

CEMETERIES: Cemetery Endowed Care Fund Law (Sec. 214.270-214.410, RSMo 1961 Supp.) applies to a religious organization operating a cemetery and which makes occasional sales to persons who are neither members of the organization nor RELIGIOUS ORGANIZATIONS: in the immediate families of such members. The fact that the purchasers may be of the same religious faith as the members is wholly irrelevant, inasmuch as the statute contains no such exception.

March 30, 1962

Opinion No. 99 (1962)

Honorable William A. Collet
Prosecuting Attorney
Jackson County
415 East Twelfth Street
Kansas City 6, Missouri

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Dear Mr. Collet:

This is in response to your request for an opinion dated January 25, 1962, as follows:

"A question has arisen concerning the application of the Cemetery Endowed Care Fund Law Section 214.270(1) to religious organizations which sell burial spaces in their cemeteries primarily to their members but which make occasional sales to non-members of the same religious faith.

"Would you please advise whether the fact that those religious organizations make occasional sales of burial places to non-members of the particular organization but restrict sales to members of the same religious faith would make such organization subject to said act in light of the definition contained in Section 214.270(1)."

The specific section of the law in question, Section 214.270(1), RSMo 1961 Supp., reads as follows:

"'Cemetery' shall include cemeteries, mausoleums, garden crypts, columbariums, crematoriums and all other places held for burial purposes for sale to the public, but shall not include any of the foregoing held or operated by the

Honorable William A. Collet

state or federal government or any political subdivision thereof, any incorporated city or town, or any religious organization or fraternal society holding the same for sale solely to members and their immediate families;"

In this state there are but two classes of cemeteries, public and private. *Wooldridge vs. Smith*, 243 Mo. 190, 1.c. 198, 147 S.W. 1019, and *Mount vs. Yount*, 220 Mo. App. 187, 281 S.W. 119, 120. And see *City of Caruthersville vs. Faris*, 237 Mo. App. 605, 146 S.W. 2d 80, 84. A private cemetery is one such as is described in Section 214.090, RSMo 1959, and is for the use of the descendants of a single family. A cemetery such as is described in your letter is a public and not a private cemetery.

Obviously, the Cemetery Endowed Care Fund Law (Sections 214.270 to 214.410, RSMo 1961 Supp.) has no application at all to private cemeteries, and is intended to apply to public cemeteries. However, Section 214.270(1) excepts from the operation of the law certain cemeteries which would otherwise come within the scope thereof. Among these exceptions is the one here involved: religious organizations holding the same for sale solely to members and their immediate families. The word "solely" is controlling and so definite as to require no construction. It can mean as here used only "exclusively" and "without exception".

CONCLUSION

The Cemetery Endowed Care Fund Law (Sec. 214.270 - 214.410, RSMo 1961 Supp.) applies to a religious organization operating a cemetery and which makes occasional sales to persons who are neither members of the organization nor in the immediate families of such members. The fact that the purchasers may be of the same religious faith as the members is wholly irrelevant, inasmuch as the statute contains no such exception.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Howard L. McFadden.

Yours very truly,

HLM:BJ

THOMAS F. EAGLETON
Attorney General