

CEMETERIES:
CITIES OF THE FOURTH CLASS:

Authority of cities of the fourth
class to control cemeteries.

1/26
January 26, 1940



Mr. S. J. Hudson, Chairman
Cemetery Commission
Poplar Bluff, Missouri

Dear Sir:

This is in reply to yours of recent date where-
in you submit the question based on the following state-
ment of facts:

"A short time ago we extended our City Limits and took in a Cemetery which before was located in the County. The roads and streets and avenues according to the plat filed were dedicated to the public forever. I would like to know if this Cemetery is now under our control and if we can make ordinances to rule or control it in the same manner that we rule and control our City Cemetery.

"Our City Attorney thinks we have no authority to take control of this Cemetery or pass any ordinances to rule it or have anything to do with it since it is owned by a private company.

"We have an ordinance governing our City Cemetery. I would like to have your opinion on this matter."

Cities of the fourth class are creatures of the statute and it is a well known rule of law that such cities must look to the statutes for their powers and duties.

On the question of the powers and duties of cities of the fourth class in relation to cemeteries, we find that such cities may possess and control cemeteries under Section 7040, R. S. Missouri 1929, which provides as follows:

"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 by this section that cemeteries which the city purchases or receives, within the city limit or within a distance of three miles thereof, shall have jurisdiction over such cemeteries and may pass the proper ordinances for the regulation and supervision of them.

By Section 14068, R. S. Missouri 1929, it is provided 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 thereon, 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."

By comparing these two sections hereinbefore cited, it will be seen that regulation and supervision of cemeteries in cities of the fourth class, or within three miles of the limits thereof, depends on the city purchasing or receiving and holding cemeteries for cemetery purposes. In case a private cemetery or one owned by a cemetery association is within the corporate limits or is brought in by an extension of the boundaries of the city or is within three miles of such city, such cemetery would not be subject to the provisions of the foregoing sections without the owners thereof surrendering possession to the city.

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(4)

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CONCLUSION.

From the foregoing it is the opinion of this department that even though the city limits are extended to include a private cemetery, such cemetery would not come under the control of the city council unless the owners of such cemetery conveyed all of their interests to the city and the city received the same. Therefore, the city has no authority to take control over such cemetery or to pass any ordinances to rule it or to have anything to do with it.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney General

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