



## TEXAS FUNERAL SERVICE COMMISSION

O.C. "Chet" Robbins, Executive Director

RECEIVED

FEB 06 2006

OPINION COMMITTEE

O.C. "Chet" Robbins  
Executive Director

Texas Funeral Service Commission  
333 Guadalupe Street, Suite 2-110  
Austin, Texas 78701

February 2, 2006

RQ-0440-GA FILE # ML-44593-DL  
I.D. # 44593

Honorable Greg Abbott  
Attorney General of Texas  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

ATT'N: Nancy Fuller, Chair  
Opinion Committee

Re: Statutory Requirements to Establish a Family Cemetery

Dear General Abbott:

The Texas Funeral Service Commission at its January 11, 2006, meeting authorized me to request your opinion relating to the applicability of chapter 711, § 711.034 of the Health & Safety Code to family cemeteries. Texas Occupations Code, § 651.163 requires this authorization. The question presented affects the public interest as that term is used in the Government Code, § 402.042(a).

Your office previously has concluded that "[t]he provisions in chapter 711 of the Health and Safety Code that refer broadly to cemeteries, as opposed to cemetery organizations, apply as a general matter to the cemeteries dedicated in the late nineteenth century." JC-0355 (2001), at 3. We now request your opinion whether an unincorporated family attempting to establish and operate a cemetery solely for the interment of family members on family-owned property is a "cemetery organization" required to comply with the survey, filing, and dedication requirements of Health and Safety Code, § 711.034.

Texas Occupations Code, § 651.353(a) provides that "A cemetery may not conduct a cemetery business without being licensed by the Commission." Family cemeteries, however, are not required to be licensed. See § 651.353(d) (excepting family-owned, unincorporated and not for profit, religiously affiliated and publically owned cemeteries from the licensing requirements in § 651.353.)

All section references below are to various sections of chapter 711, Health & Safety Code.

Mailing Address:  
P.O. Box 12217  
Capitol Station  
Austin, Texas 78711

Toll Free: (888) 667-4881  
Tel: (512) 936-2474  
Fax: (512) 479-5064  
website: www.tfsc.state.tx.us

Physical Address:  
333 Guadalupe Street  
Suite 2-110  
Austin, Texas 78701

A person may not engage in the cemetery business in this state unless the person "is a corporation organized for these purposes." Section 711.021(a). Family-owned cemeteries are not required to operate as corporations, however. See § 711.021(g)(1) (exempting a family, fraternal, and community cemetery not larger than 10 acres; an unincorporated association of plot owners not operated for profit; a church, a religious society or denomination, or an entity solely administering the temporalities of a church or religious society or denomination; or a public cemetery belonging to this state or a county or municipality from the incorporation requirement.)

Section 711.001(3) defines a "cemetery organization" as

- (A). an unincorporated association of plot owners not operated for profit that is authorized by its articles of association to conduct a business for cemetery purposes; or
- (B). a corporation, either for profit or not for profit, that is authorized by its articles of incorporation to conduct a business for cemetery purposes."

Section 711.034 provides, in part, the following:

(a) A cemetery organization that acquires property for interment purposes shall:

(1) in the case of land, survey and subdivide the property into gardens or sections, with descriptive names or numbers, and make a map or plat of the property showing the plots contained within the perimeter boundary and showing a specific unique number for each plot; or

(2) ...

(b) The cemetery organization shall file the map or plat with the county clerk of each county in which the property or any part of the property is located.

(c) The cemetery organization shall file with the map or plat a written certificate or declaration of dedication of the property delineated by the map or plat, dedicating the property exclusively to cemetery purposes. The certificate of declaration must be:

(1)-(3) ...

(d)-(g) ...

Section 711.034 specifically applies to "cemetery organization(s)." Chapter 711 otherwise is silent regarding survey and dedication requirement for cemeteries falling outside § 711.001(3)'s definition of "cemetery organization." In JC-0355 at p. 2 your office observed that chapter 711

applies to cemeteries generally but that "the provisions dealing specifically with cemetery organizations apply only to those entities that fall within the definition of that term in § 711.001(3)."

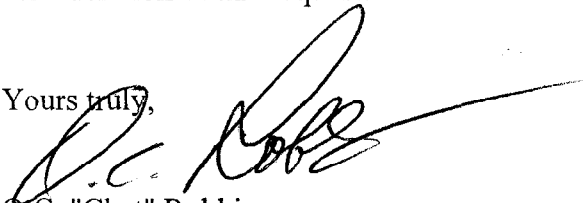
In this agency's interpretation, a family described in the second paragraph of this request is not a cemetery organization within the § 711.001(3) definition of the term. Section 711.021(g)(1) exempts both "family" cemeteries and "unincorporated associations of plot owners not operated for profit" from incorporation requirements. The section's exemption of both groups from incorporation requirements is redundant, if the terms are synonymous. Further, families are not corporations, and, as previously discussed, § 711.021(g)(1) exempts a family cemetery from incorporation requirements.

The Commission's interpretation is not accepted universally . At least one Texas county refuses to allow a family to inter a deceased family member on family-owned property. The county's interpretation is that § 711.034's requirements apply to family cemeteries. We understand that the county's view has been disseminated to all county clerks in Texas.

We request your interpretation to the end that chapter 711's requirement will be applied uniformly throughout the state.

Please call me at 936-2474, if I can provide you with additional information. Thank you for your consideration of this request.

Yours truly,



O.C. "Chet" Robbins  
Executive Director