



STATE OF KANSAS

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ATTORNEY GENERAL

October 3, 1983

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ATTORNEY GENERAL OPINION NO. 83- 150

James B. McKay, Jr.  
City Attorney  
P.O. Box 49  
El Dorado, Kansas 67042

Re: Cities and Municipalities--Cemeteries--Establish-  
ment or Acquisition in Cities or Townships

Cities and Municipalities--Interlocal Cooperation--  
Interlocal Agreements by Public Agencies

Synopsis: No statutory provision prescribes administrative procedures for managing a city-township cemetery acquired under K.S.A. 12-1401, or procedures whereby control of such a cemetery may be transferred. In the absence of a statute governing the subject, a city and township may enter into an interlocal agreement for joint action relating to such cemetery, and such an agreement may provide a method whereby control of the cemetery may be transferred to one of the contracting parties, or to a third party. Cited herein: K.S.A. 12-1401, 12-1402, 12-1403, 12-1404, 12-1441, 12-2901 12-2904.

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Dear Mr. McKay:

You request our opinion concerning the disposition of a cemetery acquired pursuant to K.S.A. 12-1401. You advise that the city of El Dorado and El Dorado Township previously acquired a cemetery pursuant to the aforesaid statute, and that, due to

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disagreements relating to management of the cemetery, the city wishes to determine the procedures whereby the same may be "dissolved." You advise that your inquiry includes "the possibility of either of the governing boards selling out to the other, or both governing boards selling to a third party."

K.S.A. 12-1401 provides, in part, as follows:

"Any city or any township or city and township or two or more townships desiring to join may establish or acquire a cemetery for public use and may acquire land necessary for such purpose by condemnation, as provided by law." (Emphasis added.)

K.S.A. 12-1401 is a codification of L. 1913, ch. 73, §§2 to 6, and the balance of said 1913 act, as amended, is codified at K.S.A. 12-1402 to 12-1404. None of the provisions of said act, or any other statutory provision of which we are aware, prescribes administrative procedures for managing a city-township cemetery acquired under K.S.A. 12-1401, or the manner in which control of such a cemetery may transferred. Under such circumstances, the following principle must, in our opinion, control:

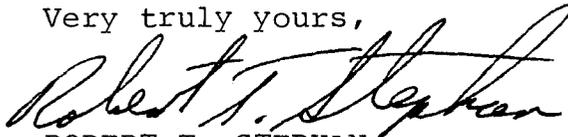
"Voluntary relations frequently exist between cities and townships, and when not governed by local statutes, such arrangements of a consensual nature are subject to the local rules governing contracts." Antieau, Municipal Corporation Law §19A.19

In accordance with the above-quoted principle, it is our opinion that a city and township may, pursuant to K.S.A. 12-2901 et seq., as amended by L. 1983, ch. 69, enter into an interlocal agreement for joint action relating to a city-township cemetery acquired under K.S.A. 12-1401. In this regard, K.S.A. 12-2904(c)(5) prescribes that such an agreement shall specify "[t]he permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination." Thus, a contractual provision relating to disposal of the cemetery could provide for either of the possible alternatives which you suggest, i.e. the city transferring control to the township (or vice-versa), or the city and township transferring control to a third party. However, any provisions relating to disposal must prescribe that

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any transfer of control of the cemetery shall be subject to K.S.A. 12-1441, and shall prohibit use of the cemetery for any purpose other than for burial and other intended cemetery purposes.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

RTS:BJS:TRH:jm