



STATE OF KANSAS

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April 12, 1979

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ATTORNEY GENERAL OPINION NO. 79- 54

Mr. Sherman A. Parks, Jr.
Legal Counsel
Office of Secretary of State
2nd Floor, State Capitol
Topeka, Kansas

Re: Corporations--Cemetery Corporations--Permanent
Maintenance Fund

Synopsis: The term "purchase price," as used in K.S.A. 1978
Supp. 17-1311, means the total expenditure required
of the buyer to bring about the agreed return from
the seller, including any "front end" fee or
charge added to the cost of the burial lot. Thus,
pursuant to said statute, such fee or charge
shall be included in computing the amount of the
purchase price to be deposited in the cemetery's
permanent maintenance fund.

* * *

Dear Mr. Parks:

You request our opinion as to the meaning of the term "purchase price," as said term is used in K.S.A. 1978 Supp. 17-1311. You indicate that audits by the office of the Secretary of State reveal that some cemetery corporations add a "charge" or "fee" to the "purchase price" of the burial lot and require said charge or fee to be paid at the time the sales contract is executed. The contract then provides that the "actual" purchase price, that is, the purchase price exclusive of the

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charge or fee, is to be paid under an installment payment plan. Subsequently, upon receipt of each installment payment, the cemetery corporation deposits fifteen percent (15%) thereof to the permanent maintenance fund. Under this arrangement, no part of the fee or charge is deposited to the permanent maintenance fund, it being the cemetery corporation's position that said fee or charge is not part of the "purchase price" of the burial lot. We cannot agree with that contention.

The Kansas Supreme Court, in State, ex rel. v. Anderson, 195 Kan. 649 (1965), in discussing what is now K.S.A. 1978 Supp. 17-1311, said:

"The statute, originally enacted in 1901 (Laws 1901, ch. 102, §5), expressed the public concern in maintaining in a seemly manner places set apart as burial grounds and in preventing the maintenance of privately developed public cemeteries from becoming public charges. Being of a remedial nature it is to be liberally construed to effectuate the purpose for which it was enacted (VanDoren v. Etchen, 112 Kan. 380, 383, 211 Pac. 144). We think the narrow construction of the statute urged by defendants would tend to defeat that purpose. It must be remembered defendants operate as a business venture, for profit, and there are many possibilities whereby money received from the sale of lots might be diverted without adequate provision for maintenance and care of the cemeteries, which is exactly what the statute seeks to prevent.

"We are unwilling to place such meticulous or technical definition on the words "purchase price" . . . as used in the statute as would defeat its manifest intention"
[Emphasis added.] Id. at 652, 653.

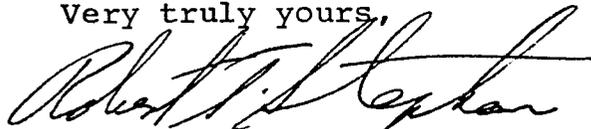
Given the Court's position in Anderson, that the purpose of this statute is to prevent money received from the sale of lots from being diverted, thereby leaving inadequate provision for the maintenance and care of cemeteries, and that this statute is to be liberally construed, it is our opinion that the term

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"purchase price," as used in K.S.A. 1978 Supp. 17-1311, means the total expenditures required of the buyer to bring about the agreed return from the seller. It denotes the consideration received in exchange for a property interest conveyed. See 35A Words and Phrases, Purchase Price, 236 (1963).

Under this definition, the charge or fee required to be paid is included in the "purchase price" and fifteen percent (15%) thereof must be deposited to the permanent maintenance fund of the seller-cemetery corporation.

Very truly yours,



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Attorney General of Kansas



Rodney J. Bieker
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RTS:BJS:RJB:jm