



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 87- 17

David Retter  
Concordia City Attorney  
213 West Sixth, P.O. Box 676  
Concordia, Kansas 66901

Re: Cities and Municipalities--Cemeteries--Revestment  
of Title to Lots; Procedure

Synopsis: Under the procedure prescribed in subsection (b) (5)  
of K.S.A. 12-1440, an action in district court is  
necessary in order to vest title to abandoned  
cemetery lots in the governing body of the  
cemetery. Cited herein: K.S.A. 12-1440.

\* \* \*

Dear Mr. Retter:

You request our interpretation of K.S.A. 12-1440.  
Specifically, you ask whether the revestment procedure  
prescribed therein requires the filing of an action in  
district court in order to vest title to abandoned cemetery  
lots in the governing body of a cemetery.

K.S.A. 12-1440 prescribes a procedure whereby title to  
conveyed platted lots or designated pieces of ground in a  
city or township cemetery, other than ground actually used for  
burial purposes and all ground within 2 feet thereof, may be  
revested in the city or township. In order for title to  
revest, no internment shall have been made in the lot, and the  
title to the lot shall have been vested in the present owner  
for a period of at least 50 years. K.S.A. 12-1440(b) (1).  
Notice of intended revestment must be given to lot owners,

and lot owners may preserve their right to a cemetery lot by filing a written statement of their entitlement. K.S.A. 12-1440(b)(2) and (b)(3). When the time for filing a written statement of entitlement has passed, the statute provides as follows:

"Upon expiration of the period of time allowed for the filing of statements by lot owners as contained in the notice served personally, by mail or published, all parties who fail to file with the city clerk their statement asserting their rights in the cemetery lots shall be deemed to have abandoned their rights and claims in the lot, and the governing body may bring an action in the district court of the county in which the cemetery is located against all lot owners in default, joining as many parties so in default as it may desire in one action, to have the rights of the parties in such lots or parcels terminated and the property restored to the governing body of such cemetery free of any right, title or interest of all such defaulting parties, or their heirs, administrators, trustees, legatees, devisees or assigns. Such action in all other respects shall be brought and determined in the same manner as ordinary actions to determine title to real estate." (Emphasis added.)

The Kansas Supreme Court has, by way of dicta, held that language identical to that quoted above (see K.S.A. 17-1335c) requires an action in district court in order to re-vest title:

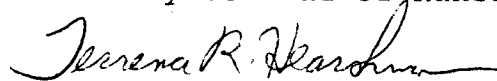
"In an act relating to cemetery districts, K.S.A. 1979 Supp. 17-1330 and -1331 and K.S.A. 17-1332 through -1335i, the legislature has provided for proceedings in district court when it is necessary to vest title to abandoned burial lots in the cemetery district. The suit is in the nature of a quiet-title action. K.S.A. 17-1335c, 1335e." State ex rel. Stephan v. Lane, 228 Kan. 379, 391 (1980).

In accordance with the above-quoted authority, it is our opinion that under the procedure prescribed in subsection (b) (5) of K.S.A. 12-1440, an action in district court is necessary in order to vest title to abandoned cemetery lots in the governing body of the cemetery.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

RTS:JLM:TRH:jm