January 17, 1978

ATTORNEY GENERAL OPINION NO. 78-25

Mr. Philip E. Winter
Assistant County Attorney
Lyon County Courthouse
Emporia, Kansas 66801

Re: Corporations--Cemetery Corporations--Same Located Within Two Miles of Third Class City

Synopsis: Any corporation formed for establishment and maintenance of cemeteries in or within two miles of any city of the third class must comply with the provisions of K.S.A. 17-1307, 17-1308, 17-1311, 17-1312, and 17-1312(a) through 17-1312(b).

* * *

Dear Mr. Winter:

You request my opinion whether a non-profit corporation created in 1977 to operate and maintain a previously existing "unincorporated non-profit cemetery" must comply with the provisions of K.S.A. 17-1307, 17-1308, 17-1311, 17-1312, and 17-1312(a) through 17-1312(b) (Chapter 102, Laws of 1901, as amended and supplemented.)

K.S.A. 17-1307 provides in pertinent part that

"[e]very corporation hereafter formed or organized or that has been organized subsequent to March 1, 1914, for the purpose of the establishment and maintenance of cemeteries in, or within two miles of any city of the third class . . . ."  [Emphasis added.]
shall comply with the remaining requirements found at K.S.A. 17-1307, et seq. The above quoted phrase manifests clearly an intent by the legislature to include all such corporations so formed within the purview of these statutes.

Your question is posed in such manner as to suggest that perhaps the new corporation does not fall within the dual, definitional criteria required by K.S.A. 17-1307, i.e., "establishment and maintenance of cemeteries," since the establishment of the cemetery has already occurred. I am not so persuaded. That the cemetery itself is already in existence at the formation of the new cemetery corporation is not significant. It is the acquisition of the cemetery by the corporation which "establishes" the corporate cemetery which in turn places the corporation categorically and clearly within the parameters of the Act.

I do not find elsewhere in the Kansas statutes provision exempting a corporation such as above discussed from the requirements of K.S.A. 17-1307, et seq. Accordingly, it is my considered opinion that the same must therefore comply with said Act.

Yours, truly,

CURT T. SCHNEIDER
Attorney General

CTS:JPS:kj

cc: Mr. Gary W. Rulon
Attorney at Law
Post Office Box 609
Emporia, Kansas 66801