



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

November 15, 1983

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 83- 168

The Honorable Elizabeth Baker
State Representative, 82nd District
1006 Morrison Court
Derby, Kansas 67037

Re: Corporations -- Cemetery Corporations -- Cemetery
Districts; Inclusion of Abandoned Cemeteries

Synopsis: A cemetery district established pursuant to K.S.A. 1982 Supp. 17-1330 et seq. is responsible for the operation and maintenance of such cemeteries located therein which are conveyed to it by individual cemetery associations or which, if abandoned, are voluntarily taken over by the district. The mere establishment of a cemetery district does not automatically transfer control of or responsibility for all cemeteries included within its boundaries. If responsibility for an abandoned cemetery within the cemetery district has not been assumed by the district, then the township containing said abandoned cemetery is responsible under K.S.A. 1982 Supp. 80-916. Cited herein: K.S.A. 1982 Supp. 17-1330, K.S.A. 17-1332, K.S.A. 1982 Supp. 80-916.

* * *

Dear Representative Baker:

As State Representative for the 82nd District, you request our opinion on a matter concerning the responsibility for maintaining an abandoned cemetery. The cemetery in question is located in Rockford Township in Sedgwick County, Kansas, which township is partially included in your district. While a cemetery district exists which is contiguous with the township, it has not taken responsibility for the cemetery in question. You inquire whether the district has a duty to do so under the statutes of Kansas and, if not, how the cemetery is to be maintained.

Elizabeth Baker

Page Two

From the material you provided, it appears that the Sedgwick County Commission approved the creation of a cemetery district in Rockford Township in 1948, after receiving a petition to that effect from more than 51% of the residents of the proposed district pursuant to what is now K.S.A. 1982 Supp. 17-1330. Also in accordance with that statute was an offer from the directors of the El Paso Cemetery Association to convey all real and personal property of the association to the proposed district, as required by K.S.A. 17-1332. Upon this basis, the county commission approved the creation of the cemetery district, which was referred to in subsequent documents as the El Paso Cemetery District.

However, nothing in the records indicates that any property was conveyed to the cemetery district other than that owned by the El Paso Cemetery Association. This fact is important, given that the abandoned cemetery in question here, Union Cemetery, is separate and distinct from El Paso Cemetery. Although both are contained in Rockford Township, and so are within the boundaries of the cemetery district created in 1948, in our opinion this does not in and of itself mean that the El Paso Cemetery District is now responsible for Union Cemetery. While abandoned cemeteries can be included within cemetery districts, to do so requires affirmative action under K.S.A. 17-1332. After requiring that a petition for formation of a cemetery district be accompanied by an offer to convey property by a cemetery association, that statute states:

"Provided, That the petition may be granted by the board of county commissioners to a cemetery district organized to take over one or more abandoned cemeteries within the proposed district if the petition is accompanied by an affidavit signed by one or more residents of the district stating that the persons or association owning or having control of said cemetery or cemeteries cannot be ascertained or located and that said cemetery or cemeteries have been abandoned for more than five years. Upon the granting of said petition said cemetery district may take over and exercise ownership and control of said abandoned cemetery or cemeteries and shall be vested with color of title thereto."

In that a cemetery district may expend tax revenues only for the care and maintenance of cemeteries which have either been conveyed to it or are abandoned and for which responsibility has been assumed [K.S.A. 1982 Supp. 17-1330(a)], the failure to bring Union Cemetery within the legal authority of the district is determinative of the latter body's duty of care, i.e., none exists without further action.

Elizabeth Baker
Page Three

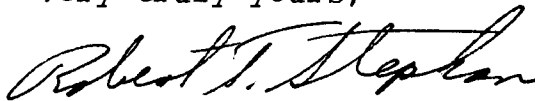
Given that the property of Union Cemetery apparently was not included in that conveyed to the cemetery district in 1948 and has additionally not been added since, you inquire as to which governmental unit has the duty of care? In our opinion, Rockford Township would be responsible, given the language of K.S.A. 1982 Supp. 80-916 which states:

"From and after the passage of this act it shall be the duty of the township board of any township within the state of Kansas in which there is situated an abandoned cemetery to provide for the care of such cemetery and to provide for the proper and seasonable cutting of all weeds and grass therein at least twice each year; and for such purposes such township board shall appropriate and expend not more than \$500 per year for each such cemetery."

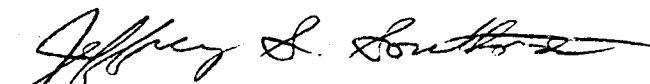
Should the extent of the needed maintenance exceed what the township would be able to provide, there exist additional provisions in the Abandoned Cemetery Act, K.S.A. 17-1366 et seq., which could place responsibility with the county. However, that act is restricted to only certain classes of cemeteries [K.S.A. 17-1366(a)], and so may be inapplicable here, given the particular facts about the origin of Union Cemetery.

In conclusion, a cemetery district established pursuant to K.S.A. 1982 Supp. 17-1330 et seq. is responsible for the operation and maintenance of such cemeteries located therein which are conveyed to it by individual cemetery associations or which, if abandoned, are voluntarily taken over by the district. The mere establishment of a cemetery district does not automatically transfer control of or responsibility for all cemeteries included within its boundaries. If responsibility for an abandoned cemetery within the cemetery district has not been assumed by the district, then the township containing said abandoned cemetery is responsible under K.S.A. 1982 Supp. 80-916.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Assistant Attorney General

RTS:BJJS:JSS:hle