



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

February 17, 1958

Honorable Richard E. Rudeloff
County Attorney
Bee County
Beeville, Texas

Opinion No. WW-373

Re: Authority to establish
a cemetery within less
than one mile from the
incorporated line of a
city which has a popula-
tion of not less than
5,000, but not more
than 25,000 inhabitants.

Dear Mr. Rudeloff:

You have requested the opinion of this office as to whether a new cemetery may be established on property situated within one-half mile of the incorporated limits of Beeville, a city of about 15,000 population, and if the establishment of such a cemetery is prohibited by Article 912a-24, Vernon's Civil Statutes, whether the City of Beeville and the Commissioners' Court of Bee County may waive this restriction.

You have advised us that the property on which the cemetery is proposed to be established is adjacent to a cemetery that has been in operation for fifty years or more.

The applicable portion of said Article 912a-24 reads as follows:

"It shall be unlawful for any person, company, corporation, or association to establish or use for burial purposes any graveyard or cemetery, or any mausoleum and/or cemetery except in a cemetery heretofore established and operating, located within, or within less than one (1) mile from, the incorporated line of any city of not less than five thousand (5,000) nor more than

twenty-five thousand (25,000) inhabitants according to the last preceding Federal Census, . . . provided that where cemeteries have heretofore been used and maintained within the limits hereinabove set forth, and additional lands are required for cemetery purposes, land adjacent to said cemetery may be acquired by the cemetery association operating such cemetery, to be used as an addition to such cemetery, and the use of said additional land for such purposes shall be exempt from the provisions of this Section."

In our opinion there is no doubt that the proposed location of the cemetery is prohibited under the terms of Article 912a-24, supra. Faulk v. Buena Vista Burial Park Association, 152 S.W.2d 891 (Civ. App. 1941, no writ history), is the only reported case we have found bearing on the statute in question. In that case, the predecessor to Article 912a-24, supra, was sustained by the Court as an exercise by the State of its police power. The Court was of the opinion that the statute was neither unreasonable nor arbitrary.

We, likewise, agree with your conclusion that the prohibition on the location of new cemeteries contained in Article 912a-24, supra, cannot be waived, in this instance, by the City of Beeville and the Commissioners' Court of Bee County. This statute is an expression of the intention of the Texas Legislature, and does not confer upon local governing bodies the power to waive the application of any of its provisions.

SUMMARY

Article 912a-24 prohibits the establishment of a cemetery within one mile or less from a city whose population is not less than 5,000 nor more than 25,000, and local

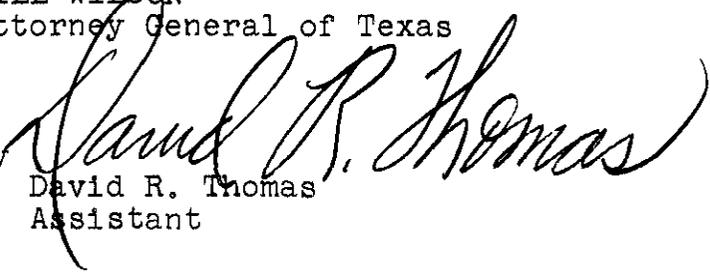
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governing bodies may not
waive this statutory pro-
hibition.

Yours very truly,

WILL WILSON
Attorney General of Texas

By


David R. Thomas
Assistant

DRT:jl:wam

APPROVED

OPINION COMMITTEE

Geo. P. Blackburn, Chairman

J. C. Davis, Jr.

Leonard Passmore

John Reeves

REVIEWED FOR THE ATTORNEY GENERAL

BY: W. V. Geppert