

CEMETERIES,

City of the fourth class may own a public cemetery and support same from general revenue of the city.

5-14

May 11, 1934.



Senator Thomas J. Daggs
Kahoka, Missouri

Dear Senator Daggs:

This is to acknowledge your request for an opinion of recent date concerning the following:

May a city of the fourth class maintain, own and operate a cemetery, levying and collecting taxes to do the same?

I.

In Mount v. Yount, 281 S. W. 119, l. c. 120, the Springfield Court of Appeals said:

"There are but two classes of cemeteries, public and private."

And further, page 121,

"The Sikeston Cemetery is either public or private. It cannot be both. It is admitted to be public, and in addition the statute (section 8491) only authorizes the city to own a public cemetery."

Corpus Juris, Vol. 11, page 51, in part says this:

"The power existing in the Legislature to regulate the burial of the dead may be delegated by the legislature to municipalities. And under general powers as to

public safety, welfare, health, etc., or under an express grant of power for the purpose, a municipality may regulate burials and burial places within its limits. Such power, however, must not be exercised in an arbitrary or unreasonable manner, or in such manner as to be discriminatory or creative of a monopoly. Etc."

Article 8, Chapter 38, R. S. Mo. 1929, are laws that pertain to cities of the fourth class, and Section 7040 of the same article and chapter provides:

"The board of aldermen shall have power to purchase, receive, and to hold real estate, as hereinbefore mentioned, for public cemeteries, either within or without the city, within a distance of three miles thereof, and the city and its officers shall have jurisdiction over the said cemeteries wherever located: Provided, that no such cemetery shall exceed eighty acres in one body. The board of aldermen shall provide for the survey, platting, grading, fencing, ornamenting and improving of all the cemetery ground, and the avenues leading thereto, owned by the city, and may construct walks and protect ornamental trees, and provide for paying the expenses therefor. The board of aldermen may make rules and pass ordinances imposing penalties and fines, regulating, protecting and governing city cemeteries, the owners of lots therein, visitors thereto, and punish trespassers therein, and the officers of such city shall have as full jurisdiction and power in the enforcing of such rules and ordinances as though they related to the city itself."

It will be noted that the statute says "and provide for paying the expenses therefor" and "shall have as full jurisdiction and power in the enforcing of such rules and ordinances as though they related to the city itself." Thus, the board of aldermen

have the power to purchase, receive, and to hold real estate and provide for paying the expenses therefor, and to make rules and ordinances.

Section 7041, of the same article and chapter, provides as follows:

"The cemetery lots shall be conveyed by certificates, signed by the mayor, countersigned by the clerk, under the seal of the city, specifying that the purchaser to whom the same is issued is the owner of the lot described therein by numbers, etc."

Section 14068, R. S. Mo. 1929, provides as follows:

"Any town, city or village in the state of Missouri may purchase, receive and hold real estate within or outside such city, town or village for the burial of the dead, and may lease, sell or otherwise dispose of the same. And the council of said cities, towns and villages may make rules and pass ordinances imposing penalties and fines not exceeding one hundred dollars, regulating, protecting and governing cemeteries outside of said cities, towns and villages, the owners of lots therein, visitors thereto, and punishing trespassers thereon, to the extent as though such cemeteries were inside the corporate limits of such cities, towns and villages; and the officers of said cities, towns and villages shall have as full jurisdiction and power in the enforcing of said rules and ordinances as though they related to such city, town or village itself."

Therefore, from the above, it is our opinion that a city of the fourth class may own, maintain, regulate and operate a cemetery.

II.

The next question for determination is: How and from what source, if any, may revenue be taken to effect the purposes of ownership?

In State ex rel. v. City of St. Louis, 216 Mo. 47, the Supreme Court, en banc, l. c. 91, said the following:

"* * * * *, and that municipal corporations were only authorized to levy and collect taxes for municipal purposes, and municipal enterprises should be conducted and controlled in fact by such municipalities by and through their proper officers, * * * * *."

Thus, we look to the statute governing cities of the fourth class relative to tax matters. However, before we do that, we call attention to Section 10, Article X, of the Constitution of Missouri, which provides:

"The General Assembly shall not impose taxes upon counties, cities, towns or other municipal corporations or upon the inhabitants or property thereof, for county, city, town or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes."

Section 6948 R. S. Mo. 1929, provides in part as follows:

"If such report shows that the city has less than 10,000 inhabitants, the city council may levy on all subjects and objects of taxation for city purposes not to exceed fifty cents on the one hundred dollars valuation. Should the population be one thousand or less, said rate of levy shall not exceed twenty-five cents on one hundred dollars valuation."

The foregoing are maximum rates which may be levied in said cities and towns. Provided, however, the board of aldermen shall not have power to order a rate of tax levy on real or personal property for the year 1921 which shall produce more than ten per cent in excess of the amount produced, mathematically, by the rate or levy ordered in 1920, and in no subsequent year may any such board of aldermen or any officers or officer acting therefor, order a rate of tax levy that will produce, mathematically, more than ten per cent in excess of taxes levied for the previous year."

Section 7001, R. S. Mo. 1929, provides in part as follows:

"The board of aldermen shall, from time to time, provide by ordinance for the levy and collection of all taxes, licenses, wharfage and other duties not herein enumerated, etc."

Section 7047, R. S. Mo. 1929, provides in part as follows:

"The cities coming under the provisions of this article, in their corporate capacities are authorized and empowered to enact ordinances for the following purposes in addition to the other powers granted by law: First. To levy and collect taxes for general revenue purposes on all mixed personal and real property within the limits of said city, taxable according to the laws of this state. Etc. "

Nowhere do we find any provision of statute permitting a city of the fourth class to levy a tax for the use and benefit

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of a publicly or city owned cemetery. Thus, the expense of maintaining, operating or regulating a cemetery must be borne from the general revenue of the city, and such is our opinion.

Yours very truly,

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Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

JLH:EG