

August 9, 1977

OPINION LETTER NO. 165

Mr. Lowell McCuskey
Prosecuting Attorney of
Osage County
P.O. Box L
Linn, Missouri 65051



Dear Mr. McCuskey:

This letter is in response to your question asking:

"A conveyance of a burying ground or cemetery has been made to the County Court under the provisions of Section 214.090. Can the County Court convey the burying ground or cemetery to a not-for-profit corporation incorporated for the purpose of receiving and investing funds for the upkeep of the burying ground or cemetery."

You also state:

"A conveyance of a burying ground or cemetery was made many years ago to the County Court under the provisions of current section 214.090 RSMo. A group of interested individuals have formed a not-for-profit corporation for the purpose of receiving and investing funds for the upkeep of the burying ground or cemetery. The not-for-profit corporation has requested the County Court to make a conveyance of the burying ground or cemetery to the not-for-profit corporation."

Section 214.090, RSMo provides:

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"Any person desirous of securing family burying ground or cemetery on his or her lands, may convey to the county court of the county in which the land lies any quantity of land not exceeding one acre, in trust for the purpose above mentioned, the deed for which to be recorded within sixty days after the conveyance; and such grounds, when so conveyed, shall be held in perpetuity as burying grounds or cemeteries for the use and benefit of the family and descendants of the person making such conveyance."

This section expressly states that the land may be conveyed to the county court and that such land will be held in perpetuity as burying grounds. We find no authority for the county court to convey this land to a private not-for-profit corporation. The general rule of law expressed in Walker v. Linn County, 72 Mo. 650 (1880) is that a county court is vested with such powers only with reference to management of the affairs of the property and business of the county as are expressly conferred on it by statute or as may be fairly or necessarily implied from those powers expressly granted. In this case, in the absence of legislative authority it seems clear that the county court has no authority to convey such property. Although an incorporated cemetery company is authorized to receive grants and bequests in trust with respect to such property under Section 214.130, RSMo, the company is not granted the power by such section to receive such land from the county court.

Very truly yours,

John Ashcroft
Attorney General