regular meeting to examine said petition and resolution and, if it finds that said petition and resolution are regular and in the form herein prescribed and that there is no outstanding indebtedness against said township cemetery district and that said township board is willing to convey all right, title and interest of said township in and to said cemetery to the proposed new cemetery district, it shall enter an order in its proceedings disorganizing said township cemetery district and establishing said proposed cemetery district.

Thereupon, the township board of the township shall convey all right, title and interest in and to said township cemetery to the newly organized cemetery district. Such conveyance shall be made by a deed signed and acknowledged by the township trustee. Immediately upon the selection and qualification of the treasurer of the new cemetery district, the township treasurer shall pay over to such cemetery district treasurer all funds and moneys in his hands together with all moneys and funds in the county treasury which have been collected for cemetery purposes by such township." [Emphasis added.]

You express concern that this statute may not permit the formation of a cemetery district which will include a third class city.

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Careful examination of K.S.A. 17-1345 reveals no qualification as to the composition of the cemetery district other than the parenthetical addition: "(which includes territory wherein an existing township cemetery is located)." By your letter you have advised that the proposed district will include an existing township cemetery which is prepared to disorganize to facilitate the creation of a new cemetery district. That this same proposed district will also incorporate a third class city is of no significance; the fact remains that the single qualification has been satisfied. Thus, in my judgment the township cemetery may properly follow the procedure provided in K.S.A. 17-1345 to disorganize itself, and the new district may be formed pursuant thereto to include a city of the third class.

You also ask what statutes will govern the operation of a cemetery district created pursuant to K.S.A. 17-1345. The provisions of K.S.A. 17-1346¹ provide:

"The provisions of Sections 17-1330a, 17-1331, 17-1334 and 17-1335 of the General Statutes of Kansas of 1935 [now Kansas Statutes Annotated] and sections 17-1330, 17-1333, 17-1337, 17-1338 and 17-1889 of the General Statutes Supplement of 1941 shall apply to said cemetery district established by the board of county commissioners and all the rights, powers, duties, authority and jurisdiction conferred by said sections on cemetery districts are hereby conferred on the cemetery district and the board of directors thereof established and provided for under the provisions of this act."

It would appear that the delineation of powers and responsibilities found in the statutes referred to in the above statute should

1. K.S.A. 17-1346 was promulgated as the second part of the act providing K.S.A. 17-1345: § 2, Chapter 330, Laws of 1943.

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provide those provisions of law which will perforce govern the
operation of the cemetery district.

Yours truly,



CURT T. SCHNEIDER
Attorney General

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