



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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October 12, 1981

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ATTORNEY GENERAL OPINION NO. 81-238

Charles L. Eberhard
Township Clerk
East Branch Township
Box 69, Route 2
Peabody, Kansas 66866

Re: Townships and Township Officers -- Cemeteries -- Care
of Abandoned Cemeteries

Synopsis: Pursuant to K.S.A. 80-916, a township board is under an obligation to provide for the care of any abandoned cemetery within its boundaries. While such a cemetery may also be included within the boundaries of a cemetery district established pursuant to K.S.A. 1980 Supp. 17-1330 et seq., the cemetery district is not obligated to care for any abandoned cemetery located therein unless the board of directors determines it to be in the best interests of the district to do so. Cited herein: K.S.A. 1980 Supp. 17-1330, K.S.A. 17-1332, 80-916.

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Dear Mr. Eberhard:

As Township Clerk for East Branch Township in Marion County, you request our opinion on a question concerning the care and maintenance of a cemetery located within the township. Specifically, you inform us that East Branch Township currently cares for a cemetery which was

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originally founded by a church, but which has since been abandoned. With the creation of a cemetery district which encompasses that portion of the township in which this cemetery is situated, you wish to know if the township's duty for care and maintenance continues.

In our opinion, the answer to your query is supplied by two statutes. The first, K.S.A. 80-916, provides that:

"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 \$50 per year for each such cemetery: Provided, That the first cutting not be later than June 1 and second cutting not earlier than July 15 and not later than August 1."

It is pursuant to this statute that the township cares for the cemetery at the present time. Additionally, it should be noted that the term "abandoned cemetery" used therein does not have the same meaning provided by a more recent statute, K.S.A. 1980 Supp. 17-1366. There, the phrase [at subsection (a)] refers to "a failure to cut grass or weeds or care for graves, grave markers" and so forth for a period of "at least one year." As the township's care over recent years would preclude these requirements from being met, this definition is not applicable here.

While the preceding statute acts to place a duty of care, albeit not an extremely heavy one, on the township, K.S.A. 1980 Supp. 17-1330(a) (a portion of the cemetery district act) is less restrictive. Therein, it is stated in part:

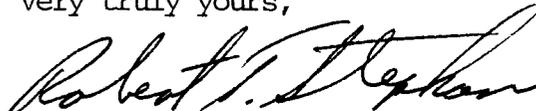
"The board of county commissioners in each county in which any part of said cemetery district is located shall thereafter authorize the levy of a tax on all the taxable tangible property within the cemetery district, in a sum not to exceed three thousand dollars (\$3,000) for the maintenance, operation, regulation and care of such cemetery or for the purchase and use of adjoining property of said cemetery as hereinafter provided for, or, if the board of directors of any cemetery association determines it to be in the best interests of the cemetery district, for care and maintenance of any abandoned cemetery located within the district." (Emphasis added.)

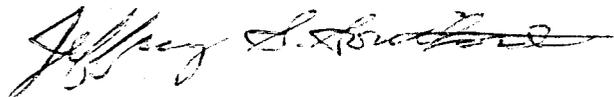
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Accordingly, while the abandoned cemetery now cared for by the township may lie within the boundaries of the newly formed district, no duty of care exists on the part of the cemetery district in the absence of a determination by the board of directors. We see no reason why the township board could not request the board of directors of the cemetery district to make such a determination or, alternatively, could not initiate petition proceedings under K.S.A. 17-1332, which allows a district to assume control of those cemeteries which have been abandoned for more than five years and for which no responsible person or association can be located.

In conclusion, pursuant to K.S.A. 80-916, a township board is under an obligation to provide for the care of any abandoned cemetery within its boundaries. While such a cemetery may also be included within the boundaries of a cemetery district established pursuant to K.S.A. 1980 Supp. 17-1330 et seq., the cemetery district is not obligated to care for any abandoned cemetery located therein unless the board of directors determines it to be in the best interests of the district to do so.

Very truly yours,


ROBERT T. STEPHAN
Attorney General


Jeffrey S. Southard
Assistant Attorney General

RIS:BJS:JSS:may