



State of Kansas

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ATTORNEY GENERAL OPINION NO. 96- 52

Ruth E. Graham, Counsel
Tecumseh Township, Shawnee County
714 Capitol Federal Building
700 Kansas Avenue
Topeka, Kansas 66603-3881

Re: Townships and Township Officers—Public Parks and Cemeteries—
Acquisition of Cemetery Association or Corporation Property; Prohibition
When Township Maintains Public Cemetery

Synopsis: A township which maintains a public cemetery may not assume
responsibility, either as an owner or trustee, for a private cemetery in the
absence of special legislation. Cited herein: K.S.A. 1995 Supp. 80-915; 80-
941.

* * *

Dear Ms. Graham:

As counsel for Tecumseh township, you request our opinion regarding whether a township may assume responsibility, either as an owner or trustee, for a private cemetery and if so, what procedure to follow.

You indicate that there is a private cemetery within the township known as Bethel cemetery which is currently owned by Bethel Cemetery Association, a corporation. The township has been informally assisting with this cemetery for several years by mowing around the graves and assisting gravestones to be re-set after vandalism. The township has also been maintaining two public cemeteries. At present, Bethel Cemetery Association requests the township to assume all responsibility for Bethel cemetery either as the owner or to manage it as a trustee.

K.S.A. 1995 Supp. 80-915 states, in pertinent part, that

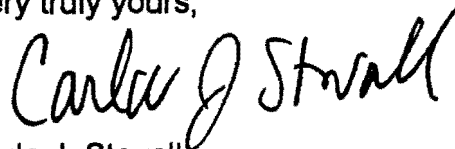
"[e]xcept as provided in K.S.A. 1995 Supp. 80-941, no township board shall agree to take over any such [cemetery association or corporation] cemetery where the township already has and maintains a public cemetery."

It is clear from the language of this statute that a township, such as Tecumseh, which currently maintains a public cemetery, may not assume responsibility for a private cemetery in the absence of statutory authorization.

Attica township confronted a situation similar to that confronted by Tecumseh township. In Attica township there is a cemetery known as Pleasant Ridge cemetery which was owned by Pleasant Ridge Cemetery Association. The township informally assisted Pleasant Ridge cemetery for several years. In 1991 Pleasant Ridge Cemetery Association disbanded and sought to transfer ownership of the cemetery to Attica township. The township board sought information from the Sedgwick county attorney as to the possibility of such a transfer. They were informed by the attorney that they needed special legislation for such a transfer. For this reason L. 1992, ch. 42, § 2 was introduced as a "local bill" to allow for the transfer between Attica township and the Pleasant Ridge cemetery association. See Minutes, House Committee on Local Government, February 25, 1992, attachment no. 2. The legislation is not applicable to other townships. However, it serves as an example of a process that other townships might follow. The legislation has since been codified as K.S.A. 1995 Supp. 80-941.

It is therefore our opinion that Tecumseh township may not assume responsibility, either as an owner or trustee, for the Bethel cemetery in the absence of legislation similar to K.S.A. 1995 Supp. 80-941.

Very truly yours,



Carla J. Stovall
Attorney General of Kansas



Camille Nohe
Assistant Attorney General