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OPINION COMMITTEE

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The Honorable John Cornyn  
Office of the Attorney General  
Opinion Committee  
P.O. Box 12548

FILE # ML-41244-00

I.D. # 41244

Dear General Cornyn,

I am respectfully requesting an attorney general's opinion on a matter concerning state cemeteries.

- 1) Does property owner who holds in trust property that was conveyed by deed and dedication therein as a public burial ground ("cemetery") and on which remains have been interred, have the right of sale or conveyance to such publicly dedicated land other than the sale of burial plots? *Health and Safety Code 711.035; 12 Tex. Jr. 3d, Sec. 12, 13.*
- 2) May property that has been conveyed by deed and dedicated as a public "cemetery" when deed has been so recorded and human remains have been interred on the property be subject to any sale or conveyance that would interfere with its continued use as a public burial ground? *Health and Safety Code 711.035; 12 Tex. Jur 3d Sec. 11, 13.*
- 3) If original grantor of land recorded a written instrument dedicating land as public burial ground and the public uses such land to inter remains is an irrevocable dedication to public use created? *30 Tex. Jur 3d, Sec. 19, 34 46, 54.*
- 4) Does Health and Safety Code 711.008 apply to a cemetery established prior to the Act and in existence without operating (existing interment but no current or future interment of remains)?
- 5) May remains be disinterred without approval and permit from the Texas Department of Health. *30 Tx. Jur. 3d, Sec. 58; Health and Safety Code 694.001.*
- 6) May owner of "cemetery" property petition a court for removal of the deeded dedication when the property owner is not a cemetery association? *Health and Safety Code 711.036(a).*
- 7) May owner of "cemetery" property seek to remove deeded dedication of public burial ground while remains are interred on the property?



- 8) May remains be disinterred prior to removal of deeded dedication?
- 9) May owner of "cemetery" property make application to plat such property for another intended use when the deeded dedication of such property has not been removed by a court or remains are interred on the property?
- a) May a municipal board approve such application or plat on property with a deeded dedication that has not been removed or while remains are interred?  
*Civil Practice and Remedies Code, Title 5, Section 101.0215*
- 10) May property owner of a non-perpetual care cemetery who is not a cemetery organization move interred remains from one plot to another location in the "cemetery"? *Health and Safety Code 711.004(e)1,2,3.*
- a) If yes, are the descendants of those interred provided notification of removal and relocation of the remains and is their consent required? *Health and safety Code 711.004(a) 1,2,3,4,5, (b).*
- b) If the State Registrar in their permitting process requires the notification and consent of descendants prior to disinterment, is the property owner subject to the permitting process when property owner is not a cemetery organization?
- 11) May remains that are disinterred from individual burial plots be grouped together and re-interred in one burial or must remains be re-interred in individual plots?
- 12) When remains are re-interred do the provisions of Health and Safety Code 714.001 apply?
- 13) Sections 711.010 and 711.011 of the Health and Safety Code, created by HB 817, provide for Unknown and Abandoned Cemetery, without definition.
- a) Does the fact that property maintenance has been neglected in a non-perpetual care cemetery amount to abandonment? *12 Tex. Jur. 3d, Sec. 20; 30 Tex. Jur. 3d, Sec. 58.*
- b) If a deed has been recorded in the County records, publicly dedicating land as cemetery, or improvements have been constructed on the property, or grave markers remain on the property or the property has been publicly marked as cemetery, or remains are interred on the property is this sufficient to show that a cemetery is not abandoned? *12 Tex. Jur 3d Sec. 20, 30 Tex. Jur 3d, Sec. 58.*

I believe an opinion on these questions would clarify the statutes related to and governing cemeteries. Thank for your assistance on this matter.

Sincerely,

  
Chris Harris