

Ohio Cemetery Law Task Force Task Force Report & Recommendation 29 September, 2014

Presented to:
Governor John R. Kasich
Senate President Keith Faber
Speaker of the House of Representatives William G. Batchelder



(Clockwise from upper left to right)

Ohio Veterans Home Cemetery, Sandusky - Photo courtesy of the Ohio Department of Veterans Services

Grandview Cemetery, Salem - Photo courtesy of the Ohio Division of Real Estate & Professional Licensing

Woodland Cemetery and Arboretum, Dayton - Photo courtesy of the Ohio Division of Real Estate & Professional Licensing

Woodland Cemetery and Arboretum, Dayton - Photo courtesy of the Ohio Division of Real Estate & Professional Licensing

**Ohio Cemetery Law Task Force
Task Force Report & Recommendation
29 September, 2014**

*Presented to:
Governor John R. Kasich
Senate President Keith Faber
Speaker of the House of Representatives William G. Batchelder*

Table of Contents

1) Executive Summary	3
2) Task Force Members	4
3) Meeting Dates	6
4) Task Force Mandate, Mission and Vision	8
5) Task Force Process Overview	9
6) Stakeholders Represented and Statements Given	11
7) Recommendations for Legislative Initiatives	14
8) Acknowledgments	27
9) Appendix	28
Meeting Minutes	I
Stakeholder Testimony & Written Comments	II
Exhibits	III

Executive Summary

On September 29, 2013, House Bill 59 of the 130th Ohio General Assembly was enacted creating the Ohio Cemetery Law Task Force. While granting general authority to the Task Force to review all laws related to cemeteries, it also provided a unique opportunity for stakeholders of all walks of life to present their views on the current state of cemeteries in Ohio.

The Task Force learned that when asking persons what a cemetery means to them, responses will be as diverse as the people answering. Cemeteries are a business, a glimpse into our collective past, an historical record, documentation of past cultures, a place to remember our loved ones and the final resting place of our ancestors, a place to honor our fallen heroes, even a last chance to contribute to and protect our environment. The testimony and evidence elicited and presented to the Task Force since its inception greatly aided the Task Force in completing its primary mission. The Task Force would like to express its gratitude to those groups and individuals that provided testimony and/or written statements during this process.

Task Force members were as diverse as the stakeholders that provided insightful information on the past, present, and future of cemeteries. During the many multifaceted discussions held by the Task Force one tenet became clear and was a driving force in the meetings: All burial sites and human remains, regardless of historic period or culture, deserve the same level of protection and respect. In following that tenet this report was crafted.

During discussions, central categories were identified and then used as a guide for deliberations:

- 1) Definitions
- 2) Preservation and Protection
- 3) Registration, Record Keeping and Technology
- 4) Maintenance
- 5) Enforcement
- 6) Funding
- 7) Statutory Alignment
- 8) Protected Groups

After drawing on its own members' experiences and those of stakeholders presenting testimony and written statements, the Task Force recommended common sense legislative initiatives that were unanimously agreed upon and which may be reasonably implemented in the near future. The report also contains more general recommendations on topics that are significant in nature but which the task force could not fully and fittingly address in the timeframes provided.

Task Force Members

Section 747.10 (B) of House Bill 59:

In establishing it, the General Assembly directed that the Task Force:

“...shall consist of the following eleven members: a representative of local government, other than townships, appointed by the President of the Senate; a representative of the Ohio Township Association appointed by the President of the Senate; a representative of native Americans appointed by the President of the Senate; a representative of private cemeteries appointed by the Speaker of the House of representatives; a representative of the Ohio Historical Society appointed by the Speaker of the House of Representatives; a representative of archaeologists appointed by the Speaker of the House of Representatives; a representative of the Ohio Genealogical Society appointed by the Governor; a representative of the Ohio Cemetery Dispute Resolution Commission appointed by the Governor; a representative of the Division of Real Estate and Professional Licensing in the Department of Commerce appointed by the Governor; a representative of the Department of Transportation appointed by the Governor; and a representative of the Department of Natural resources appointed by the Governor.”

Pursuant to the authority given in Section 747.10(B) of House Bill 59 of the 130th General Assembly, eff. September 29, 2013, the following individuals were appointed to serve as members of the Task Force:

Name	Title	Representation
Hon. Cory Noonan	Allen County Commissioner	Local Government - County
Hon. Keith G. Houts	Jefferson Township Trustee Mercer County	Ohio Township Association
Dr. John N. Low, JD	The Ohio State University Newark Campus	Native Americans
Mr. Daniel Applegate	Representative	Private Cemeteries
Mr. Stephen George	Senior Advisor	Ohio History Connection
Mr. David Snyder	Archaeologist/Ohio Historic Preservation Office	Archaeologists
Mr. Jay Russell	Trustee	Ohio Genealogical Society

Mr. James Wright	Member	Ohio Cemetery Dispute Resolution Commission
Ms. Anne M. Petit	Superintendent Div. of Real Estate & Professional Licensing	Ohio Department of Commerce
Mr. Patrick J. Piccininni	Chief Legal Counsel	Ohio Department of Transportation
Mr. James N. Turner	Deputy Legal Counsel	Ohio Department of Natural Resources

As authorized in Section 747.10 (B) of House Bill 59, the Task Force at its first meeting elected the Hon. Cory Noonan and Ms. Anne M. Petit as the co-chairpersons of the Task Force.

Meeting Dates

January 24, 2014 at 9:30 a.m.
77 South High Street
Division of Real Estate & Professional Licensing
Columbus, OH 43215

February 21, 2014 at 9:30 a.m.
77 South High Street, 19th Floor Room 1948
Columbus, Ohio 43215

March 7, 2014 at 9:30 a.m.
77 South High Street
Division of Real Estate & Professional Licensing
Columbus, OH 43215

April 4, 2014 at 9:30 a.m.
77 South High Street
Division of Real Estate & Professional Licensing
Columbus, Ohio 43215

April 28, 2014 at 9:30 a.m.
77 South High Street
Division of Real Estate & Professional Licensing
Columbus, Ohio 43215

May 16, 2014 at 9:30 a.m.
77 South High Street
Division of Real Estate & Professional Licensing
Columbus, Ohio 43215

June 6, 2014 at 9:30 a.m.
77 South High Street
Division of Real Estate & Professional Licensing
Columbus, Ohio 43215

June 27, 2014 at 9:30 a.m.
77 South High Street
Division of Real Estate & Professional Licensing
Columbus, Ohio 43215

July 25, 2014 at 9:30 a.m.
77 South High Street
Division of Real Estate & Professional Licensing
Columbus, Ohio 43215

August 20, 2014 at 10:00 a.m.
77 South High Street
Division of Real Estate & Professional Licensing
Columbus, Ohio 43215

September 19, 2014 at 10:00 a.m.
77 South High Street
Division of Real Estate & Professional Licensing
Columbus, Ohio 43215

September 24, 2014 at 9:30 a.m.
77 South High Street
Division of Real Estate & Professional Licensing
Columbus, Ohio 43215

Task Force Mandate, Mission and Vision

A. Task Force Mandate

House Bill 59, of the 130th Ohio General Assembly, Sections 747.10(A) and (C), effective September 29, 2013, provided that:

“(A) The Ohio Cemetery Law Task Force shall develop recommendations on modifications of the laws of this state relating to cemeteries.”

“(C) The task force shall issue a report of its recommendations to the President of the Senate, the Speaker of the House of Representatives, and the Governor not later than one year after the effective date of this section.”

The generality of the authority given the Task Force allowed it to consider many facets of the Ohio Revised Code, particularly including, but not limited to, Revised Code Chapters 4767 (Cemetery Registration), 517 (Cemeteries – Townships), 5705 (Tax Levy Law), and 5901 (Veterans’ Services – Burial) as well as the provisions of Revised Code Title 29 (Criminal Offenses and Penalties). The challenge in the mandate was in narrowing the scope of Task Force review and recommendations to provide an agenda that may feasibly be implemented by the enactment of legislation.

B. Task Force Vision and Mission

The Task Force members devoted significant discussion to their vision of both the mandate process and its results. It was important that the recommendations made should be cast in a context capable of recognizing both the historic nature and value of cemeteries as they have been since Ohio was a territory as well as the fact that the cemetery industry is to many a means of livelihood that must be flexible, since the business of providing such facilities will change as the technologies available to it evolve. Recognition that operating a cemetery can be an expensive proposition was critical to the Task Force focus – particularly in light of the fact that Ohio’s townships bear a significant level of obligation for cemeteries while at the same time being limited in their ability to fund such operations. Likewise, the Task Force sought to strike a balance between the interests of those who seek access to historic burial places and those whose private property rights may be affected.

Cemeteries were regarded by the Task Force members as not merely places to inter the dead, but as places that reflect the society that created them – its customs, culture, and history of veneration for the accomplishments of past generations. As a result, the diversity of issues considered certainly included Native American questions, Veterans’ concerns, respect for other cultures, and respect for the environment.

Task Force Process Overview

Throughout its schedule of meetings the Task Force provided proper notice of each as required by the Ohio Open Meetings Act, Revised Code Section 121.22, et. seq., and records of every meeting were made so that transcripts could be produced if requested under the Ohio Public Records Act, Revised Code Section 149.43.

After electing its co-chairpersons, the Task Force began a discussion of issues and of an invitation list for stakeholders that could fairly represent the various perspectives encompassed by the composition of the Task Force as well as cultural and technological development now taking place in the cemetery industry.

At the next several subsequent meetings testimony, written statements without testimony, e-mail communications and mail correspondence were all received. The members of the Task Force took advantage of the opportunity to ask questions of those who appeared.

Once the information described had been accumulated, the Task Force met several times to consider and assimilate it. In order to aid in that process, Co-chairs Noonan and Petit asked that each member prepare a summary of issues sorted into general categories so that a matrix of priorities could be developed. A copy of the resulting Final Matrix is included in this report as Exhibit A.

In the matrix, more specific sub-issues were identified for discussion, as noted in the following list.

A. Definitions:

Advances in technology and issues identified through past experience converge to make it necessary to update various definitions used in the Revised Code as they relate to cemetery law, including:

1. Abandoned cemeteries;
2. Human Remains;
3. Burial site or historical significant/archaeological site; and
4. Natural burial – needs definition as a matter of both technology and expansion of the code to contemplate new industry products.

B. Preservation and Protection:

1. Unmarked/abandoned (regardless of age), and
2. Education/outreach.

C. Registration, Record Keeping and Technology:

1. Centralized cemetery database; and
2. System for reporting cemeteries or burials

D. Maintenance:

1. “Traditional” cemeteries;
2. Nature preserves/green burial grounds;
3. Memorials/markers; and
4. Remediation.

E. Enforcement:

1. Increase certain criminal penalties (vandalism & desecration); and
2. More compliance authority to the Ohio Cemetery Dispute Resolution Commission.

F. Funding:

This category affects Townships, Municipalities, Association cemeteries, Religious/Benevolent/Fraternal cemeteries, and Veterans’ Affairs. Sub-categories initially identified in discussions included:

1. Funding for operations;
2. Funding for maintenance; and
3. Sources of dedicated funding including grants, trusts, and tax levy authority.

G. Statutory Alignment

1. Division of Real Estate and Professional Licensing (Division) proposed Revised Code Chapter 4767 modernization; and
2. Parity between township and municipality cemeteries within Revised Code Chapters;
3. Ohio Bureau of Workers’ Compensation rating for cemetery salespeople;
4. Updates to Ohio Revised Code Sections 1721.21 and 1721.211.

H. Protected Groups

1. Native American repatriation; and
2. Veterans.

I. Issues raised that may exceed the Task Force Capacity

1. Zoning;
2. Environmental Issues; and
3. Private Property Rights & Regulatory Taking Issues: Archaeological and genealogical interests in the preservation of existing (e.g. pioneer) burial sites, veterans’ burial sites, and Native American burial sites and earthworks were significant points for Task Force discussions.

Stakeholders Represented and Position Statements Given or Provided

The following stakeholders were invited to present their positions to the Task Force during its fact-gathering stage:

A. Stakeholders Invited to Provide Input, Listed in Alphabetical Order

1. Absentee Shawnee of Oklahoma
2. Association of Gravestone Studies
3. Catholic Conference of Ohio
4. Citizen Potawatomi Nation, Oklahoma
5. Delaware Nation, Oklahoma
6. Eastern Shawnee Tribe of Oklahoma
7. Forest County Potawatomi Community
8. Foxfield Preserve Nature Preserve Cemetery
9. Grand Traverse Band of Ottawa and Chippewa
10. Hannahville Indian Community
11. Lakeview Cemetery
12. Little Traverse Bay Bands of Odawa Indians
13. Little River Band of Ottawa Indians
14. Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan
15. Miami Tribe of Oklahoma
16. Municipal League of Ohio
17. Nottawaseppi Huron Band of the Potawatomi
18. Ohio Archaeological Council
19. Ohio Bureau of Workers' Compensation
20. Ohio Cemetery Association
21. Ohio Contractors Association
22. Ohio County Coroners Association
23. Ohio Department of Commerce, Division of Real Estate & Professional Licensing, Ohio Cemetery Dispute Resolution Commission
24. Ohio Farm Bureau
25. Ohio Funeral Directors Association
26. Ohio History Connection
27. Ohio History Connection, Office of Historic Preservation
28. Ohio Home Builders Association
29. Ohio Jewish Communities
30. Ohio Prosecuting Attorneys Association
31. Ohio Township Association

32. Ohio Veterans' Services
33. Ottawa Tribe of Oklahoma
34. Peoria Tribe of Indians of Oklahoma
35. Pokagon Band of Potawatomi Indians
36. Prairie Band of Potawatomi Nation, Kansas
37. Seneca-Cayuga Tribe of Oklahoma
38. Shawnee Tribe, Oklahoma
39. United Keetoowah Band of Cherokee Indians
40. Wyandotte Nation

B. Stakeholder Provided Testimony – In Order of Appearance/Receipt

1. Ohio Archaeological Council represented by Alan Tonetti, Chair of the Govt. Affairs Committee and Jarrod Burks, Trustee and Past President – Oral/written
2. The Ohio Chapter of the Association of Gravestone Studies represented by Beth Santore, Chair – Oral/written
3. Ohio History Connection represented by Sharon Dean, Director of American Indian Relations – oral/written
4. Ohio Department of Veterans Services represented by Jason A. Dominguez, Assistant Director/Chief of Staff – oral/written
5. Foxfield Preserve represented by Sara Brink, Foxfield Preserve Steward – oral/written
6. Catholic Cemeteries of Ohio represented by Rich Finn, Director of Cemeteries for the Catholic Diocese of Columbus – oral/written
7. Ohio Cemetery Association represented by Timothy C. Long, Ohio Cemetery Association Legislative Agent and Attorney – oral/written
8. The Ohio Department of Commerce, Division of Real Estate & Professional Licensing represented by Laura A. Monick, Attorney and Chief of the Registration and Resolution Section – oral/written
9. Linda Jean Limes Ellis – written
10. Ohio Township Association represented by Heidi Fought, Director of Governmental Affairs – oral/written
11. Gini Chandler, Wayne Township Trustee from Jefferson County, Ohio – written
12. Kathy Flayler, Manager of Willow View Cemetery Association – written
13. Tribal Historic Preservation Officer for the Pokagon Band of Potawatomi Indians represented by Marcus Minchester – written
14. Eastern Shawnee Tribe of Oklahoma represented by Chief Glenna Wallace – written testimony originally offered on May 13, 2010, to the Ohio Legislative Commission on the Education and Preservation of State History

15. Sons of Union Veterans of the Civil War, Department of Ohio, Veterans' Monuments and Memorials Preservation Task Group represented by Fredric C. Lynch, Past Department Commander – written
16. Ohio Bureau of Workers' Compensation represented by Steve Buehrer, Administrator/CEO – written

Recommendation for Legislative Initiatives

As a result of the Task Force's work and the testimony received, the following recommendations are presented for consideration:

A. Definitions

1. Definition of "Human Remains":

- a. Amend Revised Code Section 4767.01 (A) as follows:

"Cemetery," "interment," "burial right," "entombment right," "columbarium right," "human remains," and "natural burial site" have the same meanings as in section 1721.21(A) of the Revised Code."

- b. Amend Revised Code Section 1721.21(A) by adding new sub-section (A)(4) and re-numbering the sub-sections of division (A) accordingly, as follows:

"Human Remains" means any part of the body of a deceased human being in any stage of decomposition or state of preservation or the remaining bone fragments from the body of a deceased human being that has been reduced by cremation or alternative disposition."

2. "Natural Burial Site":

- a. Amend Revised Code Section 4767.01 (A) as follows:

"Cemetery," "interment," "burial right," "entombment right," "columbarium right," "human remains," and "natural burial site" have the same meanings as in section 1721.21(A) of the Revised Code."

- b. Amend Revised Code Section 1721.21(A) by adding new sub-section (A)(5) and re-numbering the sub-sections of division (A) accordingly, as follows:

"Natural Burial Site" means one in which human remains, including cremated remains, are interred in bio-degradable containers without the use of any impervious manufactured materials container or vault (partial, inverted or otherwise), vault lids, outer burial containers, impervious manufactured boxes, slabs, or partitioned liners, and without the use of toxic embalming chemicals except where the decedent has been embalmed as may be required by applicable law or against their specific written instructions or in which embalming was required for transport."

3. “Abandoned”:

Insert into proposed Revised Code Section 4767.12, Cemetery ceasing to operate, abandoned cemetery, division’s duties, Para. 3 – a new sub-division as follows:

“When the owner or person responsible for the operation or maintenance of a cemetery has, either by choice or circumstance, ceased operation and has allowed the cemetery to be declared a nuisance as defined by applicable law, then that cemetery has been “abandoned” for the purpose of this chapter.”

4. The Task Force considered the feasibility of defining “inactive” cemeteries and requiring a registration process; however, it was determined that this could be problematic for lack of interested parties with sufficient interest to pay fees or be responsible for registration under existing codes or rules.

Draft language attached as Exhibits B & C.

B. Preservation and Protection

1. Enact the Division’s proposed Revised Code Section 4767.12, as follows:

4767.12 Cemetery ceasing to operate, abandoned cemetery, division’s duties

“When the division has information that the owner or person responsible for the operation and maintenance of a registered cemetery has ceased operation and is no longer reasonably maintaining the cemetery, the division may investigate the cemetery to determine the cemetery’s current status and to determine whether the cemetery has been abandoned. If the division finds substantial evidence that the cemetery has ceased operation, is abandoned, and a municipality or township has not taken control of such cemetery, the division may apply to the appropriate court of common pleas probate division to have the cemetery declared to be abandoned and for appointment of a temporary receiver or trustee. The order appointing the temporary receiver or trustee shall order the trustee or trustees of the endowment care trust of the cemetery to make distributions in accordance with this section. Upon the termination and winding-up of the temporary receivership or trusteeship the receiver or trustee shall transfer the cemetery and its assets and records to the new owner or operator, if one is named. If there is no new owner or operator at the time of winding-up then the court shall distribute such assets as may remain in its discretion and shall cause the records of the former cemetery to be delivered to the Ohio History Connection for archival or other purposes as the Ohio History

Connection may deem appropriate pursuant to its authority as set forth in Chapter 149 of the Revised Code.

The receiver shall be compensated by the owner or person responsible for the operation of the cemetery as indicated in Division records. If the owner or person responsible for the operation of the cemetery has no assets available to pay the receiver, the receiver shall only be paid from the income of interest and dividends in the endowment care trust being held pursuant to section 1721.21 of the Revised Code. The receiver may not invade the principal or capital gains of the trust.

When the owner or person responsible for the operation or maintenance of a cemetery has, either by choice or circumstance, ceased operation and has allowed the cemetery to be declared a nuisance as defined by applicable law, then that cemetery has been “abandoned” for the purpose of this chapter.”

2. The Task Force anticipates that there will be ever developing technologies for scientific research in preservation of grave goods and the disposition of “Human remains”.

Draft language attached as Exhibit B.

C. Registration, Record Keeping and Technology

1. The Task Force determined that recommending a centralized cemetery database may be too far reaching in the near term, but that scientific and historic interests should be recognized and taken into account in creating such a database. In the future the General Assembly may, in looking into such an initiative, want to consider the method, medium and place for storage of cemetery records for public access due to their historical and genealogical value.
2. Enact the Division’s proposed Revised Code Section 4767.09 (E), as follows:

“(E) Electronic or paper cemetery records pertaining to interment, entombment or inurnment right owners and interment, entombment or inurnment records indicating the deceased name, place of death, date and location of the interment, entombment or inurnment shall be maintained in the cemetery's office. Records may be maintained in an electronic format so long as the electronic copies are true copies of all the original documents.”

Draft language attached as Exhibit B.

D. Maintenance

1. Enact the Division's proposed Revised Code Section 4767.09, as follows:

4767.09 Maintenance and record keeping

(A) The owner or person responsible for the operation of the registered cemetery shall provide reasonable maintenance of the cemetery property and of all lots, graves, mausoleums, scattering grounds and columbaria in the cemetery based on the type and size of the cemetery, topographic limitations, and contractual commitments with consumers.

(B) In determining whether the owner or person responsible for the operation of the registered cemetery provides reasonable maintenance of the cemetery property, the Division or commission may consider:

- (1) the size of the cemetery;
- (2) the type of cemetery;
- (3) the extent and use of the financial resources available;
- (4) the contractual obligations for care and maintenance of the owner or person responsible for the operation of the registered cemetery;
- (5) the standard of maintenance of one or more similarly situated cemeteries; in determining whether a cemetery is similarly situated, the division shall consider the cemetery's size, type, location, topography, and financial resources;
- (6) the minimum maintenance guidelines;
- (7) other relevant sections of the Revised Code related to cemetery maintenance;
- (8) any advisory letters or fines previously issued pursuant to section 4767.08(D) of the Revised Code.

(C) Reasonable maintenance by the owner or person responsible for the operation of the registered cemetery shall not preclude the exercise of lawful rights by the owner of an interment, inurnment, or entombment right, or by the decedent's immediate family or other heirs, in accordance with the rules and regulations of the cemetery or other agreement of the cemetery authority.

(D) Cemeteries dedicated as a nature preserve or cemeteries, including sections within a cemetery, that are specifically designed and established as natural burial sites and are intended to be maintained in a natural condition at the visible surface grade of the facility are not subject to the maintenance requirements of this section. Reasonable maintenance and repairs by the owner or person responsible for the operation of the registered cemetery shall be done in accordance with the rules and

regulations of the cemetery, an independent conservation plan, or the cemetery master plan.

2. Enact the Division's proposed Revised Code Section 4767.12, as follows:

4767.12 Cemetery ceasing to operate, abandoned cemetery, division's duties

When the division has information that the owner or person responsible for the operation and maintenance of a registered cemetery has ceased operation and is no longer reasonably maintaining the cemetery, the division may investigate the cemetery to determine the cemetery's current status and to determine whether the cemetery has been abandoned. If the division finds substantial evidence that the cemetery has ceased operation, is abandoned, and a municipality or township has not taken control of such cemetery, the division may apply to the appropriate court of common pleas probate division to have the cemetery declared to be abandoned and for appointment of a temporary receiver or trustee. The order appointing the temporary receiver or trustee shall order the trustee or trustees of the endowment care trust of the cemetery to make distributions in accordance with this section. Upon the termination and winding-up of the temporary receivership or trusteeship the receiver or trustee shall transfer the cemetery and its assets and records to the new owner or operator if one is named. If there is no new owner or operator at the time of winding-up then the court shall distribute such assets as may remain in its discretion and shall cause the records of the former cemetery to be delivered to the Ohio History Connection for archival or other purposes as the Ohio History Connection may deem appropriate pursuant to its authority as set forth in Chapter 149 of the Revised Code.

The receiver shall be compensated by the owner or person responsible for the operation of the cemetery as indicated in Division records. If the owner or person responsible for the operation of the cemetery has no assets available to pay the receiver, the receiver shall only be paid from the income of interest and dividends in the endowment care trust being held pursuant to section 1721.21 of the Revised Code. The receiver may not invade the principal or capital gains of the trust.

When the owner or person responsible for the operation or maintenance of a cemetery has, either by choice or circumstance, ceased operation and has allowed the cemetery to be declared a nuisance as defined by applicable law, then that cemetery has been "abandoned" for the purpose of this chapter.

Draft language attached as Exhibit B.

E. Enforcement

1. Expanded compliance authority for the Ohio Cemetery Dispute Resolution Commission by enacting the following proposals:

4767.08 Conduct of investigations.

Enact a new Paragraph (D) to read as follows:

If, as a result of an investigation or after a hearing held pursuant to 4767.07, the commission or the superintendent finds a violation of section 4767.09 of the Revised Code, an advisory letter shall be issued. If a cemetery is advised of a second violation within nine consecutive months, the cemetery shall be fined \$100. Each additional violation found within the nine consecutive months shall result in a fine of \$100. For purposes of this section, multiple complaints concerning maintenance within the same ten day period shall constitute a single violation. All fines collected pursuant to this section shall be credited to the cemetery grant program, created in the state treasury under section 4767.13 of the Revised Code.

2. Criminal Offenses and Penalties:

The Task Force considered the problems of vandalism of cemetery monuments, headstones, fences and other facilities as well as the morally repugnant offenses of desecration of actual graves and the abuse of corpses buried in them. The Task Force agreed on the importance of protecting all burial sites—as well as above ground mausoleums, niches, vaults and the like—against vandalism and desecration by vigorous enforcement of the statutes that criminalize those acts. All cemeteries' tombstones and monuments speak to the individuality and dignity of the people interred in them and for the culture and history of their communities. These monuments tell stories that often reveal much about history, the arts, religion, and even of contemporaneous economic, social and political conditions. While cemeteries do not necessarily need to be maintained in pristine condition they should be respected and protected from overt destruction or even slow but purposeful degradation.

Cemetery vandalism is neither a current phenomenon nor a matter of strictly local interest. It is a matter of state-wide concern that merits a state-wide legislative response. As shown by Task Force deliberations, the fiscal issue most consistently confronting cemetery operators is the criminal theft of metals and ornamental objects for which there is a secondary market at scrapyards, despite previously enacted regulations intended to combat this practice. Repairing broken monuments or replacing stolen commemorative devices represent major expenses for cemetery operators. Allied groups such as veterans and patriotic organizations are similarly

affected. Sometimes costs devolve on to family members. Damages or losses often go unrepaired, thus visibly degrading a community's cultural and historic identity. Most cemeteries lack the financial resources to cope with such malicious destruction.

During lengthy discussions, members of the Task Force expressed frustration with the apparent inefficacy of current criminal sanctions in Ohio law to deter vandalism, cemetery theft and the subsequent sale of funerary goods or human remains. Increasing the penalty level of misdemeanor provisions now in Revised Code Section 2927.11 is one option the Task Force discussed. But such amendments can be diluted by the exercise of both prosecutorial and judicial discretion. Prosecuting Attorneys must manage the limited time and resources of their offices as well as those of other parts of the correctional system, when weighing full prosecution as opposed to a negotiated plea. The Task Force acknowledges that cemetery vandalism and thefts will be balanced against arguably more serious violent offences. The Task Force likewise understands that constitutionally independent discretion is involved in criminal sentencing decisions as well, where alternative sentencing may often be preferable to incarceration, especially for non-violent offenders.

On balance then, the Task Force recommends that the General Assembly maintain the present criminal code provisions as they relate to classification of vandalism and related offenses as misdemeanors that may be stepped-up to felony crimes should the monetary value warrant. The Task Force recommends that the General Assembly clarify that such misdemeanors may be escalated to felony class crimes in the event of recidivist offenses by the same individual and look to the federal Native American Graves Protection and Repatriation Act for guidance on transport and trafficking of funerary goods or human remains.

Since the evidence received by the Task Force shows that the fiscal burden of vandalism and related cemetery crimes falls most often and most heavily on townships, the Task Force further recommends that the General Assembly explore ways to encourage a collaborative effort between the Ohio Prosecuting Attorneys Association, the Ohio Township Association, and similar stake holders to make cemetery vandalism more of a targeted local priority.

Beyond the matter of criminal penalties, the Task Force was in strong agreement that education may prove the most effective path toward decreasing incidents of cemetery vandalism and desecration. Therefore, in the wake of this report the Task Force urges various stakeholder groups to come together to discuss how such outreach efforts could be undertaken and what methodologies and resources would be most appropriate. These parties might include the Ohio Cemetery Dispute Resolution

Commission, the Ohio Cemetery Association, the Ohio Municipal League, the Ohio Genealogical Society and the Ohio History Connection. The Task Force concludes that while it has made recommendations on the criminal enforcement of offenses that impede cemetery operations, these proposals may be perceived as policy statements. The Task Force members hope that the recommendations will encourage greater analysis and communication among affected interested parties.

F. Funding

1. Township Merchandising:

The Task Force encourages the General Assembly to enact the amendment to Revised Code 517.16 as it was introduced in House Bill 382, of the 126th General Assembly, a copy of which is provided below.

That bill would have provided parity for townships to sell items of merchandise material to their primary business mission to the same or a substantially similar extent as the authority that already exists for municipal corporations. The Task Force, in making this recommendation, wishes to emphasize that the authority proposed is permissive rather than mandatory. Township trustees would not be required to make such sales nor would persons wishing to inter decedents in a township cemetery be required to purchase such goods from that township. No specific inventory of merchandise items would be required. The intent is to maintain an “open market” in such goods. This proposal also seeks to recognize private property rights in monuments, headstones and other memorials purchased and placed by the owners of burial plots by excluding them from the listing by illustrating “cemetery-related items”. The Task Force believes that all townships should have the ability to sell cemetery merchandise, regardless of whether a township has adopted limited home rule.

Enact new Revised Code Section 517.16 as follows:

“A board of township trustees may sell “at need “and “pre-need” cemetery-related items. All revenue received from their sale shall be used to provide for the care and maintenance of any township cemetery in that township, in the manner approved by the board. As used in this section, “cemetery-related items” includes, but is not limited to, monuments, vaults, outer burial containers, markers, head stones and urns, but excludes burial lots, and existing and privately placed monuments headstones, markers memorial structures and memorial embellishments on privately owned burial plots.”

2. Right of Re-Entry

- a. The Task Force recommends that Revised Code Section 517.07 be amended to grant Ohio Townships the right of re-entry for burial plots for which the deed of sale was executed prior to July 24, 1986, and is unoccupied, provided that the township first complies with the notice requirements provided in Revised Code Section 517.07(C) to perfect its right of re-entry.
- b. The Task Force also recommends that once a township has perfected its right of re-entry to a burial plot by compliance with Revised Code Section 517.07, then the township be vested with exclusive discretionary authority to re-sell the lot to a new purchaser so long as such sale is made at or below the market rate for such plots provided for in the regulations established pursuant to Revised Code Section 517.06 in effect at the time of sale.

3. Create and authorize a grant program as proposed by the Division in Revised Code Section 4767.13, as follows:

4767.13 Grant program

(A) There is hereby created in the state treasury a cemetery grant fund. The general assembly shall initially appropriate to the cemetery grant fund "X" dollars (amount to be determined upon fiscal analysis) from the Cemetery Program operating fund balance. Thereafter, one dollar of every two dollars and fifty cents of each fee collected for a burial permit by the division shall be credited to the cemetery grant fund. The division shall use it in advancing grants to registered cemeteries, except for for-profit cemeteries, to defray the costs of the maintenance of the cemetery or the training of cemetery personnel in the maintenance and operation of cemeteries. Such grants shall be made according to rules established by the commission under the procedures of Chapter 119. of the Revised Code. No more than eighty percent shall be paid out of that fiscal year's appropriation made for the purpose of the cemetery grant fund.

(B) The director of commerce, by rule adopted in accordance with Chapter 119. of the Revised Code, may increase the amount of total grants paid out in any one fiscal year if the director determines that the total amount of funds generated exceeds the amount of funds the division needs to carry out its powers and duties under this section. If the director has increased the total grants paid out in a fiscal year under division (A) of this section, the director may later lower it to the amount specified in division (A) of this section if, in any year, the director determines that the total amount of total grants paid out at the increased amount depletes the amount of funds the division needs to carry out its powers and duties under this chapter.

(C) For the purposes of this section “maintenance” means the care of a cemetery and of the lots, graves, crypts, niches, mausoleums, memorials, and markers therein, outside of the reasonable maintenance standard set forth in section 4767.09 of the Revised Code, to include but not limited to: (a) the cutting, trimming and removal of trees; (b) repair of drains, water lines, roads, fences, and buildings; and (c) payment of expenses necessary for maintaining necessary records of lot ownership, transfers, and burials.

4. Consider authorizing a continuous tax for townships as has been introduced in House Bill 576 of the 130th General Assembly by Representative Green.

G. General Review of Proposed Statutory Alignments

1. Revised Code Chapter 4767 modernization

During testimony the Division of Real Estate and Professional Licensing presented a draft modernization of Revised Code Chapter 4767. The proposed changes were the outcome of multiple discussions with stakeholders such as the Ohio Township Association, the Ohio Cemetery Association, the Ohio Municipal League and the Ohio Catholic Conference. Upon review, the Task Force found that the proposed changes would bring welcome updates to the regulation of cemeteries in Ohio and the Task Force supported the proposed changes as presented along with additional changes as noted in this report. The proposed modernization of Revised Code Chapter 4767, including the recommendations of the Task Force, is attached to this report as Exhibit B.

2. Parity between township and municipality cemetery Revised Code Chapters

3. Currently, municipality cemeteries have the option of selling cemetery merchandise. Pursuant to Revised Code Chapter 517, townships do not have the same option. During testimony the Ohio Township Association requested parity with respect to this issue. The Task Force encourages the General Assembly to enact the amendment to Revised Code 517.16 as it was introduced in House Bill 382, of the 126th General Assembly, a copy of which is provided in this report under Section F – Funding, Paragraph 1 – Township Merchandising. Updates to Revised Code Sections 1721.21 and 1721.211

The Division of Real Estate and Professional Licensing also presented updates to Revised Code Sections 1721.21 (Establishment of endowment care trust) and 1721.211 (Preneed cemetery merchandise and services contract). These updates were requested by the Ohio Cemetery Association in conjunction with discussions on Revised Code Chapter 4767. The updates would clarify that the Ohio Uniform Prudent Investors Act is a permissible investment standard under both of those sections of the Revised Code. In a market where trusts do not earn as many dividends or as much income, this change would provide a more reasonable investment standard for cemeteries maintaining such trusts. The Task Force supported the proposed changes along with addition changes as noted in this report

with respect to definitions. The proposed changes, including the recommendations of the Task Force, are attached to this report as Exhibit C.

4. Protected Groups

Protected groups were a frequent topic of discussion at the Task Force meetings. It was during these discussions that the Task Force drew the conclusion and adopted as its main tenet: All burial sites and human remains, regardless of historic period or culture, should receive the same level of protection and respect. It was this tenet that became the main thread in the deliberation of other topics as addressed in this report.

The Task Force also discussed at length Native American burial sites and unknown burial sites of undetermined origin that are discovered on private property. The time constraints faced by the Task Force and the natural tension between private property rights and interests in preserving all burial sites prevented a more thorough analysis that might have resulted in more specific recommendations. The Task Force was able to generally conclude that it would be beneficial to incorporate the Native American Graves Protection and Repatriation Act standards into Ohio's existing laws and that it would also be beneficial to create a reporting process for when an unknown burial site is discovered.

5. Bureau of Workers' Compensation

Cemetery operators in Ohio have approached the Bureau of Workers' Compensation seeking an amendment in scope rating that would not classify cemetery office and sales employees in the same risk group as those employees who are engaged in operational positions involving manual labor or the operation of heavy equipment. The two types of employees are currently placed in the same premium category, which is based on the significantly greater risk of workplace injury faced by the latter group. By placing office, sales and clerical employees in a premium group commensurate with their respective risks, the cemetery operators believe that they could realize a similarly significant reduction in premium costs.

The Ohio Cemetery Association's legal counsel and legislative agent are in direct contact with Administrator Buehrer on the issue. The Task Force considers it appropriate to note this issue as a matter of finance in this Report and Recommendation, but prefers to allow those with a direct financial interest to seek a resolution due to the fact that the issue is likely more complex than this summary might imply.

H. Issues raised that may exceed Task Force Capacity

1. Zoning:

This is a matter of local concern under Ohio law that the Task Force refrained from addressing due to the limitations placed upon state involvement in matters of local concern that are found in Article XVIII of the Ohio Constitution, §§ 3, 7 (Municipal

Home Rule); Article X of the Ohio Constitution § 1 (County Home Rule), and Revised Code Chapter 519 (Limited Home Rule Townships).

2. Environmental Issues:

The environment is already the subject of extensive regulation on both state and the federal levels. Those regulations address questions of water, contamination, remediation, impact analysis and other matters in exhaustive detail. The Task Force determined that a competent review of that volume of regulations within the time allotted by the General Assembly would not yield a productive response to its mandate.

3. Private Property Rights & Regulatory Taking Issues:

The matter of balancing private property rights with empathy for descendants of the dead interred in cemeteries on private property and others concerned with history and heritage issues was one the Task Force took seriously and to which it devoted considerable time and thought. There are many such cemeteries in Ohio, with many dating to the early decades of Ohio's statehood and there are others, like those of Native Americans, which are unknown today but go back much farther in time than the pioneer settlements or even recorded history.

Caught between the interests of descendants, scientists, genealogists, and archaeologists in preserving such burial sites and the advance of present day economic development that erodes preservation are the rights of the individual landowners on whose property such sites lie. The Task Force made considerable efforts to reconcile development and the interests of private landowners with those of family descendants or scientific, historic and genealogical communities, all seeking to learn from, experience and preserve such burial sites.

Task Force discussions ranged from seeking ways for burial sites threatened with development to have their remains and grave goods respectfully relocated to finding ways to allow non-owners some form of access to sites for purposes that include scientific study, recording historical and family information, and to offer reverence to deceased ancestors.

In the end, the Task Force was collectively unresolved on what to recommend to the General Assembly on the issue of non-owner access to privately held lands.

It seems feasible that existing options can be used, with relatively little legislative action required, to allow access subject to circumstance-specific conditions. A landowner is reasonably concerned with risk management in allowing access to their property. A person or organization seeking access should, as a result, expect a landowner to control access through the vehicle of an easement or a Right-of Entry that controls time, means and route of access; waives liability and indemnifies the owner against risk of loss; and requires restoration of the physical site if damages are caused by the entry. Agreements, similar to those embodied in the Historic Façade or

Farmland Preservation easements that are now available appear to be good models from which to begin.

Another possible concept which would provide a financial incentive for an owner's cooperation in making a site publically accessible may be to authorize tax abatement on an historic burial site. This may not be an attractive incentive, however, since in some states where it is available there has been little or no use made of it. The Task Force suspects that this may result from expensive pre-conditions to abatement, such as a stake survey to delineate the area involved. While a survey would benefit all, the cost of it has to this point appeared to fall solely on the private owner. If the cost of survey is high and the value of abatement is low, then there is little or no incentive to the owner since a straight-line amortization through the abatement granted may simply take too long to provide a benefit.

The Task Force recommends that this issue be isolated and subjected to much greater scrutiny at the policy level on issues such as what rights might be negotiable and whether mandating such arrangements would constitute a public taking of private property.

With respect to the discovery of unmarked remains and grave goods, as well as transport and trafficking in them, the Task Force recommends that the General Assembly consider the provisions in the federal Native American Graves Protection and Repatriation Act for guidance on standards that may possibly be adopted as rules for use in Ohio. A review of current Ohio cemetery laws shows a gap concerning what steps should be taken when encountering a previously unanticipated burial site in a non-federally funded project. The Task Force encourages the General Assembly to conduct a more in-depth discussion on creating appropriate processes to be followed when such a burial site is encountered. A model for such a process that may be amenable to adaptation in Ohio now exists at the federal level.

Resources consulted on the topics of burial sites on private property, Native American unmarked remains and grave goods, and tax or other financial incentives for reporting and preservation included efforts made by other states, particularly those with borders contiguous to Ohio. A compendium of codes gathered from the Internet or direct contact with a particular state on this issue is attached as Exhibit D. Also available on the topic is an article published by the University of Alabama School of Law entitled: "Grave Matters: The Ancient Rights of the Graveyard" by Alfred L. Brophy. A copy is available at this web-link: <http://ssrn.com/abstract+777747>.

Acknowledgments

The members of the Cemetery Law Task Force gratefully acknowledge those whose efforts, input and assistance provided during the course of its deliberations made this Report and Recommendation possible.

- The staff of the Ohio Division of Real Estate and Professional Licensing:

Ms. Laura A. Monick, Registration and Resolution Section Chief, who was instrumental in keeping the materials received by the Task Force well organized, who maintained the minutes of our meetings, kept track of motions made, and who provided critical background information on the current codes regulated by the Division; and

Mr. Kelly J. Neer, External Auditor, who helped set up the meeting and hearing spaces.

- Armstrong and Okey Reporting Services, whose representatives Ms. Rosemary Anderson, Ms. Catherine Passmore, Ms. Julianna Hennebert, Ms. Valerie J. Sloas, and Ms. Bobbie McGraw recorded transcripts of all our meetings and hearings, thereby assuring our compliance with the Ohio Open Meetings and Public Records Acts.
- The Ohio Department of Commerce, Division of Real Estate and Professional Licensing and the Ohio Building Authority, both of which graciously provided comfortable and technologically well-appointed meeting and hearing spaces on the 22nd and 19th floors in the Riffe Center for Government and the Arts.

APPENDIX

- I. Meeting Minutes
- II. Stakeholder Testimony & Written Comments
- III. Exhibits
 - a. Spreadsheet on Agreed Priority Focus Areas
 - b. Update Proposed by the Division of Real Estate and Professional Licensing in the Department of Commerce for Ohio Revised Code Chapter 4767
 - c. Text Amendments Proposed for Ohio Revised Code §§ 1721.21 and 1721.211
 - d. Spreadsheet on Private Property Rights Treatment in Other State Codes

Appendix I

Ohio Cemetery Law Task Force Meeting Minutes

**MINUTES OF THE MEETING OF THE
OHIO CEMETERY LAW TASK FORCE**

77 S. High Street, 22nd Floor, Hearing Room
Columbus, OH 43215-6133

January 24, 2014
10:00 a.m.

I. Preliminary Matters

Anne M. Petit, Superintendent of the Ohio Department of Commerce, Division of Real Estate & Professional Licensing, called the meeting to order and welcomed the task force members.

Roll Call: Laura Monick conducted roll call.

Present: Daniel Applegate, Stephen George, Hon. Keith G. Houts, Dr. John N. Low, Hon. Cory Noonan, Anne M. Petit, Jay Russell, David Snyder, James Turner, James Wright, Division Staff Attorney Laura Monick.

Absent: Patrick Piccininni

Review of Authorizing Statute: Allen County Commissioner Cory Noonan read into the record the authorizing statute of the Ohio Cemetery Law Task Force (130th GA, HB 59).

Introductions: David Snyder, an archeologist with the Ohio Historical Preservation Office; Cory Noonan, Allen County Commissioner; Stephen George, senior advisor with the Ohio Historical Society; Keith Houts, Jefferson Township Trustee, Mercer County; Anne M. Petit, Superintendent of the Division of Real Estate and Professional Licensing and Executive Secretary of the Ohio Cemetery Dispute Resolution Commission; James Turner, legal counsel for the Ohio Department of Natural Resources; Daniel Applegate, President of Arlington Memorial Gardens; James Wright, Ohio Cemetery Dispute Resolution Commissioner; Dr. John Low, assistant professor with the Ohio State University Newark, and a citizen of the Pokagon Band of Potawatomi Indians; Jay Russell, Trustee and cemetery committee member, Ohio Genealogical Society.

Election of Co-Chairs:

Mr. Turner opened the discussion of the election of co-chairs, as called for in the statute, and began the process by nominating Ms. Petit. Ms. Petit accepted the nomination and Dr. Low seconded the nomination. There was no additional discussion and no objections or further nominations. The nomination passed unanimously with Ms. Petit abstaining from the vote.

Mr. Wright then nominated Mr. Noonan as co-chair; Mr. Turner seconded the nomination. Mr. Noonan accepted the nomination. There was no additional discussion and no objections or further nominations. The nomination passed unanimously with Mr. Noonan abstaining from the vote.

Adoption of Procedural Rules:

Ms. Petit proceeded to adoption of procedural rules. Mr. Turner moved to adopt Roberts Rules of Order and Mr. Russell seconded the motion. The motion passed unanimously.

Ms. Petit then asked Mr. George if he would accept the task of compiling and crafting the recommendations of the task force, when the body reaches that point, into the report required under the statute. Mr. George accepted. Dr. Low seconded the motion. The motion passed unanimously.

II. New Business

Mr. Noonan moved the task force into new business and discussion on the focus and direction of the task force and how to proceed in moving forward. Mr. Piccininni arrived during these discussions.

The task force members' discussion included the following:

- Recommendations of policy that graves, cemeteries and the deceased require respectful treatment and what "respectful treatment" means; outreach and education to organizations in Ohio on treatment of deceased and care/protection of cemeteries; the opportunity to showcase Ohio's preservation of cemeteries;
- Existing provisions of the Ohio Revised Code and Administrative Code; the need to conduct a review of current law to identify where the task force may conclude there are deficiencies; whether existing law needs to be streamlined to reduce redundancy and to use the task force as an opportunity to assess the current effectiveness of laws and how to ensure the law is adequate in the future. This would also include a review of other states' models and Federal regulations including the Native American Graves Protection and Repatriation Act and Veterans' guidelines.
- The need to define the term "abandoned" as it pertains to burial sites.
- The methodology and potential usefulness of a central depository of burial locations throughout the state. This along with a process to report/submit locations upon the discovery of a burial site. The Ohio Genealogical Society has been conducting an inventory of as many cemeteries as the group is able.
- Providing protection/preservation of Native American burial sites and other remains/site/memorials of cemeteries located on private land and taking into consideration access to the cemetery and burial sites, qualifications of individuals wanting to restore memorials, and guidelines on proper restoration methods.
- The Ohio Cemetery Dispute Resolution Commission and providing the Commission with actual authority to effect real protection and the ability to both help improve cemeteries and help families; create maintenance standards for active cemeteries; some methodology that helps functioning of cemeteries. Increasing education offered by the Commission
- Governmental/Political Subdivisions: providing more flexibility for municipalities and townships, education so they have training on caring for cemeteries and possible funding.
- Transition issues such as: growth, economy, and consumer behavior; Ohio Department of Transportation access with respect to turn lanes and changes to roadways or right of ways

next to cemeteries and how to deal with safety of motorists' ingress and egress from cemeteries; columbarium and niches being added inside churches or on church grounds, and the future implications for churches that cease to exist.

The group determined that testimony from groups whose work and/or members are guided by or subject to Ohio's current laws, regulations, and rules is vital to the work product of this task force. The task force therefore will invite in person testimony or written comments to be submitted in lieu of testimony.

The members discussed numerous groups that represent an interest in the laws, regulations and rules pertaining to cemeteries/burial sites. A partial list, to be expanded as members may think of others, was compiled. That initial list includes: Ohio Township Association, Ohio Cemetery Association, Ohio Municipal League, Catholic Conference of Ohio, Ohio Jewish Federation, County Prosecuting Attorneys Association, a green burial cemetery, County Coroners, Ohio Home Builders Association/Developers, Ohio Historical Preservation Office (about the databases that they maintain), Veterans' Services, a large historical cemetery (perhaps Spring Grove or Lakeview - with respect to how to grow education), Ohio Chapter of Association of Gravestone Studies (Beth Santore is the head of this group), National Parks (Native American Repatriation), Division of Real Estate and Professional Licensing (Cemetery Commission), and Ohio Funeral Directors Association. Dr. Low added the Ohio Historical Society, which is currently running a program involving ten historic tribes of Ohio. Sharon Dean is the contact through which the tribes involved may be contacted.

The co-chairs will draft a letter inviting the interested parties to the next meeting. Ms. Petit committed to having those letters out, at least via electronic mail, by January 31 so that groups contacted may have time to respond and prepare. A copy of that letter shall be included in the minutes of this meeting for record keeping purposes (Attachment A).

Next Meeting Dates:

February 21, 2014 at 9:30 am

March 7, 2014 at 9:30 am

April 4 2014 at 9:30 am

III. Adjournment

Mr. Turner moved to adjourn. Jay Russell seconded the motion, which passed unanimously.

Respectfully submitted,

Laura A. Monick

Staff Attorney, Ohio Division of Real Estate & Professional Licensing

**MINUTES OF THE MEETING OF THE
OHIO CEMETERY LAW TASK FORCE**

77 S. High Street, 19th Floor, Room 1948
Columbus, OH 43215-6133

February 21, 2014
9:30 a.m.

I. Preliminary Matters

Co-chair Cory Noonan, called the meeting to order and welcomed the task force members.

Roll Call: Laura Monick conducted roll call.

Present: Daniel Applegate, Stephen George, Hon. Keith G. Houts, Dr. John N. Low, Hon. Cory Noonan, Anne M. Petit, Jay Russell, David Snyder, James Turner, James Wright, Division Staff Attorney Laura Monick.

Absent: Patrick Piccininni (arrived later in meeting)

Review of Meeting Minutes: Co-chair Petit opened the floor for discussion of the minutes of the January 24, 2014 meeting of the Ohio Cemetery Law Task Force. There being no discussion, Mr. Turner moved to approve the minutes. Mr. Wright seconded the motion. The motion passed unanimously.

II. Old Business

Co-chair Petit opened the floor for discussion of old business. There being no discussion the task force moved onto new business.

III. New Business

Mr. Piccininni arrived as Co-chair Noonan moved the task force into new business. Co-chair Noonan welcomed the interested parties to the task force meeting, requesting that each party confine to a fifteen minutes testimony on their thoughts and concerns about current cemetery laws in the State of Ohio and that after their testimony there would be time for the task force members to ask questions.

Ohio Archaeological Council (OAC) – represented by Alan Tonetti, Trustee and Chair of the Government Affairs Committee, and Jarrod Burks, Trustee and Past President. See written testimony attached.

Alan Tonetti began the presentation discussing the mission of the Ohio Archaeological Council and its support of revisiting Ohio law to better protect unmarked and abandoned cemeteries, regardless of their age; the importance of defining the terms “abandoned” and “human remains,” and previous efforts in Ohio concerning the treatment of buried human remains. Those previous efforts initially resulted in 37 points of agreement between stakeholders, some of which were incorporated into a comprehensive historic preservation bill introduced into the General Assembly in 1989 which did not pass. Then in 2002, a House Select Committee studied the effectiveness of Ohio’s historical program and produced a report recommending examining Ohio’s cemetery laws. Subsequently, a

stakeholders' meeting issued a report making a number of recommendations with several underlying themes concerning abandoned cemeteries and cemetery maintenance and preservation, among others. The OAC would like the task force to examine the protection of human burial places including establishing a process for reporting human burial places, creating a central register of human burial places, establishing standards for the excavation and removal of human burials when they cannot be preserved in place and increasing criminal penalties for noncompliance with the law.

Jarrold Burks then made a short power-point presentation on methods the OAC has employed to find abandoned and lost burials; including maps, aerial photographs, records, magnetometers, electrical resistance meters, and ground penetrating radar.

During questioning the OAC supported a definition of "human remains" to include "any stage of decomposition" and supported the concept of one set of cemetery regulations located in one place within the Revised Code. The OAC also encouraged the task force to look at what other states have done, in particular Indiana. Finally, the OAC discouraged using the Native American Graves Protection and Repatriation Act (NAGPRA) as a model. In conclusion, Mr. Tonetti stated that he would forward a copy of the 37 points of agreement he referenced in his testimony.

The Ohio Chapter of the Association of Gravestone Studies – represented by Beth Santore, Chair. See written testimony attached.

Ms. Santore began the presentation discussing that the organization studies grave markers of all periods and styles from both a historic and artistic perspective. Many Association of Gravestone Studies members work with various states and are aware of stricter, more robust laws in other states and would like to see similar laws implemented in Ohio. The members are primarily concerned with cemetery preservation and laws that enhance historic preservation that would include remedies and stricter prosecution to deter vandalism. Ms. Santore then highlighted Indiana's maintenance definition and the Indiana Pioneer Cemeteries Restoration Project that includes a "Cemetery & Burial Registry" database; Pennsylvania's Cemeteries and Graveyards Protected Act; and Vermont's 2010 cemetery laws publication.

The Ohio Chapter of the Association for Gravestone Studies would like to see outreach and education for groups interested in cemetery preservation, definitions of cemetery terminology, an equivalent to Indiana's "Cemetery & Burial Registry" database, laws setting care and maintenance requirements for all cemeteries, and laws providing stronger punishments for vandalizing cemeteries. During questioning Ms. Santore explained that in Oregon, simple signage in historic cemeteries has helped deter vandalism and that she was unaware of preservation of cemeteries having caused more vandalism. Ms. Santore does receive emails every month from people asking what they can do to help with cemeteries that have been vandalized and who they can contact to press charges.

Ohio Historical Society – represented by Sharon Dean, Director of American Indian Relations. See written testimony attached.

Ms. Dean began the presentation discussing the importance of Ohio's Native American archaeological and historical sites; many of which contain human remains. In working with the federally recognized tribes historically connected to Ohio, Ms. Dean expressed that many tribes would like their ancestors reburied in Ohio, where they once lived. However, tribes would like the burials secure from disturbance or desecration and tribes are concerned that current law in Ohio

won't protect the burial sites. Ms. Dean pointed out that The American University Washington School of Law has begun compiling burial protection laws by state. Ms. Dean recommended the task force look to other states for a model that may work in Ohio, create standardized definitions related to burials and archaeological sites, and work directly with the tribes in this process. Ms. Dean stated that she would forward contact information for the Tribal historical preservation offices.

Ohio Department of Veterans Services (OVDVS) – represented by Jason A. Dominguez, Assistant Director/Chief of Staff. See written testimony attached.

Assistant Director Dominguez began the presentation detailing Ohio is home to approximately 900,000 veterans, the 6th largest veterans' population in the nation and the importance of the proper burial, recognition and honor of all veterans. ODVS maintains the Ohio Veterans Home Cemetery located in Erie County and Ohio Revised Code Chapter 5901 charges County Veteran Service Officers with some cemetery related duties. Mr. Dominguez then detailed the complaints received by the County Officers related to the proper care of veterans' graves and the fact that ODVS has no enforcement authority related to those complaints. He stated that The biggest issue that ODVS sees with respect to abandoned cemeteries is that townships are unable, financially, to take care of all of the cemeteries that contain veterans' graves. In addition, veterans located in family run private cemeteries are losing resources and funding and the families are no longer around. There are also continued problems with veterans' markers being stolen for scrap metal across the state. Mr. Dominguez also shared that his office is committed to passing along potential complaints to the Division and Ohio Cemetery Dispute Resolution Commission as they become aware of issues. ODVS would be interested in discussing the potential of increasing the penalty for stealing the grave markers from a veteran's tombstone.

Foxfield Preserve – represented by Sara Brink, Foxfield Preserve Steward. See written testimony attached.

Ms. Brink began her presentation detailing that Foxfield Preserve, a nature preserve cemetery, opened in the summer of 2008 and was founded by the non-profit conservation organization, The Wilderness Center. Foxfield Preserve performs natural burials and as a nature preserve holds to a different maintenance standard than modern cemeteries. The natural reforestation of the cemetery is guided by naturalists and healthy growth of the prairie is maintained through occasional prescribed fire. The cemetery is surveyed and plotted and families are provided with GPS coordinates to assist in locating gravesites. Foxfield preserve has consulted with organizations in Ohio and across the nation to help establish other nature preserve cemeteries. Ms. Brink expressed that there is concern with a cemetery using the term green burial but then not living up to the standards of green burial. She encouraged the task force to review the draft Conservation Burial Ground Standards being created by the Green Burial Council and to consider addressing standards for green burial in Ohio. Ms. Brink also promised to forward any updated information concerning the draft standards being created by the Green Burial Council.

Catholic Cemeteries of Ohio- represented by Rich Finn, Director of Cemeteries for the Catholic Diocese of Columbus. See written testimony attached.

Mr. Finn began his presentation expressing that within the Catholic faith the care and burial of the dead is a Corporal Work of Mercy and that helping families and caring for their burial places are more of a ministry rather than a business; although they have to operate it as a business. Mr. Finn recognized that the state of Ohio has been progressive in the regulation of cemeteries and that the

current structure appears to be working. He also recognized the valuable service the Cemetery Dispute Resolution Commission offers to consumers and cemeterians. Mr. Finn expressed that the organization has been actively involved in enacting prior cemetery laws and in serving on the Ohio Cemetery Dispute Resolution Commission. In addition, Mr. Finn detailed that his organization does have concerns regarding the vandalism and desecration of cemeteries and the desire to look for better deterrents; specifically Mr. Finn detailed the issue of bronze being stolen, the difficulty of receiving restitution to help repair/replace vandalized memorials and the availability of an appropriate penalty.

Ohio Cemetery Association – represented by Timothy C. Long, Ohio Cemetery Association Legislative Agent and Attorney. See written testimony attached.

Mr. Long began his presentation explaining that most changes to Ohio cemetery law have been generated from the cemetery industry itself; including the pre-need trust laws. He expressed that the Ohio Cemetery Dispute Resolution Commission is critical to providing resolution of complaints. Mr. Long continued by discussing the difference between funeral homes and cemeteries and the need to maintain separate regulations. Mr. Long recognized the organization's involvement with the effort to clean-up Ohio Revised Code Chapter 4767 and their support of many of the initiatives within the bill including maintenance standards. The Ohio Cemetery Association supports alkaline hydrolysis as an alternative to cremation or burial. The biggest problem identified over the last decade, according to Mr. Long, has been the Ohio Bureau of Workers Compensation rating cemetery salespersons as identical to grounds workers which can have rates ten times higher. He encouraged the task force to review and help address this problem that is adversely impacting cemeteries' financial situation.

The Ohio Department of Commerce, Division of Real Estate & Professional Licensing – represented by Laura A. Monick, Attorney and Chief of the Registration and Resolution Section. See written testimony attached.

Attorney Monick began by providing a brief overview of the Division's registration program for cemeteries in the state of Ohio including the number of currently registered cemeteries and operators. She then began discussion of the Ohio Cemetery Dispute Resolution Commission, the complaint process and the Commission's authority as provided in Ohio Revised Code Chapter 4767. Ms. Monick then delivered a brief overview of the draft changes being considered in Chapter 4767 by the Division. Those changes have been discussed with stakeholders and include a scheduled audit of endowment care and pre-need trusts at least once every five years, increased confidentiality of information collected during audits, revised subpoena power for the Commission and Superintendent, the ability to open complaints against cemeteries that should be registered, set maintenance standards, the ability for the division to request a court of common pleas to appoint a temporary receiver where the cemetery has ceased operation and no other entities have taken control, and the creation of a grant program.

The task force then requested that Ms. Monick be available at the next task force meeting to answer any questions the members might have after they had the opportunity to fully review the draft changes of ORC 4767 as provided.

The co-chairs then recognized the written testimony submitted by Linda Jean Limes Ellis and that a copy of the testimony was presented to each of the task force members. See written testimony attached. Discussion continued on inviting the Farm Bureau and the recognized tribal council

leaders to provide testimony and/or written comments and the approval for the Ohio Township Association to speak at the March 7th meeting.

The task force then discussed looking at legislation juxtaposed with various statements received from stakeholders and how and where the task force could propose a legislative solution. There was then a short debate about the cooperative relationship between townships and counties and whether or not that could affect the task force's recommendations. Finally, the task force briefly discussed the liability statutes with respect to monuments that are falling or loose.

IV. Adjournment

Mr. Piccininni moved to adjourn. Mr. Russell seconded the motion, which passed unanimously.

Respectfully submitted,

Laura A. Monick

Staff Attorney, Ohio Division of Real Estate & Professional Licensing

**MINUTES OF THE MEETING OF THE
OHIO CEMETERY LAW TASK FORCE**

77 S. High Street, 22nd Floor Hearing Room
Columbus, OH 43215-6133

March 7, 2014
9:30 a.m.

I. Preliminary Matters

Co-chair Petit called the meeting to order.

Roll Call: Laura Monick conducted roll call.

Present: Daniel Applegate, Stephen George, Hon. Keith G. Houts, Hon. Cory Noonan, Anne M. Petit, Patrick Piccininni, Jay Russell, David Snyder, James Turner, James Wright, Division Staff Attorney Laura Monick.

Excused: Dr. John N. Low

Review of Meeting Minutes: Co-chair Noonan opened the floor for discussion of the minutes of the January 24, 2014 meeting of the Ohio Cemetery Law Task Force. Mr. Turner noted an errant “n” on line 3, page 2 of the minutes. Mr. Turner then moved to approve the minutes of the January 24th meeting with such correction. Mr. Piccininni seconded the motion. The motion passed unanimously.

II. Old Business

Co-chair Noonan opened the floor for discussion of old business. Co-chair Noonan noted that the Ohio Farm Bureau was contacted and at this time they respectfully declined the invitation to provide testimony.

Mr. Turner then moved to amend his motion to be an approval of the February 21, 2014 minutes. Mr. Piccininni seconded the motion. The motion passed unanimously.

Co-chair Petit, on behalf of Mr. George, announced a change in staffing at the Ohio Historical Society. Ms. Dean left their employ prior to sending the contact information for the Tribal historical preservation offices. Mr. George and Dr. Low will now assist in finding contact information for the tribal leaders.

III. New Business

Co-chair Petit brought the task force into new business and welcomed Heidi Fought with the Ohio Township Association (OTA) to the meeting.

Ohio Township Association (OTA) – represented by Heidi Fought, Director of Governmental Affairs. See written testimony attached.

Townships in Ohio maintain over 2,400 cemeteries and take pride in caring for those cemeteries. Townships have specific requirements with respect to cemeteries as found in Ohio Revised Code Chapter 517. Primarily, funding is a huge issue. In their 2015-2017 requested legislative priorities, the OTA asked the General Assembly to address funding in two ways. A few years ago, then Representative Widener introduced legislation allowing townships to sell cemetery related items to bring in additional revenue if a township wanted to sell those items. This was House Bill 382 (126th GA). Municipalities currently can sell cemetery related items but townships cannot. The other funding piece noted in their requested legislative priorities is a grant program proposed under ORC Chapter 4767. The OTA supports the grant program and thinks is a great opportunity. The OTA would also ask the task force to look at defining “abandoned” or “burial ground.” These need clearer definitions because while they are mentioned in the Ohio Revised Code there are not current definitions. If the definitions would include large numbers of additional cemeteries then townships will need adequate funding to match. Another area for the task force to review is cemetery levies.

Currently, cemetery levies only can be five years in length but townships would like the ability to have a continuous levy option. With respect to maintenance schedules and standards, townships do have Ohio Revised Code Chapter 517 that generally speaks to cemetery maintenance. The OTA likes the current minimum requirements but understands, perhaps, the need for more and looks forward to working with the task force on this issue. The loss of funding to townships has greatly impacted townships and the OTA tries to provide education and training opportunities and would like to look at creating a training program as an option to specific maintenance standards. Finally, there is an Attorney General opinion on extinguishment of burial easement and re-selling of lots which states that Ohio Revised Code Section 517.07 only permits townships to re-sell lots on lots with deeds executed from July 24, 1986 forward. The townships would like the ability to re-sell lots that are older and where they can show that there is no existing family left.

During questioning the OTA supported the same text of ORC 517.07 and just removing the date restriction. If the date is removed then the OTA thinks it would be reasonable if some more protection measures were added concerning when a township could re-sell a burial right but ideally they would like that date restriction be removed. With respect to former House Bill 382, in 2005 there were several hearings in the House and sellers of cemetery related items opposed the language that would permit townships to sell cemetery related items. Co-chair Noonan requested that the OTA mesh proposed changes into Ohio Revised Code Chapter 517 and provide that electronically to the task force. The OTA emphasized that with respect to the proposed grant program, any grant amount would help and how many townships would apply would depend on whether townships took the time to apply. Townships know that grants are competitive and the OTA understands that a tiered process with restrictions on how often a township could apply for grant funds or placing a cap on grant amounts may be needed.

After some additional discussion of a potential grant program and townships selling cemetery related items, the task force moved forward with the agenda and began discussion about the American University Washington College of Law State Burial Laws Project. The task force had the opportunity to view the State Burial Laws Project website.

Discussion then began on the mission of the task force and what direction the task force wants to move with their process now that they have heard the testimony of many interested parties. Discussion included thoughts on broader goals, what format the task force's recommendations might take and how to organize the structure of the recommendations to help create a vision of how the State can move forward. Each member of the task force had the opportunity to provide their views on moving forward and as a group the task force decided that they would have the homework of reviewing the previous meeting minutes and testimony then come up with their own lists of broad categories they feel the task force should discuss. Co-chair Petit offered to work on compiling each member's list and then sending a master list back out to the task force members prior to the next meeting. It was then agreed that the master list could be the focus of next meeting agenda with the goal of setting out broad categories and then listing out under those broad categories more specific issues as identified by interested parties and the task force.

Next Meeting Dates:

April 4, 2014 at 9:30 am
April 28, 2014 at 9:30am

IV. Adjournment

Mr. Turner moved to adjourn. Mr. Russell seconded the motion, which passed unanimously.

**MINUTES OF THE MEETING OF THE
OHIO CEMETERY LAW TASK FORCE**

77 S. High Street, 22nd Floor Hearing Room
Columbus, OH 43215-6133

April 4, 2014
9:30 a.m.

I. Preliminary Matters

Co-chair Noonan called the meeting to order.

Roll Call: Laura Monick conducted roll call.

Present: Stephen George, Hon. Keith G. Houts, Dr. John N. Low, Hon. Cory Noonan, Anne M. Petit, Jay Russell, James Turner, James Wright, Division Staff Attorney Laura Monick.

Excused: Daniel Applegate, David Snyder, Patrick Piccininni

Review of Meeting Minutes: Co-chair Petit opened the floor for discussion of the minutes of the March 7, 2014 meeting of the Ohio Cemetery Law Task Force. It was noted that Dr. Low should be marked as excused.

Mr. Turner moved to approve the minutes of the March 7th meeting with the noted revision. Mr. Russell seconded the motion. The motion passed unanimously.

II. Old Business

Co-chair Petit opened the floor for discussion of old business. Co-chair Petit noted that based on the list provided by Dr. Low, twenty-three letters were sent inviting tribal leaders to attend the April 28, 2014 meeting or to provide written testimony. The ORC Chapter 517 draft language was received from the Ohio Township Association. In addition, an email from Gini Chandler, Wayne Twp. Trustee from Jefferson Co., OH was read into the record.

III. New Business

Stephen George arrived during discussion of new business.

Co-chair Noonan brought the task force into new business. Discussion commenced on the task force coming to a consensus on the topics that need to be addressed in any final recommendations made by the task force. In addition, the members acknowledged that there may be other topics where there is not a consensus but those topics may be issues that should be included in a separate section of the final recommendations so as to bring them to the attention of the legislature, should that body determine that any require further consideration or reexamination.

The task force then began a mapping exercise with open discussion on possible major topics, sub-topics and how to approach the sub-topics.

Main topics for discussion during mapping exercise:

1. Enforcement
2. Statutory Alignment

3. Registration
 - a. Cemetery vs. per burial
 - b. Issue of unmarked graves
4. Technology
5. Record Keeping
 - a. Importance of record keeping for cemeteries
 - b. Issue of no existing records due to issues such as flooding, fires, etc.
6. Maintenance
7. Definitions
 - a. Inactive
 - b. Abandoned
 - c. Natural Burial
 - d. Human Remains
 - To be considered:
 - i. Not limited by the passage of time
 - ii. Whether it needs to be a limited definition for certain sections of ORC
 - iii. Is it different for protected groups? Further research needed – see Indiana’s two definitions
 - e. Burial Site/Grounds – Further research needed – see Indiana
 - To be considered:
 - i. cremation
 - ii. degree of intentionality
 - iii. green cemeteries
 - f. Historically Significant vs. Archeological Site; Burial vs. Native American remains; Funerary Objects/Artifacts
 - g. Preservation
 - h. Protection
 - i. Restoration
 - j. Maintenance
8. Funding – One of the highest priorities
 - a. sources for funding
 - b. set standards for appropriations and equitable distribution
 - c. account for the spending
 - d. Provide townships funding to allow for selling merchandise

After initial discussion it was determined that the task force would save final discussion on funding for last so they would know which identified topics would need funding.

9. Protected Groups

- a. Is there a need to separate out American Indian protection/registration?
- b. Further research into OHS' historic preservation office and any currently available state, federal, private funding.
- c. Promoting collaborations with Native American groups and making it easier to work together.
- d. Further research into discovery/notification requirements when grave sites are found; similar to IN
- e. Discussion on a Native American Commission similar to IN to address future disposition/re-internment of remains and standards for re-internment

10. Preservation/Protection

- a. What does each mean and do the topics need to be separated out?
- b. Protection for burial artifacts and remains from antiquities/black market trades.
- c. Discussion commenced on different models such as a State trusteeship, land bank model, permitting cemeteries to return all or a portion of their grounds back to nature
- d. Can the differences be bridged with funding instead of using discussed models?
- e. Discussion on how canal property is handled (ODNR)

Final discussion centered on the next steps of the task force. It was determined that prior to discussing other topics, the task force needs to focus on solidifying definitions for the identified terms. Before the next meeting the task force requested that research be completed with respect to other jurisdictions' definitions in order to assist them in their discussion on April 28, 2014. Mr. Russell offered to assist the Division with that research.

Next Meeting Dates:

April 28, 2014 at 9:30am

May 16, 2014 at 9:30am

James Turner left at 1:00pm after the next meeting dates were set.

IV. Adjournment

Mr. Russell moved to adjourn. Mr. Houts seconded the motion. The motion passed unanimously.

**MINUTES OF THE MEETING OF THE
OHIO CEMETERY LAW TASK FORCE**

77 S. High Street, 22nd Floor Hearing Room
Columbus, OH 43215-6133

April 28, 2014
9:30 a.m.

I. Preliminary Matters

Co-chair Noonan called the meeting to order.

Roll Call: Laura Monick conducted roll call.

Present: Daniel Applegate, Dr. John N. Low, Hon. Cory Noonan, Anne M. Petit, Patrick Piccininni, Jay Russell, David Snyder, James Turner, James Wright, Division Staff Attorney Laura Monick.

Excused: Hon. Keith G. Houts, Stephen George

Review of Meeting Minutes: Co-Chair Petit opened the floor for discussion of the minutes of the April 4, 2014 meeting of the Ohio Cemetery Law Task Force. There being no discussion Mr. Turner moved to approve the minutes of the April 4th meeting. Mr. Russell seconded the motion. The motion passed unanimously.

II. Old Business

Co-Chair Petit opened the floor for discussion of old business. Co-chair Petit noted the correspondence provided to the task force members as received from Kathy Flayler, Manager of WillowView Cemetery Association and from Marcus Winchester, the Tribal Historic Preservation Officer for the Pokagon Band of Potawatomi Indians. Dr. Low requested that the task force permit tribes to submit testimony as they are able to supply the testimony. The task force agreed to hold the historic tribal discussion until later in the summer.

Discussion began on the duties of the Ohio Historic Preservation Advisory Board; the involvement of American Indians on that Board; and the difference between state and federally recognized tribes. The task force concluded that their focus should be on human remains without regard to ancestry in order to achieve the equal protection and treatment of all human remains, cemeteries and burial grounds. Dr. Low recommended that the task force consider proposing the incorporation of NAGPRA into state law, which gained consensus.

Mr. Turner then requested that the task force mission, in crafting recommendations, should remember the relationship between Revised Code and Administrative Code. Specifically, that details sometimes considered for inclusion in law may be more appropriate in the administrative code. The incorporation of federal law into the administrative code enables updating as federal law is updated. It was the recommendation of Mr. Turner that the task force's final recommendation should point out details that should be addressed through adoption of rules with discussion of impact; including the recommendation to incorporate NAGPRA by rule.

III. New Business

Co-chair Noonan brought the task force into new business and discussion began on definitions and reviewing terms as defined by other states.

The first term discussed by the task force was "abandoned." Discussion commenced on a lack of ownership or funding versus using a timeframe for the definition and the differences expressed in other states that Attorney Monick has researched. The task force considered a definition similar to the state of New York with respect to generality and then adding some timeframes plus adequate maintenance. The task force then

debated looking at abandonment from the point-of-view of legal abandonment, ownership issues, neglect (maintenance issues), or preservation.

The task force then agreed to move into discussion revolving around three main groups: upkeep/maintenance, groups of cemeteries, and protection. The first group discussed was maintenance and upkeep. The task force looked at whether registered and inactive cemeteries should be considered separately.

Discussion commenced on proposed revisions of ORC 4767.09 concerning maintenance as proposed by the Division during its testimony. The task force considered adding subparagraph (F) with tentative language to include: "no cemetery, burial ground or burial site whether registered or unregistered will be permitted to become a nuisance (threatens safety or welfare) as defined by applicable law". With respect to "reasonable maintenance" as written in the draft of ORC 4767.09, the task force clarified that a cemetery in a condition that would rise to the level of a nuisance is not reasonable maintenance. Discussion continued on codifying that Division staff could make nuisance referrals to local building authority with jurisdiction (see building code). With those additions, the task force agreed that maintenance would be defined using the proposal in ORC 4767.09. The idea was also proposed that the Division could offer an education program to cemeteries on record keeping.

The task force requested further research into nature preserves and green/natural burial definitions.

Co-chair Noonan excused himself at 12:20pm.

The task force then turned to the term "inactive." The task force debated inactivity as it relates to the selling of burial rights versus conducting internments and the purpose of defining inactive. Discussion then returned to abandonment and whether there can be abandonment of occupation, use, or responsibility. The task force then agreed that the definition of abandonment should include: failure to conduct operations and failure to maintain reasonable management by either choice or circumstance. The task force requested that Co-chair Petit and Ms. Monick work on drafting a definition of abandoned based upon meeting discussion and then reach out to the Ohio Township Association and the Ohio municipal League for feedback on the draft definition.

Finally, the task force began discussion of the definition for "human remains." After debating the definitions used by other states, the task force came to an agreement that the definition of human remains should include: any part of the body of a deceased human being in any stage of decomposition or state of preservation or a body that has been reduced by cremation or alternative disposition. The task force also concluded that the definition of "cremated remains" and "alternative disposition remains" should mimic the definitions from the state of Oregon and include: the remaining bone fragments from the body of a deceased human being after the act of cremation or alternative disposition is completed. The Division will also work to draft a definition of this term for consideration at the next meeting.

Next Meeting Dates:

May 16, 2014 at 9:30am

June 6, 2014 at 9:30am

IV. Adjournment

Mr. Piccininni moved to adjourn. Dr. Low seconded the motion. The motion passed unanimously.

**MINUTES OF THE MEETING OF THE
OHIO CEMETERY LAW TASK FORCE**

77 S. High Street, 22nd Floor Hearing Room
Columbus, OH 43215-6133

May 16, 2014
9:30 a.m.

I. Preliminary Matters

Co-chair Noonan called the meeting to order.

Roll Call: Laura Monick conducted roll call.

Present: Daniel Applegate, Stephen George, Dr. John N. Low, Hon. Cory Noonan, Patrick Piccininni, Jay Russell, David Snyder, James Turner, James Wright, Laura Monick on behalf of Anne M. Petit.

Excused: Hon. Keith G. Houts, Anne M. Petit

Review of Meeting Minutes: Co-Chair Noonan opened the floor for discussion of the minutes of the April 28, 2014 meeting of the Ohio Cemetery Law Task Force. There being no discussion Mr. Turner moved to approve the minutes of the April 28th meeting. Mr. Applegate seconded the motion. The motion passed unanimously.

II. Old Business

Co-Chair Noonan opened the floor for discussion of old business. The task force discussed whether they wanted to take motions on specific definitions or work towards drafting all the recommendations together. The taskforce agreed to finalize all of their recommendations in a draft document prior to entertaining motions.

Laura Monick presented Chief Glenna Wallace's (Eastern Shawnee Tribe of Oklahoma) written testimony that was originally offered to the Ohio Legislative Commission on the Education and Preservation of State History on May 13, 2010. Dr. Low stated that the written testimony from 2010 remains relevant today and asked that it be accepted by the task force. Mr. George moved to accept the written testimony of Chief Wallace. Mr. Turner seconded the motion. The motion passed unanimously.

Mr. Piccininni joined the meeting at 9:46 am.

The task force then moved onto definition of terms and discussed "abandonment". Mr. Turner presented his draft amendments to ORC 4767.12 to include a definition of abandonment. Discussion then moved to the topic of separate protection for family cemeteries on private property and whether the task force should look at increasing criminal penalties and creating a reporting process for discovery of remains on private property for protection of those remains. There was also discussion on incorporating NAGPRA by rule to provide notice requirements for ancestral remains.

The proposed definition of human remains was read into the record as "human remains means any part of the body of a deceased human being in any stage of decomposition or state of preservation or the remaining bone fragments from the body of a deceased human being that has been reduced by cremation or alternative disposition." There was no discussion as the task force agreed with the definition as presented.

The task force moved on to the proposed definition of maintenance; agreeing to the newly proposed additions of paragraphs F & G while taking out the words: "burial ground or burial site" and "building."

(F) Whether registered or unregistered, no cemetery, burial ground or burial site will be permitted to become a nuisance as defined by applicable law. Division staff is authorized to make nuisance referrals to local building authorities with jurisdiction over the cemetery, burial ground or burial site.

(G) For purposes of this section, a cemetery in a condition that would rise to the level of a nuisance is not considered reasonable maintenance.

The task force then deliberated over the term inactive and whether that would include when a cemetery is no longer selling burial rights or no longer conducting burials but where the cemetery is still being cared for by an operator. Mr. Applegate and Mr. Wright provided that the industry would consider a state of inactivity to be when there are no more interments; however, it would be possible for a "full" cemetery to discover land where they could put a columbarium and the cemetery would then be active again. After deliberating further, the task force concluded that at this time they would not define the term inactive unless it comes up in future discussions.

III. New Business

Co-chair Noonan brought the task force into new business and discussion began on natural burial, the Green Burial Council, the Federal Trade Commission rules on advertising "green," and current Ohio laws that relate to natural burials. The task force wants to encourage cemeteries to be able to offer services that consumers want currently and in the future.

The task force briefly talked about the Ohio Department of Natural Resources, Division of Natural Areas and Preserves having two nature preserve cemeteries. The task force requested more information on what the cost is to maintain those cemeteries and what the management program does to preserve the tombstones. This led to a dialogue on whether there was a way to define, identify and categorize a "history preserve" or whether ORC Chapter 149 and archeological sites is a vehicle to address historical cemeteries. The task force identified two items they may want to address with respect to historic cemeteries - how to recognize their existence and how to protect them. The task force requested more information on ORC Chapter 149 and agreed to table their discussion pending the requested information.

Finally, the task force determined that they will not include a definition for "natural burial" but will instead include a general recommendation that natural burials be permitted to remain legal as long as the natural burial does not violate health codes.

The task force next moved to record keeping. The task force recognized they would like to integrate record keeping in a way that is useful and connects all the different cemeteries. There was discussion on ORC 4767.12 additions to address how a receiver appointed under that statute would handle the cemetery records. Mr. Turner will present a draft at the next meeting. The task force agreed that a draft of ORC 4767.12 should be presented to the Ohio Township Association and Ohio Municipal League after the task force has had an opportunity to fully vet the changes being drafted.

Further discussion on record keeping included digitizing records: the cost and the proper way to store as current electronic storage options may become outdated. The task force determined that a recommendation for a centralized database may be too far reaching and therefore will include in their general recommendations that in the future the General Assembly may consider the method, medium and place for storage of cemetery records for public access due to the historical and genealogical value of those records.

Next Meeting Dates:

June 6, 2014 at 9:30am.

IV. Adjournment

Mr. Turner moved to adjourn. Dr. Low seconded the motion. The motion passed unanimously.

**MINUTES OF THE MEETING OF THE
OHIO CEMETERY LAW TASK FORCE**

77 S. High Street, 22nd Floor Hearing Room
Columbus, OH 43215-6133

June 6, 2014
9:30 a.m.

I. Preliminary Matters

Co-chair Petit called the meeting to order.

Roll Call: Laura Monick conducted roll call.

Present: Stephen George, Dr. John N. Low, Hon. Cory Noonan, Anne M. Petit, Patrick Piccininni, Jay Russell, David Snyder, James Turner, James Wright

Excused: Daniel Applegate, Hon. Keith G. Houts

Review of Meeting Minutes: Co-Chair Petit opened the floor for discussion of the minutes of the May 16, 2014 meeting of the Ohio Cemetery Law Task Force. There being no discussion Mr. Turner moved to approve the minutes of the May 16th meeting. Mr. Piccininni seconded the motion. The motion passed unanimously.

II. Old Business

Co-Chair Noonan opened the floor for discussion of old business. Discussion began on the new draft language for ORC 4767.09 and 4767.12. Mr. Turner noted a few changes to the draft as handed out. Mr. Turner moved to accept the corrected amendments of ORC 4767.09 and 4767.12 into draft form for the final recommendation. Mr. Russell seconded the motion. The motion passed unanimously.

ORC 4767.09

(D) Cemeteries dedicated as a nature preserve or cemeteries, including sections within a cemetery, that are specifically designed and established as natural burial sites and are intended to be maintained in a natural condition at the visible surface grade of the facility are not subject to the maintenance requirements of this section. Reasonable maintenance and repairs by the owner or person responsible for the operation of the registered cemetery shall be done in accordance with the rules and regulations of the cemetery, an independent conservation plan, or the cemetery master plan.

ORC 4767.12 Cemetery ceasing to operate, abandoned cemetery, division's duties.

When the division has information that the owner or person responsible for the operation and maintenance of a registered cemetery has ceased operation and is no longer reasonably maintaining the cemetery, the division may investigate the cemetery to determine the cemetery's current status and to determine whether the cemetery has been abandoned. If the division finds substantial evidence that the cemetery has ceased operation, is abandoned, and a municipality or township has not taken control of such cemetery, the division may apply to the appropriate court of common pleas probate division to have the cemetery declared to be abandoned and for appointment of a temporary receiver or trustee. The order appointing the temporary receiver or trustee shall order the trustee or trustees of the endowment care trust of the cemetery to make distributions in accordance with this section. Upon the termination and winding-up of the temporary receivership or trusteeship the receiver or trustee shall transfer the cemetery and its assets and records to the new owner or operator if one is named. If there is no new owner or operator at the time of winding-up then the court shall distribute such assets as may remain in its discretion and shall cause the records of the former cemetery to be delivered to the Ohio Historical Society for archival or other purposes as the Society may deem appropriate pursuant to its authority as set forth in Chapter 149 of the Revised Code.

The receiver shall be compensated by the owner or person responsible for the operation of the cemetery as indicated in Division records. If the owner or person responsible for the operation of the cemetery has no assets available to pay the receiver, the receiver shall only be paid from the income of interest and dividends in the endowment care trust being held pursuant to section

1721.21 of the Revised Code. The receiver may not invade the principal or capital gains of the trust.

When the owner or person responsible for the operation or maintenance of a cemetery has, either by choice or circumstance, ceased operation and has allowed the cemetery to be declared a nuisance as defined by applicable law, then that cemetery has been “abandoned” for the purpose of this chapter.

The task force then moved onto the requested information provided by Foxfield Preserve – the cemetery’s Rules and Regulations and the restrictive covenant. Discussion commenced on registered cemeteries with natural sections comingled with an existing cemetery that is maintained as manicured; the liability of a cemetery maintained as a nature reserve or natural area and the determination that the appropriate place to address liability should be by the cemetery in their Rules and Regulations as well as cemetery signage. There was a brief discussion on the Ohio Department of Natural Resource’s nature preserve cemeteries.

The task force began discussion of natural burials as the term is used in the proposed amendment to ORC 4767.09(D). After the discussion, Mr. Turner moved that the task force use Foxfield Preserve’s definition of natural burial as a working draft as well as using the restrictive covenants as a guide. Mr. Russell seconded the motion. The motion passed unanimously.

At the conclusion of old business Co-chair Noonan moved that the written testimony of Kathy Flayler, Manager of the WillowView Cemetery Association, and of Fredric C. Lynch, Past Department Commander of the Sons of Union Veterans of the Civil War, Department of Ohio, Veterans’ Monuments and Memorials Preservation Task Group, be admitted into record. Mr. Turner seconded the motion. The motion passed unanimously.

III. New Business

Co-chair Petit brought the task force into new business and discussion began on preservation/protection of historical cemeteries. The task force deliberated on current criminal statutes that could apply; whether those penalties should be increased; whether penalties should include volunteer service in the cemetery where the crime occurred; who has standing to bring criminal charges when a cemetery is on private property and civil liability for entities that desecrate cemeteries for development purposes. The task force also revisited the interested party testimony that touched on increasing criminal penalties and whether the criminal statutes can be amended to create specific language concerning veterans’ graves and veterans’ memorials.

The task force also discussed at length whether due process currently exists where economic development may occur at the site of a historic cemetery; ownership of land versus owning the burial right and whether the mere existence of a cemetery creates an encumbrance regardless of whether the cemetery is noted on the deed. The task force also touched on the trade and display of human remains; mounds and earthworks and whether to develop a process similar to NAGPRA for when ancestral remains are found.

Finally, the task force concluded that a tenet in the recommendations should be that all burial sites and human remains, regardless of historic period or culture, receive the same level of protection and respect.

Mr. George excused himself from the meeting at 12:00 pm.

Next Meeting Dates:

June 27, 2014 at 9:30am.

IV. Adjournment

Co-chair Petit moved to adjourn. Mr. Russell seconded the motion. The motion passed unanimously.

**MINUTES OF THE MEETING OF THE
OHIO CEMETERY LAW TASK FORCE**

77 S. High Street, 22nd Floor Hearing Room
Columbus, OH 43215-6133

June 27, 2014
9:30 a.m.

I. Preliminary Matters

Co-chair Petit called the meeting to order.

Roll Call: Laura Monick conducted roll call.

Present: Daniel Applegate, Stephen George, Hon. Keith G. Houts, Dr. John N. Low, Anne M. Petit, Patrick Piccininni, Jay Russell, David Snyder, James Turner, James Wright

Excused: Hon. Cory Noonan

Review of Meeting Minutes: Co-Chair Petit opened the floor for discussion of the minutes of the June 6, 2014 meeting of the Ohio Cemetery Law Task Force. There being no discussion Mr. Turner moved to approve the minutes of the June 6th meeting. Mr. Russell seconded the motion. The motion passed unanimously.

II. Old Business

Co-Chair Petit opened the floor for discussion of old business.

Mr. Applegate arrived at 9:36 am. Mr. Piccininni arrived at 9:42 am.

The task force began with a discussion of criminal penalties; specifically desecration and vandalism. The conversation revolved around determining the desired outcomes from the task force's eventual recommendations. Discussion included looking at the reasons people might violate the statutes; the difference between felonies and misdemeanors and whether the task force wants to recommend a wider range of penalties for prosecutors versus increasing education for prosecutors on the cultural value of cemeteries/burial sites/monuments/memorials. The task force then looked at prosecutorial discretion and how prosecutors determine the level of proof of a crime and whether prosecutors only look at the amount of damage the crime caused. The task force deliberated on whether prosecutors would take into consideration what a cemetery/burial site/monument/memorial was worth; the value of cultural and historical significance; the cost of fixing/replacing damaged property and the value of antiquities if any were involved in the crime.

The task force determined that specific recommendations on individual crimes would be difficult to come to a consensus on but that it would be important to provide general recommendations on criminal penalties involving cemeteries/burial sites/monuments/memorials. The task force expressed frustration that the desecration and vandalism crimes occurring in cemeteries and burial sites are not being taken as seriously as they should be by prosecutors. The task force also indicated they strongly believe in the importance of education for prosecutors to draw more attention/thought on these crimes with respect to cemeteries/burials. There was also great consideration given to providing prosecutors the latitude to charge a range of misdemeanor or felony for desecration in ORC 2927.11.

The task force concluded with the recommendation that educational outreach should be conducted from stakeholder groups such as the Ohio Cemetery Dispute Resolution Commission, Ohio Cemetery Association, Ohio Township Association, Ohio Municipal League, Genealogical Societies and the Ohio History Connection. Finally, the task force would begin drafting a descending grade of misdemeanors and felonies available for desecration with grading not based on cost alone.

The task force then moved on to a discussion of natural burial and the draft language created by Mr. Turner and Ms. Monick. After a brief discussion Mr. Turner offered to work on re-wording the definition to make it more general with respect to vaults and chemicals.

The task force then began deliberating about cemeteries on private land versus registered, currently operating cemeteries with respect to the current draft of ORC 4767.12. The discussion progressed to burial sites versus archeological features, such as mounds. After a brief discussion it was determined that language would be drafted with respect to burial sites; incorporating NAGPRA standards and a reporting process when a burial site is discovered.

Mr. George left the meeting at 11:15 am.

III. New Business

Co-chair Petit brought the task force into new business. The task force began with the issue brought forth by the Ohio Cemetery Association with respect to the Bureau of Workers' Compensation (BWC) ratings of cemetery salespeople. Conversation revolved around the job of salespeople that go out to a site in the cemetery to show a consumer a specific burial location and the job of maintenance workers that are conducting physical labor out in the cemetery grounds. It was acknowledged that this is a costly issue for cemeteries but in the Ohio Cemetery Association's previous discussions with BWC, the agency was not inclined to modify the rating. Mr. Applegate noted that the Association also had suggested that BWC create a new rating for salespeople that go out into the cemetery versus true office staff. The task force determined that they would send an invitation to BWC to come speak to task force about this issue so that the task force has a clearer understanding of the issue from both the professionals' and agency's perspectives.

The next topic discussed was the Ohio Township Association's (OTA) request that statutory language be introduced to permit townships to sell merchandise. Mr. Applegate moved that the task force will include a recommendation that townships be permitted to sell merchandise. Mr. Russell seconded the motion. The motion passed unanimously.

Finally, the task force deliberated on the OTA's request to have the date restriction from ORC 517.07 removed. Co-chair Petit made a motion and then an amended motion on the topic with a second on both from Mr. Turner. However, with additional discussion, both the motion, amended motion and both seconds were withdrawn. The task force then requested that Co-chair Petit and Ms. Monick work on drafting motions for the task force to consider at the next meeting regarding this matter.

Next Meeting Dates:

July 25, 2014 at 9:30am.

IV. Adjournment

Co-chair Petit moved to adjourn the meeting at 11:46 am.

**MINUTES OF THE MEETING OF THE
OHIO CEMETERY LAW TASK FORCE**

77 S. High Street, 22nd Floor Hearing Room
Columbus, OH 43215-6133

July 25, 2014
9:30 a.m.

I. Preliminary Matters

Co-chair Noonan called the meeting to order.

Roll Call: Laura Monick conducted roll call.

Present: Daniel Applegate, Stephen George, Dr. John N. Low, Hon. Cory Noonan, Anne M. Petit, Patrick Piccininni, Jay Russell, James Turner, James Wright.

Excused: David Snyder, Hon. Keith G. Houts

Review of Meeting Minutes: Co-Chair Noonan opened the floor for discussion of the minutes of the June 27, 2014 meeting of the Ohio Cemetery Law Task Force. There being no discussion Mr. Turner moved to approve the minutes of the June 27th meeting. Mr. Russell seconded the motion. Co-chair Noonan abstained from the vote. The motion passed unanimously.

II. Old Business

Co-Chair Petit opened the floor for discussion of old business. The task force began by discussing the draft motions on ORC 517.07. After a brief discussion Mr. Turner moved to accept the following motion: "It is the recommendation of the task force that ORC 517.07 be revised to grant townships the right of reentry for lots where the deed of sale was executed prior to July 24, 1986 and is unoccupied, provided that the township comply with the notice requirements as currently set out in ORC 517.07(C) prior to establishing reentry." Mr. Russell seconded the motion. The motion passed unanimously.

Discussion continued briefly on townships re-selling lots and then Mr. Turner moved to accept the following motion: "The task force also recommends that when a township establishes reentry pursuant to ORC 517.07, the township may resell such lot. The task force recognizes that there are options available by which the sale price for a reentered lot can be established by equitable means and that should be a topic of discussion to be held by the General Assembly and affected stakeholders." Mr. Low seconded the motion. The motion passed unanimously.

The task force then moved on to criminal sanctions and the homework submitted by Mr. Turner. Discussion revolved around the criminal acts being committed in cemeteries; such as theft of vases, veterans' markers, fences and knocking over monuments which acts should all be included within the definition of vandalism. The task force also discussed whether for desecration they should move away from monetary value for penalties and look at the purpose of the criminal conduct such as digging into a grave for valuables. The task force also wanted to ensure that all burial sites – mausoleums, niches, vaults, gravesites, etcetera – be covered under vandalism and desecration. Mr. Turner offered to take the members' insights and re-draft the proposed recommendations.

Daniel Applegate arrived at 10:13 am.

The task force then discussed the changes to the proposed definition of natural burial site.

A Natural Burial Site is one in which human remains, including cremated remains, are interred in bio-degradable containers without the use of any ~~concrete~~ impervious manufactured materials container or vault (partial, inverted or otherwise), vault lids, outer burial containers, ~~concrete~~ impervious manufactured boxes slabs, or partitioned liners, and without the use of toxic embalming chemicals except where the decedent has been embalmed as may be required by applicable law or against their specific written instructions or in which embalming was required for transport.

After some discussion the task force decided to move forward with the proposed definition but to place the definition back on the agenda for the next meeting in order to determine where the definition should be placed in the Ohio Revised Code.

The task force then moved on to township selling merchandise. Mr. Turner provided the language from 126 HB 382 upon which the task force based their discussion. The question arose about whether this language would apply to both charter and non-charter townships. The task force also indicated that they would like to include in the justification that items to be sold are “new” or at-need/pre-need. After the discussion, the task force moved to place this topic on the agenda for the next meeting

Finally Co-chair Petit provided an update on the topic of BWC’s scope rating for cemetery salespeople. Co-chair Petit is working with the Department of Commerce’s Legislative Director to reach out to BWC. The invitation has been extended to have someone from BWC either come to the next meeting or provide comments in writing for the next meeting.

III. New Business

Co-chair Noonan brought the task force into new business and discussion began on Mr. Snyder’s homework. After extensive discussion the task force determined that Mr. Snyder’s homework included many aspirational goals that could be used for the vision portion of the final report. The task force also expressed that they would like the report to reflect the moral, ethical and philosophical point of view that has been threaded throughout their deliberations.

Mr. Russell then expressed his belief that all cemeteries need to be protected including the tombstones that are artifacts about the people. Tombstones can be interpreted to show the economic status of the family by the type and size of stone used; if there was a stonecutter in the community; where the stone came from tells us about the trade between people; and decorations and epitaphs which reveal to us much about the community itself. While these cemeteries do not need to be maintained the same as registered cemeteries they do need some protection. The task force members agreed with Mr. Russell’s statements and concluded that the statements should be added as part of the justification under criminal sanctions.

The task force then deliberated on easement, or set aside, programs currently existing in the state. Specifically there was discussion on the Department of Agriculture Farmland Preservation program that includes an easement purchase program and an easement donation program. The task force concluded that the final report should include a recommendation to conduct research into the viability of a cemetery easement donation program similar to the Department of Agriculture and that any future program should include an education component to notify private landowners of the availability of such program. Finally, the task force requested additional information on programs similar to Michigan where landowners agree to a 99 year restriction on land use in exchange for tax benefits.

Finally, the task force discussed phase one of the report writing and determined the best approach would be to form a sub-committee for drafting purposes. Mr. George, Mr. Turner and Mr. Russell volunteered their services. The co-chairs will participate as their schedules permit.

Next Meeting Dates:

Report writing sub-committee August 8th at 9:00 am

August 20th at 10:00 am

IV. Adjournment

Mr. Piccininni moved to adjourn. Mr. Turner seconded the motion. The motion passed unanimously.

**MINUTES OF THE MEETING OF THE
OHIO CEMETERY LAW TASK FORCE**

77 S. High Street, 22nd Floor Hearing Room
Columbus, OH 43215-6133

August 20, 2014
10:00 a.m.

I. Preliminary Matters

Co-chair Noonan called the meeting to order.

Roll Call: Laura Monick conducted roll call.

Present: Stephen George, Hon. Keith G. Houts, Hon. Cory Noonan, Anne M. Petit, Patrick Piccininni, Jay Russell, David Snyder, James Turner, James Wright.

Excused: Daniel Applegate, Dr. John N. Low

Review of Meeting Minutes: Co-chair Noonan opened the floor for discussion of the minutes of the July 25, 2014 meeting of the Ohio Cemetery Law Task Force. There being no discussion Mr. Turner moved to approve the minutes of the July 25th meeting. Mr. Piccininni seconded the motion. The motion passed unanimously.

II. Old Business

Co-chair Noonan opened the floor for discussion of old business.

Co-chair Petit introduced a letter from Bureau of Workers' Compensation Administrator Steve Buehrer as addressed to Timothy C. Long, Ohio Cemetery Association Legislative Agent and Attorney, relating to the scope rating of cemetery salespeople. The task force discussed the complexity of the issue and that they were encouraged by the information that there is now an open dialogue concerning the issue. Mr. Russell then moved that the task force should note in the final report that this is an area of concern for cemeteries due to the impact of scope ratings on operating expenses. Mr. Turner seconded the motion. The motion passed unanimously.

The discussion was then turned over to Mr. Turner to explain the process being followed by the sub-committee at their August 8th meeting. The sub-committee also met prior to this meeting to begin editing the initial draft as sent to the task force members. The task force then discussed the structural outline for the final report, the appropriate sections for topics that will be laid out in the final report and where more detail was needed.

The task force then moved on to the natural burial definition. The task force previously agreed to a definition and was left with discussing the proper location for the definition in the Revised Code. For consistency, the task force agreed that the definition should be placed in Ohio Revised Code section 1721.21 with the other cemetery definitions. This also requires a revision to Ohio Revised Code section 4767.01(A) to add the term "natural burial."

Finally, the task force touched on the topic of tax advantaged easements and set aside programs. Research conducted by Mr. Russell found that Indiana has a process to lower the tax valuation for a cemetery on private property to \$1/acre but that the process included the need for a professional survey and that this was often cost prohibitive to the landowner. Co-chair Petit found information that Michigan repealed their law but there was no documented reasoning

behind the repeal. Finally, Co-chair Petit introduced information from Washington State concerning their law permitting non-profit preservation and maintenance corporations. The task force concluded that their recommendation should include information concerning the availability of numerous options that could help address the topic of historic cemeteries on private property.

III. New Business

Co-chair Noonan brought the task force into new business and discussion began on the limited time left for the task force to complete their final report. A final review was made of the report draft provided to the task force members; including whether there were any topics discussed by the task force but not included in the current draft.

The task force then deliberated on the distribution of the final report upon completion. Mr. George moved that a hard copy of the report be provided to the Governor, the Speaker of the House and the President of the Senate with an electronic version of the report being sent to the rest of the General Assembly. Mr. Turner seconded the motion. The motion passed unanimously.

Upon discussion of the next meeting date the task force agreed to meet on September 19th at 10:00am. However, both co-chairs were unavailable on that day. Mr. Piccininni moved to designate a chair pro-tempore for the September 19th meeting. Mr. Turner seconded the motion. The motion passed unanimously.

Mr. Turner nominated Mr. Piccininni as chair pro-tempore for the September 19th task force meeting. Co-chair Petit seconded the motion. Mr. Piccininni accepted the nomination. The motion passed unanimously.

The sub-committee asked that any ideas or corrections to the draft report be submitted by the task force members by September 1st and that anything submitted be related to discussions already held in order to help keep the drafting process moving in a timely manner. After those revisions, the target for a final draft being sent to the task force members is September 12th.

Next Meeting Dates:

September 19th at 10:00 am

IV. Adjournment

Mr. Turner moved to adjourn. Mr. Russell seconded the motion. The motion passed unanimously.

**MINUTES OF THE MEETING OF THE
OHIO CEMETERY LAW TASK FORCE**

77 S. High Street, 22nd Floor Hearing Room
Columbus, OH 43215-6133

September 19, 2014
10:00 a.m.

I. Preliminary Matters

Pro-tempore Piccininni called the meeting to order.

Roll Call: Laura Monick conducted roll call.

Present: Daniel Applegate, Hon. Keith G. Houts, Patrick Piccininni, Jay Russell, David Snyder, James Turner, James Wright, Laura Monick on behalf of Anne M. Petit.

Excused: Stephen George, Dr. John N. Low, Hon. Cory Noonan, Anne M. Petit.

Review of Meeting Minutes: Pro-tempore Piccininni opened the floor for discussion of the minutes of the August 20, 2014 meeting of the Ohio Cemetery Law Task Force. There being no discussion Mr. Turner moved to approve the minutes of the August 20th meeting. Mr. Russell seconded the motion. The motion passed unanimously.

II. Old Business

Pro-tempore Piccininni opened the floor for discussion of old business and a page-by-page discussion began on the draft report completed by the writing sub-committee. Minor edits were made to pages 4, 5, 8, and 22 upon agreement of the members. An introductory sentence was also discussed for inclusion on page 14 to lead into the "Recommendation for Legislative Initiatives" section.

The task force then began discussions on the current edits made to the "Criminal Offenses and Penalties" and "Private Property Rights & Regulatory Taking Issues" sections of the report. Upon discussion, Mr. Turner moved that he would make edits to those sections using track changes and that the task force re-visits those two sections at the September 24th meeting. Mr. Russell seconded the motion. The motion passed unanimously.

After completing a review of each page, Mr. Turner then moved to adopt the version of the report as amended during the meeting, including the introductory sentence on page 14, with the exception of pages 19, 20, 25 and 26. Mr. Wright seconded the motion. The motion passed unanimously. Discussion then turned to the co-chairs and ensuring their opportunity to make edits. Mr. Turner moved to grant authority to Co-chairs Noonan and Petit to make editorial and grammatical changes without requiring approval of the full task force for their edits. Mr. Houts seconded the motion. The motion passed unanimously.

Next Meeting Dates:

September 24th at 9:30 am

III. Adjournment

Mr. Turner moved to adjourn. Mr. Houts seconded the motion. The motion passed unanimously.

**MINUTES OF THE MEETING OF THE
OHIO CEMETERY LAW TASK FORCE**

77 S. High Street, 22nd Floor Hearing Room
Columbus, OH 43215-6133

September 24, 2014
9:30 a.m.

I. Preliminary Matters

Co-chair Petit called the meeting to order.

Roll Call: Laura Monick conducted roll call.

Present: Daniel Applegate, Stephen George, Hon. Keith G. Houts, Dr. John N. Low, Anne M. Petit, Patrick Piccininni, Jay Russell, David Snyder, James Turner, James Wright.

Excused: Hon. Cory Noonan.

II. Old Business

Co-chair Petit brought the task force into old business and passed along regards from Co-chair Noonan and his appreciation for the task force members' work.

The task force then began discussions on the current edits made to the "Criminal Offenses and Penalties" and "Private Property Rights & Regulatory Taking Issues" sections of the report. The members approved of the new edits and of how the sections captured the discussions of the task force. After discussion on wording, Mr. Piccininni moved to adopt the sections as drafted with the changes discussed during the meeting. Mr. Turner seconded the motion. Discussion then commenced on including a more specific reference to the transport and trafficking of funerary goods and human remains. After two additional edits, Mr. Piccininni moved to amend his motion to include the new edits. Mr. Turner amended his second. The amended motion passed unanimously.

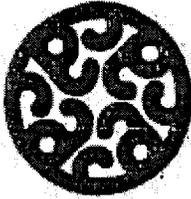
The task force members then all expressed gratitude for each member coming into the meetings with open minds and expressing a willingness to engage in thoughtful discussions which resulted in a better understanding of all opinions presented to the task force.

III. Adjournment

The final meeting of the task force was then adjourned.

Appendix II

Stakeholder Testimony & Written Comments



**THE OHIO ARCHAEOLOGICAL COUNCIL
P.O. BOX 82012 • COLUMBUS, OHIO 43202**

Testimony of the Ohio Archaeological Council to the Ohio Cemetery Law Task Force

Alan Tonetti, Trustee and Chair, Government Affairs Committee

Jarrold Brinks, Trustee and Past President

February 21, 2014

The Ohio Archaeological Council is a private, non-profit, charitable, scientific, and educational membership organization incorporated with the state of Ohio in 1975. Our mission is to promote the advancement of archaeology in Ohio through research, conservation, education, and consultation with government agencies and the public. Our more than 100 members include professional archaeologists in Ohio working in private businesses, in museums, in state and federal government agencies, and in academia.

We have long supported revising Ohio law to better protect unmarked and abandoned cemeteries regardless of their age because these places are important to many people for many reasons. The recent history of this issue begins in the 1980s and 1990s, when the Ohio Historic Preservation Office (OHPO) made significant efforts to find agreement among archaeologists, Native Americans, and other stakeholders in Ohio concerning the treatment of buried human remains. These efforts resulted in 37 points of agreement, some of which were incorporated into a comprehensive historic preservation bill introduced in the General Assembly in 1989. However, the portion of the bill protecting human burial places was strongly objected to by some Native Americans and removed from the bill, which did not pass. This led to further discussions between Native Americans, the Ohio Historic Preservation Office, and archaeologists. Although these discussions were helpful, they did not result in a separate bill better protecting human burial places. In 1988, a law was enacted prohibiting intentional disturbance to human remains found in caves and rockshelters on private land without the written permission of the landowner or lessee. This bill had the support of the Ohio Department of Natural Resources.

In 2002, an Ohio House Select Committee Studying the Effectiveness of Ohio's Historical Program and Partnerships produced a report recommending examining Ohio's

cemetery laws. This recommendation was initiated by the Ohio Archaeological Council. Subsequently, the Ohio Historical Society held a stakeholders meeting and issued a report concerning this matter. The report made a number of recommendations. Several underlying themes emerged from the discussions on abandoned cemeteries, including an overhaul of Ohio's cemetery laws clearly establishing lines of authority and protocols for cemetery maintenance and preservation, as well as discovery, disturbance, and removal; education of stakeholders; establishing a centralized clearinghouse of information on Ohio's abandoned cemeteries and their preservation; financial incentives to protect abandoned cemeteries on private property; and a dedicated source of funds to implement any new legislative initiatives. The report concluded that a state agency should undertake efforts to revise Ohio's cemetery laws, not the Ohio Historical Society, which is a private, non-profit corporation carrying out the state's history-related mission pursuant to a contract with the state.

Ohio is one of a few states that do not effectively protect abandoned and unmarked cemeteries. There are thousands of known abandoned and unmarked cemeteries in Ohio, many of which are threatened by neglect and public and private development projects. Thousands more have yet to be identified, but subject to the same threats.

Some of the issues outlined in your initial meeting are important matters to Ohio's archaeological community. We are particularly concerned with better defining the term "abandoned" as it pertains to all human burial places, the definition of a cemetery for human burials, and the identification and protection of human burial places, including establishing a process for reporting human burial places, creating a central register of human burial places, creating incentives to report and preserve human burial places, and establishing standards for the excavation and removal of human burials when they cannot be preserved in place. Increasing criminal penalties for non-compliance with the law should also be examined.

In doing so, reviewing how other states treat human burial places will be very helpful. Indiana's is one that is sometimes seen as a model. In 2002, the Ohio Historical Society produced a couple of summaries of state laws concerning these matters that we urge you to examine. Examining Federal regulations will also be of use, but we generally do not consider the Native American Graves Protection and Repatriation Act (NAGPRA) a model to follow. While it addresses some of the issues you may seek to address, we do not believe it translates well to Ohio. We also urge you to become familiar with current statutes and relevant court cases,

especially *State of Ohio v. Glass*, a case sometimes cited in national discussions of abandoned and unmarked cemeteries, and referred to below.

The term "human remains" is not defined in Ohio law. Therefore, although the term is used quite freely, it is important to understand that some Ohio laws that appear to protect human remains do not provide much protection. The concept that human remains means any part of the body of a deceased person in any stage of decomposition does not appear to be widely applicable under Ohio law.

Graves that contain human skeletal remains, and presumably associated burial objects, in abandoned cemeteries, Native American burial mounds and other places of human burial on private land are not well protected by Ohio's vandalism and desecration statutes. Human remains and associated burial objects buried on state land are protected by various state regulations (e.g., ORC 149.54, 1517.24 [the "cave act"]), and the (final) disposition of human remains and associated burial objects removed from state land is determined by the Director of the Ohio Historical Society. Human remains buried on local government land are protected by various state regulations (especially ORC 2909.05 and 2927.11) and, possibly some local ordinances.

Ohio law protecting human remains buried on private, state, and local government land is generally directed at the "unprivileged" disturbance of the places where human remains are buried. If a person has "privilege" (ORC 2901.01(A)(12): "an immunity, license, or right conferred by law, or bestowed by express or implied grant, or arising out of status, position, office, or relationship, or growing out of necessity"), i.e., the person owns the land or has permission from the land owner, the person can basically do whatever they want to the burial places, the graves, and the contents of the graves (human remains and associated burial objects), be they in prehistoric mounds or cemeteries or abandoned historic era cemeteries.

Abandoned cemeteries from the historic era are also protected by these laws, but state law does not protect the graves or the remains of humans who have been buried in the ground for more than 125 years. Ohio courts, including the Ohio Supreme Court, have repeatedly found that corpses/dead bodies cease to be entities that can be protected under Ohio's vandalism, desecration and abuse of a corpse statutes because these laws only apply to corpses/dead bodies, defined as human remains that have been buried in the ground for less than 125 years, i.e., human remains with soft tissue attached. Once the human remains become skeletal, which the

courts somehow determined in the late 1800s to take no more than 125 years, the human remains are no longer considered corpses/dead bodies and are generally left unprotected by Ohio's vandalism, desecration, and abuse of corpse statutes. Even the grave is left unprotected ("an excavation ceases to be a grave when the remains originally placed therein have decomposed to such a degree that they no longer meet the definition of a corpse or dead body" [State of Ohio vs. Glass, 1971]).

Ohio's laws protecting places of human burial are not strong, especially when compared to that of other states. You have a big and complex challenge ahead of you. We know this will not be easy, but if there is anything the Ohio Archaeological Council can help you with, just ask.

**Report to The Select Committee to Study
The Effectiveness of Ohio's Historical Programs and Partnerships**

Developing an Abandoned Cemetery and Unmarked Human Burial Ground Preservation Program

**Prepared by the Ohio Historic Preservation Office
Ohio Historical Society**

September 30, 2002

Over the course of five months spanning late 2001 and early 2002 a Select Committee of the Ohio House of Representatives conducted 15 hearings, in part, to consider how "to further enhance the State's and the OHS' historical responsibilities." The Select Committee to Study the Effectiveness of Ohio's Historical Programs and Partnerships (Select Committee) issued a report in March of 2002. In its report, the committee recommended that the Ohio Historic Preservation Office (OHPO) address several issues raised during its hearings, including the preservation of abandoned cemeteries and unmarked human burial grounds.

**Abandoned Cemetery and Unmarked Human Burial Ground
Preservation Program**

The Select Committee recommended that an abandoned cemetery and unmarked human burial ground preservation program be developed and implemented for the State of Ohio and that the State Historic Preservation Officer assemble a group of interested stakeholders to assist in the development of the program. The group of stakeholders consulted to date includes statewide organizations representing the archaeological, genealogical, historical, and Native American communities, law enforcement, and other interested parties (please refer to Appendix A for a complete list). Others to be consulted include representatives of local and state government, law enforcement officials, Ohio Historic Preservation Advisory Board, and relevant Federally recognized Indian Tribes.

In preparation for a meeting of stakeholders convened at the Ohio Historical Center on September 16, 2002, the OHPO prepared and distributed to invitees a report, *Unmarked Human Burial Grounds: An Overview of State Laws* (please refer to Appendix B). This was done, in part, as a result of testimony during the Select Committee's hearings that noted that Ohio was one of few states that does not have a specifically designed program to protect such places. A summary of other states' legislation provides a context for analyzing the situation in Ohio. The summary also provides a shared knowledge base for the stakeholders' discussions.

Prior to the September 16th stakeholders' meeting, correspondence was sent to a number of groups and organizations apprising them of the Select Committee's report and inquiring as to whether they wished to participate in an effort to address the issues identified therein. Several of these groups participated in a preliminary telephone survey to identify additional groups and organizations to be invited. This was followed up in August with an invitation to attend the

September meeting (refer to Appendix C, Meeting Agenda); a copy of the summary of other states' legislation was enclosed. The September meeting was designed to establish a working relationship among the stakeholders, to frame the issues, and to suggest some preliminary approaches for inclusion in this report. It is recognized that additional efforts are necessary to develop fully a preservation program, but this meeting was a critical step.

Twenty persons representing 16 organizations plus OHPO support staff attended the September 16th meeting (please see Appendix A). The meeting was organized around a series of questions posed to the stakeholders, first on the issue of abandoned cemeteries, and second on the issue of unmarked human burial grounds. The list of questions is included in Appendix D. The participants were also invited to introduce other questions for the group's consideration. Finally, participants offered the names of additional organizations that they felt should be asked to participate or which were likely to have an interest in the issues we discussed.

Abandoned Cemeteries

In order to augment the background information provided for unmarked burials, Ms. Lolita Guthrie, Ohio Genealogical Society, and Ms. Katie Karrick, Ohio Cemetery Preservation Society, provided a brief overview of issues surrounding abandoned or neglected cemeteries in Ohio. Ms. Guthrie noted the efforts of the Ohio Genealogical Society (OGS) to record Ohio cemeteries through the publication of a book, which lists 13,000. Since its publication in 1978, more than 2,000 cemeteries have been added to this database maintained by the OGS, bringing the total to over 15,000 of which 6,000 have locations plotted on USGS maps. The OGS continues recording cemeteries on Lost & Forgotten Cemetery Forms, a copy of which is appended. Very few of the cemeteries in this database are Native American in origin and many have no visible marker. Since 1995, all active cemeteries must register with the Division of Real Estate annually. A Cemetery Dispute Resolution Committee, appointed by the Governor, oversees this requirement. All but 300 of the 3,300 registered cemeteries are owned by political subdivisions.

Ms. Karrick indicated that most of the correspondence received by the Ohio Cemetery Preservation Society (OCPS) is from people who want to report that a cemetery is neglected, abandoned, or endangered by encroaching development. The OCPS' mission is to locate, preserve, and bring cemeteries back so that people can enter them to conduct research and learn more about the history of Ohio.

In addition to the database maintained by the OGS, the Ohio Historic Preservation Office also maintains several databases that contain cemeteries. These include the Ohio Archaeological Inventory, the Ohio Historic Inventory, and the National Register of Historic Places. Cemeteries are just one type of resource entered into these databases, and their numbers are rather small relative to the size of these databases. Of the 123,956 properties recorded in the archaeological and historic inventories, only 1,280 or approximately 1%, are cemeteries or sites with burials or human remains. Of Ohio's 3,600 National Register listings only 44, or 1.2%, are cemeteries. This may be explained, in part, by the fact that cemeteries (along with birthplaces and primarily commemorative properties) ordinarily are not considered eligible for listing on the National

Register of Historic Places. Cemeteries may qualify for listing if they are integral parts of historic districts that do meet the criteria or if they derive their primary significance from distinctive design features, from age, from graves of persons of transcendent importance, or from association with significant historic events.

Observations made by the participants include:

- There is a lack of understanding of who has responsibility for the care of cemeteries.
- There is no centralized source of information on abandoned cemeteries available to developers (note that the OHPO does distribute a fact sheet on cemetery preservation, see Appendix D).
- Family cemeteries are often deliberately destroyed.
- Several cases of cemeteries lost to development pressures were noted as well as examples of cemeteries that were saved or moved.
- In some cases township trustees do not assume responsibility for abandoned cemeteries under their jurisdiction.
- The expense of caring for cemeteries is a significant concern for townships and municipalities.
- A lack of respect was noted for human burials whether or not located in cemeteries.
- Adverse possession threatens abandoned cemeteries within or adjacent to private property.
- Changing funerary practices include increasing numbers of requests for individuals to be buried on private property raising issues of care and long term preservation of the site.
- Concern was expressed over the proliferation of large funerary corporations and the long term care of cemeteries owned by them.
- Concern was expressed that we focus not merely on markers and headstones but on the preservation of human remains at these sites.
- Ohio falls short of other states in programs for abandoned cemeteries. Ohio has many pioneer and native burials.
- It is critical to know where the abandoned cemeteries are and to have a procedure dealing with accidental or intentional discovery and disturbance.
- Other states' laws might provide some direction on how to proceed.
- Several efforts over the course of many years to modify existing Ohio law have had little success.

Several underlying themes emerged from the discussions on abandoned cemeteries:

- Ohio cemetery laws and the responsibility for maintaining cemeteries are not well understood, even by the political jurisdictions with the relevant authority and responsibility.
- Based upon a review of other states' legislation, it was felt that an overhaul of Ohio's cemetery laws outlining clear lines of authority and protocols for cemetery maintenance and preservation as well as discovery and disturbance is needed.
- Education was also cited as a necessary element, including the desirability of having a centralized clearinghouse of information on Ohio's abandoned cemeteries and their

preservation. The Ohio Genealogical Society has led the way in developing a database for Ohio's 15,000 cemeteries.

- It was recognized that financial resources are needed for the maintenance of cemeteries, a burden shared by 1,300 townships and over 600 municipalities. Financial incentives for those who protect abandoned cemeteries on private property and a dedicated source of funds to implement new legislation were considered important to the group.
- Existing legislation is not enforced consistently across political subdivisions, leading to the observation that a centralized enforcement authority may be appropriate.

Unmarked Human Burial Grounds

The group next turned its attention to the preservation of unmarked human burials, fully realizing that there are many areas of overlap with the issue of abandoned cemeteries. The questions listed in Appendix D served as the basis for discussion.

The discussion began with a brief review of Ohio's legislation related to unmarked human burials, which includes a prohibition against desecrating a place of burial or burial marker, Indian mounds or earthworks, and sites of great historical or archaeological interest, among others. This prohibition applies to persons, "without privilege to do so." The Ohio Revised Code also grants the director of the Ohio Historical Society the authority to determine the disposition of artifacts and skeletal remains discovered on state lands.

In addition to Ohio law, there is a nexus of Federal legislation that pertains to unmarked human burials albeit in a broader context. The National Historic Preservation Act directs Federal agencies to take into consideration the effects of their undertakings on historic properties, which can and do include historic and archaeological sites containing human burials. A set of procedures codified at 36 CFR 800 outlines the process followed by agencies in considering historic properties, the hallmarks of which are identification, evaluation, determination of effects, and where there are adverse effects, a good faith effort to mitigate those effects. A key element throughout this process is active public participation.

Another federal law that has a direct bearing on this topic is the Native American Grave Protection and Repatriation Act, commonly referred to as NAGPRA. NAGPRA is a complex piece of legislation with full implementing regulations yet to be completed ten years after becoming law. Two salient elements are of note here. The law requires Federal agencies to consult with relevant Federally recognized tribes prior to the disturbance of Indian burials on *Federal land*. Second, museums and other educational institutions that receive Federal funds and have possession of, or control over, human remains, funerary objects, sacred objects, or objects of cultural patrimony must consult with *Federally recognized tribes* culturally affiliated with the subject remains regarding their disposition. It should be noted that Ohio has very little *federal land* (a participant noted that 95% of Ohio is private property) and that there are no *Federally recognized tribes* resident in Ohio.

Finally, Ohio, unlike some other states, does not have a review process whereby the effects of state undertakings on historic properties are taken into account and whereby the public is afforded an opportunity to participate in the review process.

Observations made by the participants on this topic include:

- There are major problems with development effecting unmarked burial sites as most of it in Ohio is not federally assisted, hence not subject to review.
- NAGPRA has limitations, as it does not apply to State and private land.
- The disposition of Native American, but culturally unidentifiable, human remains is unclear under NAGPRA
- Each of Ohio's coroners receives 1 or 2 calls every couple of years for assistance in dealing with unmarked skeletal material, some of which is human.
- The process Ohio coroners follow varies on a case by case basis.
- Education was identified as a key element in addressing this issue.
- Others felt that new legislation is the only solution, and enforcement is critical.
- The issue of private property ownership and rights was noted as a related issue.
- Urban sprawl is a root cause of the disturbance of unmarked human remains.
- Indiana was cited as having a good law that addresses accidental discovery of human remains and that applies to all archaeological sites, including those on private property. Education is necessary to pass such legislation.
- Some states, such as Indiana, re-cover and avoid human remains accidentally discovered where possible.
- A register or listing of unmarked human burials was suggested.
- Incentives are needed for private property owners that preserve human burial grounds. Some incentives currently exist but are underutilized.
- An Ohio based committee (separate from NAGPRA) is needed.
- Ohio should consult with other states that have good programs. Indiana, Wisconsin, Maryland, West Virginia, and North Carolina were mentioned.
- A dedicated source of funds is needed for a preservation program.
- Several participants noted the need to consult with additional interest groups, including the Farm Bureau, federally recognized tribes, state agencies, the Ohio Home Builders Association, cemetery associations, African American associations particularly in regards to Underground Railroad sites, and amateur archaeologists.
- Concern was expressed that our efforts should continue and not start over with the inclusion of additional stakeholders.
- Several participants noted that it is important to know who might oppose legislation on this topic.
- Prior, and unsuccessful, attempts to enact legislation on this topic in Ohio are instructive.

Themes emerging from the discussion on unmarked human burials include:

- Education on this topic is extremely important and necessary for the successful passage of legislation.

- Existing state and Federal legislation does not adequately address the preservation of unmarked human burials in Ohio. Legislation is necessary to address this issue.
- Ohio should look at several states' legislation and seek legal assistance in drafting legislation.
- The list of stakeholders should be expanded to include those in favor and those that may be opposed to legislation.

Summary and Recommendations

In conducting the meeting of stakeholders, the OHPO found the ensuing discussion to be thought provoking and insightful. A number of issues were raised and suggestions made which provide direction in continuing this effort. It would be premature at this stage to suggest a consensus has been reached on the development of a preservation program for abandoned cemeteries and unmarked burial grounds. It was clear from the stakeholders' discussion, however, that Ohio's current legislation does not provide adequate protection or guidance for the protection of these resources.

Key elements that should be considered for any proposed legislation include:

- An education program designed to make the general public aware of the importance of preserving places of human burials.
- The development and maintenance of a Geographic Information System- based listing of all known cemeteries and places of human burials in Ohio.
- Protocols and clear lines of responsibility for the discovery and accidental or intentional disturbance of abandoned cemeteries or places of human burials.
- The establishment of a consultation process to include interested parties regarding the disturbance and disposition of abandoned cemeteries and places of human burial.
- Incentives and/or financial assistance for the preservation of abandoned cemeteries and places of human burial.
- Appropriate penalties and enforcement.

As was clearly underscored by the stakeholders, the development of a preservation plan for abandoned cemeteries and unmarked human burial grounds involves dealing with many complex issues. Different cultural traditions regarding the treatment of the dead need to be considered. The question of how to accommodate scientific archaeological research needs to be resolved. Economic and legal issues regarding maintenance, land use, access, and private property rights must be addressed. In spite of these difficult issues, the stakeholders indicated that, as has been done in other states, they were prepared to make an effort to develop such a plan through their individual educational efforts and their common goal of seeing that legislation is enacted in Ohio to address the preservation of abandoned cemeteries and human burial grounds.

A key step in developing legislative language is direct consultation with several states identified by the stakeholders as having good programs. The participants in the September 16 meeting identified other stakeholders that need to be invited to participate in another meeting, or series of meetings, to continue this effort.

Another issue that needs to be addressed is the appropriate placement of responsibility for overseeing the implementation of an abandoned cemetery and unmarked human burial grounds preservation plan. While expertise in history or archaeology may be necessary to identify and evaluate the historic significance of places of burial, the vast majority of the state's 15,000 cemeteries are not historic. In point of fact, most are excluded from consideration for listing in the National Register of Historic Places. Many of Ohio's prehistoric burial sites may have historic significance, but it was clear from some of the stakeholders that other cultural values were more important to them. It would be appropriate to explore the placement of responsibility for the oversight of such a program in a state agency with a broader mandate to consider the variety of social, economic, legal, cultural, scientific, and historic issues and values associated with abandoned cemeteries and unmarked human burial grounds. It would also be helpful if LBO/LSC would survey other states with regulator functions in this area to determine budget appropriations and expenditures.

Testimony for the Ohio Cemetery Law Task Force Meeting

February 21, 2014

Ohio Chapter of the Association for Gravestone Studies

Beth Santore, Chair

I would like to thank the Ohio Cemetery Law Task Force for inviting The Ohio Chapter of the Association for Gravestone Studies to give testimony at the February 21, 2014 meeting. The Association for Gravestone Studies is a 501(c)(3) nonprofit organization whose mission is to foster appreciation of the cultural significance of gravestones and burial grounds through their study and preservation. The organization was founded in 1977 for the purpose of furthering the study and preservation of gravestones. AGS is an international organization with an interest in gravemarkers of all periods and styles. Through its publications, conferences, workshops and exhibits, AGS promotes the study of gravestones from historical and artistic perspectives, expands public awareness of the significance of historic gravemarkers, and encourages individuals and groups to record and preserve grave markers. At every opportunity, AGS cooperates with groups that have similar interests.

State and regional chapters are a fairly new concept for AGS. The first state chapter was formed in New Hampshire in late 2009. Ohio's state chapter was started by Beth Santore in September 2010, and was the third chapter to be established. There are currently eleven chapters across the country. AGS chapters expand public awareness and support for the research, preservation and conservation of grave markers and places of burial. The main purpose of state or regional chapters is to work as local extensions of the national AGS and to be able to offer meeting and workshop opportunities at the local level. State chapters operate, not as independent organizational entities, but as local (and, in certain cases, regional) bases from which members will work to expand interest and membership in the AGS.

The Ohio Chapter's members are very enthusiastic and optimistic about the Ohio Cemetery Law Task Force, and have followed all updates about the task force that have been shared with the public. Since many of our members work and talk with AGS members from various states across the country, we are well aware of stricter, more robust laws in other states, and would like to see similar laws, especially those around gravestone preservation, be implemented in our state. We would like to see our cemeteries have the same amount of protection that they do in several other states.

A polling of our chapter's members show that most are concerned primarily with cemetery preservation, including procedures and laws that enhance historic preservation of contents, grounds, and monuments. We would also like to see more laws around remedies, including prosecution, to deter vandalism in our cemeteries.

As previously mentioned, many states have laws that we could use as a guide for Ohio's cemetery laws. If the task force would like to be put in contact with representatives who work with the laws in these states, our chapter would be happy to help by providing names of people we have worked with or know through the national AGS organization. Some of the states and laws we would like to highlight are listed below:

Indiana

- Definition of "maintenance of a cemetery" includes resetting and straightening all monuments, leveling and seeding the ground, constructing fences where there are none and repairing existing fences, destroying and cleaning up detrimental plants, noxious weeds, and rank vegetation.
- Indiana Pioneer Cemeteries Restoration Project (<http://www.rootsweb.ancestry.com/~inpcrp/>) holds a "Cemetery & Burial Registry" database under the DNR and is run by the Indiana Cemetery and Burial Ground Registry Coordinator.

Indiana's cemetery laws include...

- A person may not disturb the ground within 100 feet of a burial ground or cemetery for the purpose of erecting, altering or repairing any structures without have a developmental plan approved by the DHPA.
- Illegal to disturb the ground for the purpose of discovering or removing artifacts, burial objects, grave markers or human remains without a plan with DHPA.
- Allows for a person to be convicted under the criminal mischief law if they vandalize a cemetery
- Must have a permit to probe in a cemetery (in search of buried gravestones).

Pennsylvania

- "Cemeteries and Graveyards Protected Act" – It is illegal to construct a street, lane, alley, or public road through a cemetery unless a future law specifically allows for it (this law dates to 1849!)
- The following actions are illegal: the removals of a fence, tomb, monument, gravestone, or fragment.

Vermont

The Vermont Secretary of State's office published a document in 2010 that contains an easy to read breakdown of the state's cemetery laws.

In addition to preservation, many of our chapter's members expressed a desire for clearer laws around "abandoned" cemeteries and their maintenance. Often villages, cities, and townships get into disputes around who is responsible for maintaining abandoned cemeteries, and as a result, many of these abandoned cemeteries sit neglected. This can encourage more vandalism and theft at these locations. If the term "abandoned" could be better defined in our laws, perhaps we could avoid this all too common problem with cemeteries across the state. Also, a better definition of maintenance schedules and requirements would be beneficial.

To summarize, the main items that the Ohio Chapter of the Association for Gravestone Studies would like to see accomplished by the Ohio Cemetery Law Task Force are:

- Outreach and educational programming for groups interested in cemetery preservation.
- Definition of terminology related to cemeteries, such as "maintenance", "abandoned", etc.
- Ohio's equivalent to Indiana's "Cemetery & Burial Registry" database.
- Laws that requirement set care and maintenance in all cemeteries.
- Laws which provide consequences and punishments for vandalizing cemeteries.

Thank you for allowing us this opportunity to speak at your meeting, and please feel free to reach out to me at any time if you would like further input from our group at either the state or national level.



OHIO HISTORICAL SOCIETY

**Testimony on the Impact of Current Cemetery Laws on
Native American Tribes**

Sharon Dean, Director of American Indian Relations, Ohio Historical Society

OHIO CEMETERY LAW TASK FORCE

Established under HB59, 130th General Assembly

February 21, 2014

Committee Members: Daniel Applegate, Stephen George, Honorable Keith G. Houts, Dr. John N. Low, Honorable Cory Noonan, Anne Petit, Patrick Piccininni, Jay Russell, David Snyder, James N. Turner, James Wright

My name is Sharon Dean and I am the Director of American Indian Relations at the Ohio Historical Society. On behalf of the Historical Society, I have been working for the past five years to build good relationships with the federally recognized tribes historically connected to Ohio. Many people have asked me why this work is so important. After all, there are no contemporary Indian tribes living in on federal land in Ohio. Why should we care? It is true that Ohio does not have any federally recognized tribes or tribal lands within the state. In fact, Ohio is considered a 'donut hole' and is surrounded by states that do have federally recognized tribes within their borders. On a cursory level, it can be said that learning about Native Americans who lived in Ohio until the mid-nineteenth century gives us a much richer understanding of our state and nation's history and has long been missing from the record. But it goes much deeper than that. Even though we don't have contemporary American Indian tribes living within our state borders, we do have numerous important archaeological and historical sites that provide evidence as to how the landscape of Ohio, both metaphorically and physically, was shaped. Human remains are buried at many of these sites and are currently in danger; some because of erosion, others because of looting, but most egregiously because of weak laws that do not protect any graves at 'abandoned' cemeteries, burials on private land, or ones that are older than 125 years.

The Ohio Historical Society has made this work a priority and has created my position so that I can focus my attention on working with the tribes full time and facilitate the work others at OHS do with the tribes. I have been traveling to Oklahoma, where most of the tribes live, to visit, attend ceremonies and pow wows and to collaborate on various grant projects aimed at the recovery of language and history, land preservation, educational programming and exhibits. I have gotten to know tribal representatives

OHIO HISTORICAL SOCIETY

American Indian Relations

800 E. 17th Ave., Columbus, Ohio 43211-2497 ph: 614.297.2501 cell: 614-507-7665

www.ohiohistory.org

quite well and am building real trust. We are beginning to discuss some sensitive issues that could not be approached a few years ago, but that need to be addressed. One of those issues, of course, is NAGPRA (the Native American Graves Protection and Repatriation Act) that allows tribes to request human remains, funerary and sacred objects to be repatriated. Interestingly, the tribes in Oklahoma do not want human remains coming to their state for reburial. They would like to see their ancestors reburied in Ohio – where they once lived. But they need that place to be secure to prevent future disturbance or desecration. No one in Ohio can promise that right now and that concerns the tribes. As Chief Glenna Wallace of the Eastern Shawnee Tribe of Oklahoma eloquently stated in her testimony to the Ohio Legislative Commission on the Education and Preservation of State History in May of 2010:

“Although Ohio has no federally recognized tribes currently residing in the state, that does not mean there are no indigenous tribal interests in Ohio. The Eastern Shawnee as well as the other Shawnee Tribes, including the Absentee Shawnee and the Shawnee, recognize Ohio as part of their aboriginal and treaty lands. As such, we are very concerned about our American Indian Cultural sites in Ohio, including the preservation, destruction, or looting of those sites. Even though we were sent to live on reservations in Oklahoma and Kansas, our ancestors are buried here and connections to the land run deep.”

The current Ohio law considers the desecration of cemeteries and gravesites a misdemeanor and trafficking of human remains or abuse of a corpse a 4th class felony at best. That, of course, applies to both archaeological sites and historic cemeteries, but it truly adversely impacts the tribes. I have begun benchmarking other states laws on abandoned cemeteries and desecration of archaeological and historical sites to see how strong the laws are elsewhere. There is a website organized by the American University Washington School of Law entitled “State Burial Laws Project.”

(<http://www.wcl.american.edu/burial/ak.cfm>) I encourage the Committee to look at it and get some very useful information. The Project specifically looks at burial protection laws state by state and examines what the criminal statutes are. It is not totally completed yet, but it is a good place to start. For your review, I am attaching a selection of state laws from that website.

After my initial review of the various state statutes, I have to say I was quite disappointed. It seems that while protections are in place in other states for abandoned cemeteries, archaeological sites and even for abuse and trafficking of human remains, which is certainly stronger than current Ohio laws, the criminal penalties for these offenses are still very weak (see attached). The strongest laws and protections I have seen so far are in Oklahoma where prison sentences and fines can be levied concurrently for desecration of a grave or archaeological site and human remains. Jail sentences can be up to 2 years and fines can be up to \$100,000. California also has some strong language and penalties.

In looking at Ohio, I think there are a few reasons for our weak burial laws. The first reason has to do with simple economics. Cities, townships and municipalities around our state either don't have the resources to preserve cemeteries or they need/want to develop as much land as they can for roads, businesses or housing developments. Historic cemeteries that don't seem to be used and archaeological sites can sometimes be considered 'in the way.' While federal Section 106 laws can somewhat slow the construction process and in many cases protect archaeological and historical sites, it does not apply to those located on privately owned land or to graves older than 125 years of age.

The second reason for weak laws in Ohio has to do with the lack of a standard definition of terms. For example, we need to better define what a burial site is, particularly for Native Americans. What kinds of burial places are covered under the law? We also need to define what 'abandoned' cemetery means. The definition seems to be different for public versus private land. What are considered 'human remains' and who falls under that category? If burials over 125 years are not protected, what is the difference in meaning between a corpse and a skeleton and why should that make a difference? Who has privilege over these sites? On private land, it seems the owners can and do whatever they wish. What does compliance or non-compliance with the law look like? When is desecration a misdemeanor and when is it a felony? Defining these and other terms will at least clarify existing laws and highlight which statutes either need to be strengthened or perhaps rewritten.

One final reason I would argue that Ohio burial laws are weak is because, as I mentioned earlier, Ohio does not have any Indian tribes living within its borders. Certainly, the weak laws pertain to both historic and archaeological sites. However, the State and many Ohioans being unaware of Native American history in this state makes the protection of archaeological sites and burials older than 125 years less of a priority. This impacts the tribes and the ability of institutions like the Ohio Historical Society to create meaningful partnerships with them.

In recent years, Indian tribes and cultural institutions have recognized that connections to each other need to be deeper and stronger. For the tribes, a stronger relationship means more access to collections, the ability to use collections to help revitalize their cultural traditions, languages and histories, and the opportunity to partner on exhibits and educational programs. For cultural organizations, it is an opportunity to understand their collections better, obtain federal grants for exhibits and collections and land management, and create educational and internship programs for students interested in Native American history. There is also the opportunity for tribes and archaeologists to work together and fill in the knowledge gap and better understand the material they

excavate. But the relationship needs to go beyond just museums and tribes. A stronger connection between the tribes and the State of Ohio could also provide an opportunity to resolve longstanding issues like burial laws and better preserve our state's history.

In conclusion, I would recommend to the Committee the following: First, continue benchmarking other state laws to look for a model that may work for Ohio. Second, create more standardized definitions of terms related to burials and archaeological sites to see how current laws could be better enforced or amended. Finally, I would encourage the Committee to work with the tribes directly and consider them a stakeholder in the process. There are hundreds of archaeological sites in Ohio. A Native voice could create awareness and understanding, create a bridge for tribes to connect once again to Ohio and finally help all of us protect and understand our history better. Again, quoting Chief Glenna Wallace:

Native American heritage in Ohio is extremely important. For the Eastern Shawnee, it is our history and a strong part of who we are. For the citizens of Ohio, Native American heritage is a significant part of the state's rich history. ... Native American heritage can help show the connections between the people that lived here before and those who live here now.

Thank you allowing me to provide testimony on this important issue. I would be happy to assist in further research, if you wish, and answer any questions the Committee Members may have.

Select State Cemetery Laws (from:
<http://www.wcl.american.edu/burial/ak.cfm>)

California Annotations

Expand All | Collapse All

1. Protection of Burials

a. Acts Prohibited by Law and Subject to Criminal Sanctions

- i. What is the criminal liability for unlawfully excavating human remains or archaeological resources?

Native American historic or sacred sites, Public Resources § 5097.993

It is a misdemeanor to unlawfully and maliciously excavate, remove, destroy, injure, or deface a Native American historic, cultural, or sacred site, including historic or prehistoric ruins, burial grounds, or any archaeological evidence. A finding of guilty for this offense must include a specific intent to vandalize the site or object in question. This law applies to both public and private land. The penalty for this crime is a term of imprisonment not to exceed one year and/or a fine of up to \$10,000.

Excavation without permission, Public Resources § 5097.5

It is a misdemeanor to knowingly and willfully excavate, remove, destroy, injure, or deface any historic or archaeological site, or burial ground, situated on public lands without the express permission of the public agency with jurisdiction over the site. Unlike state lands, public lands include all lands owned or controlled by the state, any city, county, district, authority, or public corporation.

- ii. What is the criminal liability for unlawfully selling or purchasing human remains and funerary objects?

Obtaining or possessing Native American artifacts, Public Resources § 5097.99

It is a felony to knowingly and willfully take or possess Native American remains or artifacts from a Native American grave. It also is a felony to remove Native American remains or artifacts with the intent to sell or dissect, or to do so with malice or wantonness.

- iii. What is the criminal liability for unlawfully taking or possessing human remains and funerary objects?

Native American historic or sacred sites, Public Resources § 5097.993

It is a misdemeanor to unlawfully and maliciously excavate, remove, destroy, injure, or deface a Native American historic, cultural, or sacred site, including historic or prehistoric ruins, burial grounds, or any archaeological evidence. A finding of guilty for this offense must include a specific intent to vandalize the site or object in question. This law applies to both public and private land. The penalty for this crime is a term of imprisonment not to exceed one year and/or a fine of up to \$10,000.

Excavation without permission, Public Resources § 5097.5

It is a misdemeanor to knowingly and willfully excavate, remove, destroy, injure, or deface any historic or archaeological site, or burial ground, situated on public lands without the express permission of the public agency with jurisdiction over the site. Unlike state lands, public lands include all lands owned or controlled by the state, any city, county, district, authority, or public corporation.

Obtaining or possessing Native American artifacts, Public Resources § 5097.99

It is a felony to knowingly and willfully take or possess Native American remains or artifacts from a Native American grave. It also is a felony to remove Native American remains or artifacts with the intent to sell or dissect, or to do so with malice or wantonness.

- iv. What is the criminal liability for unlawfully disturbing human remains and funerary objects?

Native American historic or sacred sites, Public Resources § 5097.993

It is a misdemeanor to unlawfully and maliciously excavate, remove, destroy, injure, or deface a Native American historic, cultural, or sacred site, including historic or prehistoric ruins, burial grounds, or any archaeological evidence. A finding of guilty for this offense must include a specific intent to vandalize the site or object in question. This law applies to both public and private land. The penalty for this crime is a term of imprisonment not to exceed one year and/or a fine of up to \$10,000.

- v. What is the criminal liability for defacing or destroying historical or archaeological sites?

Municipal monuments, Penal § 622

It is a misdemeanor to willfully injure, disfigure, or destroy any monument, work of art, or useful/ornamental improvement, any shade tree or ornamental plant. This law applies to private and public spaces.

Objects of archaeological or historical interest, Penal § 622.0

It is a misdemeanor to willfully injure, disfigure, deface, or destroy any object or item of archaeological or historical significance or value. This law applies to private and public spaces.

- vi. What is the criminal liability for unlawfully reproducing historic or archaeological artifacts?

We are unable to locate information relevant to this question at this time.

- vii. What is the criminal liability for unlawfully destroying tombs, monuments, or gravestones?

Destruction of cemetery or mortuary property, Penal § 594.35

It is a crime to destroy, cut, mutilate, efface, remove, tear down, or otherwise injure any tomb, monument, memorial, or marker in a cemetery, as well as any grave, vault, niche, crypt, or any building, statuary, or ornamentation within the cemetery. This also includes any gate, door, fence, wall, post, railing, or other enclosure for the protection of the cemetery or any property within the cemetery. It is also unlawful to obstruct or interfere with any person accompanying human remains to a cemetery or funeral establishment, or participating in a funeral/interment service. This crime is punishable by a term of imprisonment not to exceed one year.

- viii. What is the criminal liability for unlawfully taking or possessing monuments or gravestones?

Obtaining or possessing Native American artifacts, Public Resources § 5097.99

It is a felony to knowingly and willfully take or possess Native American remains or artifacts from a Native American grave.

- ix. What is the criminal liability for destroying or damaging petroglyphs and cave surfaces?

Caves, Penal § 623

It is a misdemeanor to intentionally and knowingly break, crack, carve upon, paint, write, mark, or otherwise destroy or deface any natural material in any cave without the prior written permission of the owner. This offense includes disturbing or altering any archaeological evidence within the cave. This crime is punishable by up to a year in prison and/or a fine not to exceed \$1,000.

- x. What specific laws restrict the alienation or use of historic burial places?

Rule against perpetuities and alienation, Health & Safety § 8559

Property dedicated for a cemetery cannot be alienated as to title or use.

- xi. What is the criminal liability for removing or damaging headstones?

Destruction of cemetery or mortuary property, Penal § 594.35

It is a crime to destroy, cut, mutilate, efface, remove, tear down, or otherwise injure any tomb, monument, memorial, or marker in a cemetery, as well as any grave, vault, niche, crypt, or any building, statuary, or ornamentation within the cemetery. This also includes any gate, door, fence, wall, post, railing, or other enclosure for the protection of the cemetery or any property within the cemetery. It also is unlawful to obstruct or interfere with any person accompanying human remains to a cemetery or funeral establishment, or participating in a funeral/interment service. This crime is punishable by a term of imprisonment not to exceed one year.

- xii. What are the general state criminal laws for abuse of corpse?

Obtaining or possessing Native American artifacts, Public Resources § 5097.99

It is a felony to knowingly and willfully take or possess Native American remains or artifacts from a Native American grave. It also is a felony to remove Native American remains or artifacts with the intent to sell or dissect, or to do so with malice or wantonness.

- xiii. What other general state criminal laws affect human remains and burial places?

Theft of articles from dead bodies, Penal § 642

It is a crime to willfully and maliciously remove and possess articles of value from a dead human body. If theft of the articles would be considered grand theft, it is a felony. If theft of the articles would be petty theft, it is a misdemeanor.

- xiv. What are the general state criminal laws for theft?

Theft, Penal § 484

Any person who feloniously steals, takes, carries, leads, or drives away the property of another, or who fraudulently appropriates property, or knowingly defrauds another of money or property, or fraudulently obtains credit is guilty of theft. The value of the stolen property is based on the reasonable and fair market value.

Pawnbrokers or secondhand dealers, Penal § 484.1

Any person who knowingly provides false information to a pawnbroker about his identity or ownership of property in order to sell the property is guilty of theft.

Appropriation of lost property, Penal § 485.

Any person who finds lost property with knowledge of the rightful owner but appropriates the property for his own use without first making a reasonable effort to find the owner and return the lost property is guilty of theft.

Grand theft, Penal § 487.

Grand theft is committed when money, labor, or real or personal property stolen is worth more than \$400, when the property is taken from the person of another, when the property is a car or livestock, or when it is a firearm.

Petty theft, Penal § 488.

If grand theft is not committed, then the theft is considered petty theft.

Grand theft punishment, Penal § 489.

Grand theft involving a firearm is punishable by a term of imprisonment of 16 months, 2 years, or 3 years. In all other cases of grand theft, imprisonment may not exceed 1 year.

Petty theft punishment, Penal § 490.

Petty theft is punishable by a maximum fine of \$1,000 and/or by imprisonment not exceeding 6 months.

- xv. What are the general state criminal laws for receiving stolen property?

Receiving stolen property, Penal § 496.

Any person who knowingly buys or receives stolen property or property that was obtained through theft or extortion, or helps conceal, sell, or withhold stolen property may be imprisoned for a term not to exceed 1 year. Swap meet vendors and other professionals dealing in secondhand merchandise must make reasonable inquiries into the property they receive to ensure it is being given to them by the rightful owner. Failure to do so may result in a term of imprisonment not to exceed 1 year.

- xvi. What are the general state criminal laws for unlawful trespass?

Forcible entry, Penal § 603.

It is a misdemeanor to forcibly enter a house, cabin, or other building without consent of the owner and damage or destroy any property of value.

- xvii. What are the general state criminal laws for mischief?

See general state criminal laws for damage to property.

xviii. What are the general state criminal laws for damage to property?

Vandalism, Penal § 594

It is an act of vandalism to maliciously deface with graffiti or other inscribed material, damage, or destroy the real or personal property of another person. If the real property vandalized belongs to any public entity, it is assumed that the violator had no ownership claim to that property. Acts resulting in \$400-\$10,000 of damage carry a possible term of imprisonment up to one year or a fine not to exceed \$10,000. Acts resulting in \$10,000 or more of damage carry a possible penalty not to exceed \$50,000 or a combination of a fine and a term of imprisonment. Acts of vandalism resulting in less than \$400 of damage are punishable by a term of imprisonment of not more than one year and/or a fine of up to \$1,000. However, if the violator has been convicted of vandalism previously, the maximum fine becomes \$5,000. The violator also may be required clean up, repair, or replace the damaged property.

Possession with intent to commit vandalism, Penal § 594.2

It is a misdemeanor to possess a masonry or glass drill bit, carbide drill bit, glass cutter, grinding stone, awl, chisel, carbide scribe, aerosol paint container, felt tip marker, or other marking substance with the intent to commit vandalism. A violator may be required to perform community service not to exceed 90 hours.

Vandalism based on racial or religious prejudice, Penal § 594.3

It is a crime punishable by a term of imprisonment of up to one year to knowingly vandalize a church, synagogue, mosque, temple, building owned and occupied by a religious educational institution, or other place primarily used for religious services or a cemetery. If this crime is committed as a hate crime or with the purpose of intimidating and deterring people from freely exercising their religion, the crime becomes a felony.

Destruction of cemetery or mortuary property, Penal § 594.35

It is a crime to destroy, cut, mutilate, efface, remove, tear down, or otherwise injure any tomb, monument, memorial, or marker in a cemetery, as well as any grave, vault, niche, crypt, or any building, statuary, or ornamentation within the cemetery. This also includes any gate, door, fence, wall, post, railing, or other enclosure for the protection of the cemetery or any property within the cemetery. It also is unlawful to obstruct or interfere with any person accompanying human remains to a cemetery or funeral establishment, or participating in a funeral/interment service. This crime is punishable by a term of imprisonment not to exceed one year.

Affixing graffiti, Penal § 594.6

Any person convicted of vandalism may be required to complete community service not to exceed 300 hours over a period of 240 days. The violator also may be required to keep a specified piece of property free of graffiti for up to one year. Additional counseling may be imposed by the court.

Subsequent conviction of vandalism, Penal § 594.7

A person who has been convicted of vandalism more than once and at least one of the previous convictions resulted in imprisonment, a conditional sentence, or probation, shall be sentenced to imprisonment of not more than one year if the person commits the offense again.

Destructive implements, Penal § 594.8

Any minor convicted of possessing a destructive instrument with the intent to commit vandalism may be sentenced to community service of not less than 24 hours, as well as counseling. In lieu of community service, the violator may be required to keep a specified piece of property free of graffiti for 60 days.

xix. What are the general state criminal laws for hate crimes?

Hate crime, Penal § 422.55

A hate crime is any criminal act committed in whole or in part because of the victim's actual or perceived disability, gender, nationality, race or ethnicity, religion, sexual orientation, and/or association with a person or group with one of more of these actual or perceived characteristics.

Interference with exercise of civil rights, Penal § 422.6

No person may threaten by force, threat of force, willful injury, intimidation, interference, or oppression the free exercise or enjoyment of any right preserved by the state and federal constitutions and laws because of an actual or perceived characteristic listed in Penal § 422.55. No person may destroy, deface, or damage the real or personal property of any person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right preserved in the state and federal constitutions and laws. This offense is punishable by up to a year of imprisonment, a \$5,000 fine, and/or community service.

b. **Acts Prohibited by Law and Subject to Civil or Administrative Sanctions**
How is the excavation of historical and archaeological resources restricted in this state?

We are unable to locate information relevant to this question at this time.

- i. How is the collection or removal of historical and archaeological resources restricted in this state?

We are unable to locate information relevant to this question at this time.

- ii. What specific laws restrict the alienation or use of historic burial places?

Rule against perpetuities and alienation, Health & Safety § 8559

Property dedicated for a cemetery cannot be alienated as to title or use.

c. Time Limits for Bringing Criminal Action

- What time limits govern the initiation of a criminal action related to the protection of burials?

We are unable to locate information relevant to this question at this time.

d. Time Limits for Bringing Civil Action

- What time limits govern the initiation of a civil action related to the protection of burials?

We are unable to locate information relevant to this question at this time.

2. Sanctions

Criminal

- What are the general criminal fines and penalties for misdemeanors and felonies in the state?

For fines and penalties associated with crimes related to burials and historic preservation, see individual crimes explained above.

- i. What are the class designations for misdemeanors and felonies in the state?

We are unable to locate information relevant to this question at this time.

a. Civil or Administrative

- What are the civil sanctions related to burial protection in the state?

Penalties for violations of 5097.993(a), Public Resources § 5097.994

Violations of §5097.993(a) are punishable by civil penalties in addition to criminal ones. A fine of up to \$50,000 may be imposed for each separate violation. The court must consider the extent of the damage to the Native American site or object when assessing the penalty.

- i. What are the administrative sanctions related to burial protection in the state?

We are unable to locate information relevant to this question at this time.

3. Preservation of Burials and Compliance Therewith

Laws Related to Preservation of Burials

- What are the time limitations for bringing a civil action related to the preservation of burials to court?

We are unable to locate information relevant to this question at this time.

- i. How are future interests in property involving burials subject to the rule against perpetuities?

Rule against perpetuities and alienation, Health & Safety § 8559

Dedication of property to cemetery purposes does not violate the rule against perpetuities due to the unique needs of burying the dead.

- ii. How can the state exercise eminent domain over a cemetery or historic property?

Eminent domain, Government Code § 15855

The State Public Works Board may invoke the power of eminent domain to acquire property needed by any state agency for any state purpose. This does not limit the rights of the Department of Transportation, Department of Water Resources, State Lands Commission, State Reclamation Board, or the University of California to exercise eminent domain. If the state legislature finds that use of eminent domain has been improper, all associated contracts are cancelled and considered null and void.

- iii. How are conservation and preservation easements created in this state?

Legislative findings and declaration, Civil § 815

The State Legislature has declared that the preservation of land in its natural, agricultural, historical, forested, or open-space condition is an important public interest and thus encourages conservation easements.

Conservation easement, Civil § 815.3

Only tax-exempt nonprofits with primary missions of preservation, state, county, and local governments, and federally-recognized California Native American tribes may acquire and hold conservation easements.

Enforcement of easement, Civil § 815.7

No conservation easement is unenforceable due to lack of privity or lack of contract. Injunctive relief to ensure that the terms of a conservation easement are followed can be ordered by the court. Injury to a conservation easement may entitle the holder to recover monetary damages.

- iv. How does the state create authorized rights-of-way through cemetery property?

We are unable to locate information relevant to this question at this time.

- v. To what extent are burial grounds and cemeteries open to the public in this state?

We are unable to locate information relevant to this question at this time.

- vi. How are the transfer of cemetery lots and the disposition of cemetery land regulated?

Disposition, Health & Safety § 7900

Whenever human remains have been ordered removed from a cemetery, the cemetery authority may sell or mortgage areas where no interments were made or where all human remains have been removed.

Sale, Health & Safety § 7901

Sale or mortgage of cemetery property must be conducted fairly for a reasonable price. The fairness and reasonableness of the transaction must be confirmed by the superior court of the county in which the land is located.

Recordation of removal of human remains, Health & Safety § 7904

A cemetery authority may file with the county or city in which a cemetery is located a record that all human remains have been removed. Once the record is formally acknowledged, it serves as proof in further transactions involving the property that all human remains have been removed.

Reservation of land for mausoleum, Health & Safety § 7905

Land from a cemetery where remains have been removed may be reserved to erect a mausoleum for re-interment of some remains, with the approval of the governing body of the city or county where the cemetery is located.

Removal of dedication of cemetery lands, Health & Safety § 7906

After all human remains have been removed from a cemetery, the dedication as a cemetery may be removed from the land once it has been proved in court that all bodies have been removed, no more interments have been made, and that the property is no longer required for interment purposes.

- vii. How will the state regulate or sell unsuitable or condemned cemetery property?

We are unable to locate information relevant to this question at this time.

- viii. What is the procedure for abandoning burial grounds or cemetery lots?

Abandonment of non-endowment care cemetery, Health & Safety § 8825

Cities and counties may abandon cemeteries where not more than 10 bodies have been interred in the past 5 years if the cemetery threatens or endangers public health or safety.

Notice of abandonment, Health & Safety § 8827

60 days after the first notice in a newspaper of general circulation of a resolution to abandon a cemetery expires, the process of removing objects and structures on the property that threaten or endanger public health or safety commence.

Marking as memorial, Health & Safety § 8828

Once the abandonment process is complete, the cemetery is marked as a memorial to commemorate those still interred and title to the property passes to the city or county.

- ix. What is the procedure for removing or replacing headstones?

We are unable to locate information relevant to this question at this time.

- x. How will the state preserve historical or archaeological resources threatened by public construction or public works?

State lands, Public Resources § 5097

State lands are defined as any land owned by or under the jurisdiction of the state or any state agency.

Submission of plans to parks and recreation department, Public Resources § 5097.1

Before the construction of any public project may begin, the state agency responsible for the project may submit plans indicating the nature, location, and excavations of the project to the State Department of Parks and Recreation.

Site survey, Public Resources § 5097.2

Once the Department of Parks and Recreation has received a project plan from the appropriate state agency, it may initiate an archaeological survey of the site. Upon completion of the survey, the Department may offer recommendations to the state agency for preservation, recordkeeping, and excavation for any archaeological, paleontological, or historical features on the land.

Preservation or recording of features, Public Resources § 5097.3

The state agency commencing a public project on state land may undertake such measures as it deems necessary to preserve or record any archaeological, paleontological, or historic features of the land after receiving the recommendations of the Department of Parks and Recreation concerning the site.

Impairment or delay of state construction project, Public Resources § 5097.4

No archaeological program conducted by the Department of Parks and Recreation shall impair, impede, or delay any state construction project.

Expenditures, Public Resources § 5097.6

The State Legislature must appropriate funds to conduct survey and preservation on state lands.

State-owned historical resources, Public Resources § 5024.5

No state agency can alter, transfer, relocate, or demolish historical resources listed by the Office of Historic Preservation but not yet on the state register without first giving the state historic preservation officer notice of the proposed action. The state historic preservation officer has 30 days after notice to provide comments. If the historical resource is endangered by the project, the agency must develop a mitigation plan. The Office of Planning and Research mediates disputes between the historic preservation office and the agency.

- xi. What are the procedures for excavating or removing remains or archaeological resources on public lands?

State lands, Public Resources § 5097

State lands are defined as any land owned by or under the jurisdiction of the state or any state agency.

Submission of plans to parks and recreation department, Public Resources § 5097.1

Before the construction of any public project may begin, the state agency responsible for the project may submit plans indicating the nature, location, and excavations of the project to the State Department of Parks and Recreation.

Site survey, Public Resources § 5097.2

Once the Department of Parks and Recreation has received a project plan from the appropriate state agency, it may initiate an archaeological survey of the site. Upon completion of the survey, the Department may offer recommendations to the state agency for preservation, recordkeeping, and excavation for any archaeological, paleontological, or historical features on the land.

Preservation or recording of features, Public Resources § 5097.3

The state agency commencing a public project on state land may undertake such measures as it deems necessary to preserve or record any archaeological, paleontological, or historic features of the land after receiving the recommendations of the Department of Parks and Recreation concerning the site.

Impairment or delay of state construction project, Public Resources § 5097.4

No archaeological program conducted by the Department of Parks and Recreation shall impair, impede, or delay any state construction project.

Expenditures, Public Resources § 5097.6

The State Legislature must appropriate funds to conduct survey and preservation on state lands.

Interference with Native American religion, Public Resources § 5097.9

Even when a public agency occupies or operates public property, it cannot interfere with any constitutionally protected right to free expression or exercise of Native American religion. If the public property contains a cemetery, place of worship, or other sacred site, the public agency cannot cause irreparable damage to the site without a clear and convincing public interest. This applies to private parties using public lands.

- xii. What are the procedures for excavating or removing remains or archaeological resources on private lands?

Discovery of Native American human remains, Public Resources § 5097.98

After Native American human remains have been discovered, the most likely descendants must be immediately notified. The descendants then, with permission of the landowner, inspect the site and offer recommendations for how to excavate and dispose of the remains and associated burial artifacts. This process must be completed within 48 hours. The landowner must ensure that the remains are not damaged or disturbed until the descendants have determined a course of action. That course of action may include: removal; preservation, return of the remains to the descendants; or other culturally appropriate treatment. If descendants cannot

be identified, the landowner must re-inter the remains and associated burial goods in an appropriate place that will not be disturbed in the future.

- xiii. What are the procedures for discoveries of human remains and artifacts of cultural significance?

Discovery of Native American human remains, Public Resources § 5097.98

After Native American human remains have been discovered, the most likely descendants must be immediately notified. The descendants, then, with permission of the landowner, inspect the site and offer recommendations for how to excavate and dispose of the remains and associated burial artifacts. This process must be completed within 48 hours. The landowner must ensure that the remains are not damaged or disturbed until the descendants have determined a course of action. That course of action may include removal, preservation, return of the remains to the descendants, or other culturally appropriate treatment. If descendants cannot be identified, the landowner must re-inter the remains and associated burial goods in an appropriate place that will not be disturbed in the future.

- xiv. What are the procedures for the disposition of human remains and funerary artifacts?

Repatriation of Native American remains, Public Resources § 5097.991

It is the policy of the State that Native American remains and associated funerary artifacts shall be repatriated.

- xv. What are the procedures for the removal and re-interment of human remains from cemeteries?

Required consent, Health & Safety § 7525

Human remains may be removed from a cemetery only with the consent of the cemetery authority and written consent of one of the following: the surviving spouse; surviving children; surviving parents; or surviving siblings.

Permission of court, Health & Safety § 7526

If consent cannot be obtained to remove human remains from a cemetery, permission from the superior court of the county where the cemetery is located is sufficient.

Notice of application to court for permission, Health & Safety § 7527

The cemetery authority and persons refusing consent to remove remains from a cemetery must be given notice at least 10 days before in person or 15 days before by mail an application is submitted to court to approve the removal.

Exemptions, Health & Safety § 7528

Removal of remains to another plot within the same cemetery or removal of remains from a plot that is past due or unpaid does not require consent.

Interment in religious cemetery, Health & Safety § 7980

When a decedent has been interred in a cemetery under the auspices of a religious corporation or society, or church, any removal and re-interment of remains must be in accordance with the rules, regulations, and discipline of the religious denomination, society, or church.

Cemeteries with no interments for two years, Health & Safety § 7600

If no interments have been made in a cemetery for 2 years, the governing body of the city in which the cemetery is located may provide for the removal of all human remains from the cemetery.

Removal of remains, Health & Safety § 7701

When a city or county orders the removal of human remains, it must prescribe time limits and other reasonable regulations for conducting the removal and re-interment.

Declaration, Health & Safety § 7725

A cemetery authority may declare its intent and purpose to remove remains when so ordered by an ordinance to remove the remains. The procedure for such a declaration must be voted on by the cemetery authority's governing body and then approved by a majority vote of the lot holders.

Contents of declaration, Health & Safety § 7726

A declaration to remove human remains must specify that remains not removed within ten months after the declaration is published will be removed by the cemetery authority.

Publication, Health & Safety § 7735

A declaration of intent to remove human remains must be published in a newspaper of general circulation at least once a week for two successive months.

Posting of copies, Health & Safety § 7737

Copies of the declaration must be posted in at least 3 noticeable places in the cemetery within 10 days after publication.

Mailing to plot owners, Health & Safety § 7738

A copy of the declaration must be mailed to every person who owns, holds, or has the right of interment in any plot affected by the removal.

Mailing to heirs of persons interred, Health & Safety § 7739

Notice of a planned removal of remains from a cemetery must be mailed to each known living heir of any person interred in the cemetery.

Notice of desire to be present, Health & Safety § 7750

Any relative or friend of a decedent whose remains are being removed from a cemetery must request to be present when the remains are disinterred.

Contents of notice, Health & Safety § 7751

A request to attend the removal of remains must specify to the cemetery authority the name of the person, where the plot is located, the date of interment, and a current address.

Delivery or mailing to cemetery authority, Health & Safety § 7752

A request to attend a disinterment may be mailed to the office of the appropriate cemetery authority.

Notice by cemetery authority of time and place, Health & Safety § 7753

A cemetery authority must provide written notice of when remains will be removed and when they will be re-interred to any person requesting to be present.

Requirement of notice before disinterment, Health & Safety § 7754

A cemetery authority cannot remove remains until the person requesting to be present has been notified of the date of removal.

Voluntary removal, Health & Safety § 7800

A relative or friend may voluntarily remove and dispose of remains scheduled to be disinterred by a cemetery authority.

Affidavit of person desiring removal, Health & Safety § 7801

Before a voluntary removal can occur, the person requesting the removal must submit an affidavit of consent to the cemetery authority. If the requester is not a relative, permission of known heirs must be obtained before removal.

Removal by purchaser or owner of plot; Health & Safety § 7802

The purchaser/owner of a plot or those having a right of interment in a plot may remove remains without filing an affidavit of consent.

Removal by heirs of grantee of plot; Health & Safety § 7803

Heirs to a plot or right of interment may remove remains without filing an affidavit of consent.

Removal of appurtenances; Health & Safety § 7804

When remains are voluntarily removed by a friend or relative of the decedent, that friend or relative also may remove any monument, headstone, or appurtenance.

Failure to remove appurtenances; Health & Safety § 7805

Monuments, headstones, and other items that have not been removed within 90 days may be disposed of by the cemetery authority.

Removal and reinterment; Health & Safety § 7850

After notice and expiration of any time limits, the cemetery authority may remove any remains and re-inter those remains in other cemeteries in the State.

Reinterment in adjoining county; Health & Safety § 7851

Cemetery authorities must transport and re-inter removed remains to a cemetery in an adjoining county.

Nature of reinterment; Health & Safety § 7852

Removed remains must be re-interred in a proper vessel and treated respectfully.

Disposition; Health & Safety § 7900

Whenever human remains have been ordered removed from a cemetery, the cemetery authority may sell or mortgage areas where no interments were made or where all human remains have been removed.

- xvi. How does the state regulate the opening and construction of highways through burial grounds or cemeteries?

We are unable to locate information relevant to this question at this time.

Removal of human remains, Health & Safety 7050.5

When human remains are discovered outside a cemetery, the remains must not be disturbed until the coroner of the county in which the remains are discovered determines whether law enforcement should be involved. If the coroner determines that the remains are not subject to her authority and believes they may be Native American, she must contact the Native American Heritage Commission with 24 hours.

Inventory of Native American remains, Health & Safety § 8013

Any agency or museum with collections of Native American human remains and associated funerary objects must complete an inventory that (1) identifies geographical location, state cultural affiliation, and circumstances of acquisition; (2) list the items that are identifiable with a cultural affiliation; and (3) list the items that are reasonably identifiable with a cultural affiliation. The agency or museum also must summarize funerary and sacred objects not associated with human remains. A California tribe may request additional documentation from the agency or museum. The inventory must be given to the Repatriation Oversight Commission within 90 days of its completion. The requirements of this section must be met regardless of an agency or museum's obligations under NAGPRA. If no Native American items are found in an agency or museum's collection, it must certify such in a letter to the Commission. The agency or museum is responsible for updating its inventory and provided those updates to the Commission.

Repatriation requests, Health & Safety § 8014

A tribe may request the return of human remains and cultural items by filing a written request with the Repatriation Oversight Commission and by providing evidence that the items are actually culturally affiliated with the tribe making the request for return.

Duties of commission, Health & Safety § 8015

When the Commission receives a repatriation request, it forwards the request to the agency or museum and publishes it on its website for 30 days. If the items requested are not under dispute and all paperwork is in order, the agency or museum must return the item within 90 days of the request being published by the Commission.

Multiple repatriation requests, Health & Safety § 8016

The Commission will notify all parties when multiple repatriation requests are submitted for the same item, or when a dispute arises between a requesting party and the agency or museum. If all relevant criteria are met, the agency or museum

must return the requested remains or artifacts. However, in the event of a dispute, the Commission will follow standard mediation practices. If the parties cannot settle their dispute, the Commission or a certified mediator will mediate the dispute. The Commission or mediator reviews all complaints and evidence submitted by the parties and holds a mediation session within 20 days of receipt of responses from each side to the complaints. 7 days after the session, the mediator will deliver her decision. If the dispute cannot be resolved through mediation, the Commission will render a final decision. Appeals to the Commission's decision must be filed in court within 30 days after the decision is made.

Committees or groups authorized to accept items, Health & Safety § 8017

Repatriated items may be given to a committee or group of tribes authorized by their tribal governments to accept the items.

Liability for claims, Health & Safety § 8018

Any agency or museum that repatriates an item in good faith is not liable for claims against it. No action may be brought by the state or another entity if the agency or museum complied with the repatriation laws.

Relinquishment of control, Health & Safety § 8019

An Indian tribe or group may expressly relinquish control over any human remains or cultural items.

Mediation sessions, Health & Safety § 8020

Mediations of repatriation disputes may be closed to the public to protect information necessary for a determination of repatriation.

Appeal by either party, Health & Safety § 8021

If a party in a repatriation dispute files an appeal, the decision of the Commission or mediator is automatically stayed.

Repatriation Oversight Commission, Health & Safety § 8025

The Repatriation Oversight Commission is composed of 10 members, 6 from federally-recognized tribes, 1 from a state agency, 1 nominated by the University of California, 1 nominated by the California Association of Museums, and 1 from a non-federally-recognized tribe.

Meetings and duties, Health & Safety § 8026

The Commission's duties include the following: ordering repatriation of human remains and cultural items; establishing mediation procedures; administering the

budget; managing a website; advise tribes and state agencies; prepare an annual report; report noncompliance with NAGPRA; and impose civil penalties against agencies and museums that violate repatriation requirements.

Compensation, reimbursement, and chairperson, Health & Safety § 8027

Commission members cannot receive a salary, but may be reimbursed for expenses incurred during the performance of their duties. The members elect the Commission chairperson.

Terms and vacancies, Health & Safety § 8028

Member terms are 3 years and no member may serve more than 2 consecutive terms. In the event of a vacancy, the replacement is named by the constituency that was represented by the exiting member and will only serve for the remainder of the exiting member's term.

Failure to comply, Health & Safety § 8029

Any agency or museum that fails to comply with the repatriation procedures may be fined a maximum of \$20,000 for each violation. Factors considered in assessing the penalty are the archaeological, historical, and commercial value of the item involved, the cultural and spiritual significance of the item, the damages suffered, and the number of violations that occurred. If the agency or museum fails to pay, the Attorney General may initiate a civil action in court to collect the money. Actions in good faith to comply with NAGPRA are exempt from a civil penalty.

Restriction of archaeological record disclosure, Government Code § 6254

Records of Native American graves, cemeteries, and sacred places are not required to be disclosed.

xviii. How does the state preserve historical lands from surface mining?

We are unable to locate information relevant to this question at this time.

xix. What are the procedures for the exploration of submerged graves and underwater sites?

We are unable to locate information relevant to this question at this time.

xx. How is activity affecting aquatic beds regulated?

We are unable to located information relevant to this question at this time.

xxi. What are the procedures for transferring land and property containing historic or cultural resources?

Transfer of state-owned National Register property, Public Resources § 5027

Historical resources listed on the National Register of Historic Places that is transferred from the state to another public agency cannot be demolished, destroyed, or altered except for purposes of restoration and preservation.

- xxii. What miscellaneous laws exist in this state to preserve human remains, burial places, and funerary objects?

Natural disaster damage to historic property, Public Resources § 5028

Historical structures listed on the federal or state registers of historic places may not be demolished or altered if they sustain natural disaster damage, except for restoration and preservation, unless the state historic preservation office approves the demolition. Local governments may seek consultation with the historic preservation office for restoration of damaged properties.

- xxiii. What public health regulations exist for the removal and burial of human remains?

Health department permission, Health & Safety 7500

No human remains can be removed from a cemetery without written consent from the health department with jurisdiction over the cemetery. The cemetery from which the remains are removed must keep a record of the date of removal, name of deceased, and the plot from which the remains are removed.

Transporting human remains, Health & Safety 7502

Cemetery authorities must transport human remains in accordance with reasonable rules and regulations a local board of health may adopt.

- xxiv. How is environmental impact measured for historic and archeological resources?

Archaeological resources, Public Resources § 21083.2

An environmental impact report is required when a project by a state agency may adversely affect an archaeological resource. If the project will damage a unique archaeological resource, reasonable efforts should be made to preserve the resource. If an archaeological resource is not preserved or left undisturbed, mitigation measures should be taken, including excavation. Unique archaeological resources are those that contain information to answer important scientific questions, have a special quality, or are associated with an important historic event.

a. Activities Affecting Burials which Require State or Local Government Compliance

What activities affecting burials require state or local government compliance?

We are unable to locate information relevant to this question at this time.

b. Regulation by State or Local Government of Non-Governmental Burial-Related Activities

What state regulations relate to non-governmental burial-related activities?

We are unable to locate information relevant to this question at this time.

i. What local regulations relate to non-governmental burial-related activities?

We are unable to locate information relevant to this question at this time.

4. Decision-Making

Authorities Empowered to Make Decisions Affecting Burials

How is a cemetery association formed in this state?

Private cemeteries; Health & Safety § 8275.

Any corporation authorized to do so may establish, maintain, improve, operate, and otherwise conduct the business of a cemetery, for profit or not and it known as a cemetery authority.

i. Who has the right to conduct archaeological field excavations?

State Historical Resources Commission archaeological sites; Public Resources § 5020.5

The Commission develops criteria for determining the significance of archaeological sites and which sites should be preserved or excavated. The Commission also develops guidelines for the collection of archaeological specimens.

ii. Who has custody rights of discovered human remains?

We are unable to locate information relevant to this question at this time.

iii. Who has the ownership rights of archaeological specimens or objects of cultural significance?

We are unable to locate information relevant to this question at this time.

iv. What rights do nonresidents of the state maintain?

We are unable to locate information relevant to this question at this time.

- v. What has the authority to enforce criminal or unlawful actions regarding human remains and cultural resources?

We are unable to locate information relevant to this question at this time.

- vi. Who has dominion and control of state historic or archaeological resources?

We are unable to locate information relevant to this question at this time.

- vii. Who sits on the state historical commission, and how are these members appointed?

Public Resources § 5020.2

The State Historical Resources Commission consists of 9 members who are appointed by the governor. Members hold office for a term of 4 years. Members are eligible based on their backgrounds in disciplines like history and archaeology, ethnic history, or folk life.

- viii. Who sits on the state historic preservation board and for how long?

Public Resources § 5020.6

The governor appoints a State Historic Preservation Officer who serves as the executive secretary of the State Historical Resources Commission.

a. Scope of Authority

- What powers and responsibilities are delegated to cemetery associations in this state?

Powers of cemetery authority, Health & Safety 8300

Cemetery authorities care for, control, and manage cemeteries under their authority. Authorities may limit use of property, regulate markers and monuments, manage where remains are interred, and regulate conduct of people in the cemetery.

- i. How are cemetery sales records to be kept?

Interment records, Health & Safety § 8330

Records must be kept of every interment, including dates, name and age of person interred, and the location of the burial plot.

Ownership records, Health & Safety § 8331

Records must be kept of all sales and transfers of plots.

- ii. What power does the state have to acquire or purchase property of historic or archaeological significance?

Real property acquisition, Public Resources § 5079.20

The State Public Works Board may acquire any real property requiring preservation under the state register of historic places. The Office of Historic Preservation may accept gifts of real property or enter into agreements to purchase real property to achieve the objectives of historic preservation.

Acquisition for public access, Public Resources § 5079.21

The Office of Historic Preservation may acquire and hold historic resources in order to provide public access to such sites.

Acquisition, conservation, return and transfer of title, Public Resources § 5079.35

The Office of Historic Preservation may acquire real property with historic or archaeological significance to protect it from imminent destruction or to otherwise secure preservation. However, the Office should attempt to find another qualified buyer, if possible, and return title to another entity once the property is preserved.

- iii. How does the state manage park and historical sites?

Department of Parks and Recreation, Public Resources § 5001

State parks are managed by the Department of Parks and Recreation.

- iv. What are the powers of municipal and county governments regarding park and historical sites?

Acquiring property for historic landmarks, Government Code, § 25373

County governments may acquire property for the preservation or development of a historic landmark or recreational facilities.

- v. How do county and municipal governments oversee cemetery property?

Public cemeteries, Health & Safety § 8125

Cities, towns, and counties may dedicate public property not exceeding 5 acres as a cemetery. A survey and description of the land set-aside must be filed with the county.

Management of public cemeteries, Health & Safety § 8130

The general management of a public cemetery, including burials and plots, is conducted by the city owning the cemetery.

County cemeteries, Health & Safety § 8000

A county may order the removal of all human remains from a cemetery if it is necessary for the land to be used for other purposes, the cemetery is located on a site of a county institution for the indigent and sick, and an adequate alternative exists for burial of the indigent and sick.

Resolution of county board of supervisors, Health & Safety § 8001

A declaration to remove human remains from a cemetery requires notice through publication in a newspaper of general circulation and shall be mailed to any known living heir to any person whose remains are interred in the cemetery.

Voluntary removal, Health & Safety § 8002

Any relative or friend may voluntarily remove a decedent's remains before the date fixed for removal by the county.

Removal and reinterment by county, Health & Safety § 8003

The county may conduct the removal of remains not claimed after notice has been provided and the time limit specified in the notice has expired.

Nature of reinterment, Health & Safety § 8004

Remains removed from a cemetery by the county must be transported and reinterred in a proper vessel and given a permanent identifying marker.

Use of property after removal, Health & Safety § 8005

After all human remains have been removed from a cemetery the property may be used as seen fit by the county.

vi. What are the powers and duties of the state historical commission?

State Historical Resources Commission powers and duties, Public Resources § 5020.4

The State Historical Resources Commission evaluates sites for the National Registers of Historic Places, maintains records of historical resources, establishes criteria for preserving historical resources, develops criteria for rehabilitation of historic structures, develops policies, makes recommendations on historic sites, and submits an annual report on its activities.

- vii. How does the state historical commission register or include historical property?

Registration of state landmarks and points of interest, Public Resources § 5021

The Commission maintains a register of historical landmarks and points of historical interest. The Commission issues recommendations for the registers sites that are deemed important historical resources or points of historical interest that warrant a sign identifying the site.

State-owned historic resources, Public Resources § 5024

The State Historic Preservation Officer determines which state-owned historical resources are eligible for listing on the National Register of Historic Places or as a state historical landmark. The Officer maintains a master list of all historic places and informs state agencies of funding opportunities for preservation activities.

California Register of Historical Resources, Public Resources § 5024.1

Criteria considered in listing a site on the state register of historical resources include the site's association with significant events in state history, its association with important historic figures, whether it embodies distinctive characteristics of a particular historical era, or whether it yields important historical information.

- viii. What are the powers and duties of the state archaeological commission?

State Office of Historic Preservation, Public Resources § 5024.6

The Office of Historic Preservation recommends properties for listing on the historic registers, administers preservation incentive programs, provides information on preservation programs, provides education and technical assistance, administers grant and loan programs, cooperates with ethnic and cultural organizations, reviews impacts on historical resources of public works, and reviews excavation and salvage permits.

- ix. How is the rehabilitation and preservation of historic property conducted?

State Historical Resources Commission powers and duties, Public Resources § 5020.4

The State Historical Commission develops criteria for the rehabilitation and preservation of historic property.

- x. What specific historic or cultural properties are regulated by the state's historical commission?

Registration of state landmarks and points of interest, Public Resources § 5021

The Commission maintains a register of historical landmarks and points of historical interest. The Commission issues recommendations for the registers sites that are deemed important historical resources or points of historical interest that warrant a sign identifying the site.

State-owned historic resources, Public Resources § 5024

The State Historic Preservation Officer determines which state-owned historical resources are eligible for listing on the National Register of Historic Places, or as a state historical landmark. The Officer maintains a master list of all historic places and informs state agencies of funding opportunities for preservation activities.

California Register of Historical Resources, Public Resources § 5024.1

Criteria considered in listing a site on the state register of historical resources include the site's association with significant events in state history, its association with important historic figures, whether it embodies distinctive characteristics of a particular historical era, or whether it yields important historical information.

5. Special Funding Sources

Special Funding for Protection and Preservation of Burials

How is the income from cemetery land to be used and dispersed in this state?

Proceeds of sale of land, Health & Safety § 7925

Money received from the sale of unused cemetery land or land where all remains have been removed may be used for: acquisition of lands and improvements for cemetery purposes; disinterment, removal, and reinterment of bodies; endowment care of graves and markers; and other purposes consistent with the objectives of a cemetery authority.

Use of funds to pay for expense of removal, Health & Safety § 7926

A cemetery association may use funds in its treasury to offset the removal of remains; such as paying for a reinterment plot, transportation of remains, removal or monuments and headstones, and other incidental expenses.

Endowment care fund for cemetery on reinterment, Health & Safety § 7927

The cemetery association will set aside adequate funds for the maintenance and care of the cemetery to which remains have been moved.

1. How is a state historic acquisition and preservation fund administered?

California Heritage Fund, Public Resources § 5079.10

The California Heritage Fund is administered by the Office of Historic Preservation and is used to implement historic preservation laws and pay the costs of the Office in carrying out this function.

Deposits, Public Resources § 5079.11

All funds received for the purpose of historic preservation must be deposited into the Heritage Fund. The fund may be divided into separate accounts categorized by the intended purpose of the deposited therein.

Grants, gifts, donations, Public Resources § 5079.11

The historic preservation office may receive grants, gifts, donations, rents, and other financial support from private sources.

Deposit of proceeds, Public Resources § 5079.13

All funds received from leases, rentals, sales, exchanges, or transfers of real property, including interest, must be deposited into the Heritage Fund.

Emergency financial support, Public Resources § 5079.15

Projects that qualify under federal and state emergency and disaster guidelines may receive emergency financial support.

Loans and grants to public agencies and non-profits, Public Resources § 5079.25

The state historic preservation office may provide loans and grants from the Heritage Fund to public agencies and non-profits engaged in historic preservation efforts.

Grants - maximum amount, Public Resources § 5079.40

Grants to public agencies and nonprofits may not exceed \$1 million or 50% of the cost of the historic preservation project.

- ii. How are trust funds for the maintenance of cemeteries established and administered?

We are unable to locate information relevant to this question at this time.

- iii. How are state historic archives maintained?

Information maintained by the Department of Parks and Recreation, Government Code § 6254.10

Records maintained by the state pertaining to archaeological sites are not required to be disclosed.

- iv. How may the state enter into private contracts for recovering and preserving historical artifacts?

Authorization to contract, Public Resources § 5079.26

The Office of Historic Preservation may enter into contracts with private entities to encourage and support historic resource preservation.

Support services, Public Resources § 5079.27

The Office of Historic Preservation may contract with private entities to carry out its duties in § 5020.4.

- v. What funding exists for state historical education efforts?

We are unable to locate information relevant to this question at this time.

- vi. What funding exists for state museums' scientific services?

We are unable to locate information relevant to this question at this time.

a. Special Funding for Public Lands

What special funding sources are there for protection and preservation of burials on public lands?

Grants for impaired resources, Public Resources § 5079.50

The Office of Historic Preservation awards grants to public agencies and nonprofits to improve state historical resources that have been damaged by natural events or human activity.

Archaeological resources grant, Public Resources § 5079.61

The Office of Historic Preservation may award grants to public agencies and nonprofits for historical preservation and acquisition of archaeological resources and artifacts.

b. Special Funding for Private Lands

What special funding sources are there for protection and preservation of burials on private lands?

We are unable to find information relevant to this question at this time.

6. State Recognition of Constituent Groups

Laws Recognizing or Acknowledging Constituent Groups

What laws are there recognizing or acknowledging constituent groups?

Inventory of Native American remains, Health & Safety § 8013

Any agency or museum with collections of Native American human remains and associated funerary objects must complete an inventory that: (1) identifies geographical location, state cultural affiliation, and circumstances of acquisition; (2) list the items that are identifiable with a cultural affiliation; and (3) list the items that are reasonably identifiable with a cultural affiliation. The agency or museum also must summarize funerary and sacred objects not associated with human remains. A California tribe may request additional documentation from the agency or museum. The inventory must be given to the Repatriation Oversight Commission within 90 days of its completion. The requirements of this section must be met regardless of an agency or museum's obligations under NAGPRA. If no Native American items are found in an agency or museum's collection, it must certify such in a letter to the Commission. The agency or museum is responsible for updating its inventory and providing those updates to the Commission.

Repatriation requests, Health & Safety § 8014

A tribe may request the return of human remains and cultural items by filing a written request with the Repatriation Oversight Commission and by providing evidence that the items are actually culturally affiliated with the tribe making the request for return.

Duties of commission, Health & Safety § 8015

When the Commission receives a repatriation request, it forwards the request to the agency or museum and publishes it on its website for 30 days. If the items requested are not under dispute and all paperwork is in order, the agency or museum must return the item within 90 days of the request being published by the Commission.

Multiple repatriation requests, Health & Safety § 8016

The Commission will notify all parties when multiple repatriation requests are submitted for the same item, or when a dispute arises between a requesting party and the agency or museum. If all relevant criteria are met, the agency or museum must return the requested remains or artifacts. However, in the event of a dispute, the Commission will follow standard mediation practices. If the parties cannot settle their dispute, the Commission or a certified mediator will mediate the dispute. The Commission or mediator reviews all complaints and evidence submitted by the parties and holds a mediation session within 20 days of receipt of responses from each side to the complaints. 7 days after the session, the mediator will deliver her

decision. If the dispute cannot be resolved through mediation, the Commission will render a final decision. Appeals to the Commission's decision must be filed in court within 30 days after the decision is made.

Committees or groups authorized to accept items, Health & Safety § 8017

Repatriated items may be given to a committee or group of tribes authorized by their tribal governments to accept the items.

Liability for claims, Health & Safety § 8018

Any agency or museum that repatriates an item in good faith is not liable for claims against it. No action may be brought by the state or another entity if the agency or museum complied with the repatriation laws.

Relinquishment of control, Health & Safety § 8019

An Indian tribe or group may expressly relinquish control over any human remains or cultural items.

Mediation sessions, Health & Safety § 8020

Mediations of repatriation disputes may be closed to the public to protect information necessary for a determination of repatriation.

Appeal by either party, Health & Safety § 8021

If a party in a repatriation dispute files an appeal, the decision of the Commission or mediator is automatically stayed.

Repatriation Oversight Commission, Health & Safety § 8025

The Repatriation Oversight Commission is composed of 10 members; 6 from federally-recognized tribes; 1 from a state agency; 1 nominated by the University of California, 1 nominated by the California Association of Museums, and 1 from a non-federally-recognized tribe.

Meetings and duties, Health & Safety § 8026

The Commission's duties include the following; ordering repatriation of human remains and cultural items; establishing mediation procedures; administering the budget; managing a website; advise tribes and state agencies; prepare an annual report; report noncompliance with NAGPRA; and impose civil penalties against agencies and museums that violate repatriation requirements.

Compensation, reimbursement, and chairperson, Health & Safety § 8027

Commission members cannot receive a salary, but may be reimbursed for expenses incurred during the performance of their duties. The members elect the Commission chairperson.

Terms and vacancies, Health & Safety § 8028

Member terms are 3 years and no member may serve more than 2 consecutive terms. In the event of a vacancy, the replacement is named by the constituency that was represented by the exiting member and will only serve for the remainder of the exiting member's term.

Failure to comply, Health & Safety § 8029

Any agency or museum that fails to comply with the repatriation procedures may be fined a maximum of \$20,000 for each violation. Factors considered in assessing the penalty are the archaeological, historical, and commercial value of the item involved, the cultural and spiritual significance of the item, the damages suffered, and the number of violations that occurred. If the agency or museum fails to pay, the Attorney General may initiate a civil action in court to collect the money. Actions in good faith to comply with NAGPRA are exempt from a civil penalty.

i. What tribes are recognized by the state?

California recognizes the Gabriellino-Tongva tribe and the Juaneno Band of Missions Indians.

ii. Are the state-recognized tribes different from the federally-recognized tribes in the state?

Yes, there are many more tribes in California that are federally-recognized. For a complete list, see <http://www.ncsl.org/?tabid=13278#fed>.

a. Enforcement Laws

What laws are there related to enforcement of recognition or acknowledgment of constituent groups?

We are unable to locate information relevant to this question at this time.

b. Compliance Laws

What laws are there related to compliance with recognition or acknowledgment of constituent groups?

We are unable to locate information relevant to this question at this time.

c. Regulatory Laws

What laws are there related to regulation of recognition or acknowledgment of constituent groups?

We are unable to locate information relevant to this question at this time.

d. Decision-Making Authorities

What notice and consultation with tribes is required for discoveries of Native American human remains, burial places, and funerary objects?

Investigations and hearings, Public Resources § 5097.97

The Commission may conduct investigations into proposed state actions that may severely and irreparably damage sacred sites. Following a public hearing, the Commission may recommend mitigation measures to the agency overseeing the project. If the agency ignores the recommendations, the Commission may request that the Attorney General intervene with appropriate legal action to avoid severe and irreparable damage to Native American sacred sites.

Inventory of Native American remains, Health & Safety § 8013

Any agency or museum with collections of Native American human remains and associated funerary objects must complete an inventory that (1) identifies geographical location, state cultural affiliation, and circumstances of acquisition; (2) list the items that are identifiable with a cultural affiliation; and (3) list the items that are reasonably identifiable with a cultural affiliation. The agency or museum also must summarize funerary and sacred objects not associated with human remains. A California tribe may request additional documentation from the agency or museum. The inventory must be given to the Repatriation Oversight Commission within 90 days of its completion. The requirements of this section must be met regardless of an agency or museum's obligations under NAGPRA. If no Native American items are found in an agency or museum's collection, it must certify such in a letter to the Commission. The agency or museum is responsible for updating its inventory and provided those updates to the Commission.

Repatriation requests, Health & Safety § 8014

A tribe may request the return of human remains and cultural items by filing a written request with the Repatriation Oversight Commission and by providing evidence that the items are actually culturally affiliated with the tribe making the request for return.

Duties of commission, Health & Safety § 8015

When the Commission receives a repatriation request, it forwards the request to the agency or museum and publishes it on its website for 30 days. If the items requested are not under dispute and all paperwork is in order, the agency or

museum must return the item within 90 days of the request being published by the Commission.

Multiple repatriation requests, Health & Safety § 8016

The Commission will notify all parties when multiple repatriation requests are submitted for the same item, or when a dispute arises between a requesting party and the agency or museum. If all relevant criteria are met, the agency or museum must return the requested remains or artifacts. However, in the event of a dispute, the Commission will follow standard mediation practices. If the parties cannot settle their dispute, the Commission or a certified mediator will mediate the dispute. The Commission or mediator reviews all complaints and evidence submitted by the parties and holds a mediation session within 20 days of receipt of responses from each side to the complaints. 7 days after the session, the mediator will deliver her decision. If the dispute cannot be resolved through mediation, the Commission will render a final decision. Appeals to the Commission's decision must be filed in court within 30 days after the decision is made.

Committees or groups authorized to accept items, Health & Safety § 8017

Repatriated items may be given to a committee or group of tribes authorized by their tribal governments to accept the items.

Liability for claims, Health & Safety § 8018

Any agency or museum that repatriates an item in good faith is not liable for claims against it. No action may be brought by the state or another entity if the agency or museum complied with the repatriation laws.

Relinquishment of control, Health & Safety § 8019

An Indian tribe or group may expressly relinquish control over any human remains or cultural items.

Mediation sessions, Health & Safety § 8020

Mediations of repatriation disputes may be closed to the public to protect information necessary for a determination of repatriation.

Appeal by either party, Health & Safety § 8021

If a party in a repatriation dispute files an appeal, the decision of the Commission or mediator is automatically stayed.

Repatriation Oversight Commission, Health & Safety § 8025

The Repatriation Oversight Commission is composed of 10 members, 6 from federally-recognized tribes, 1 from a state agency, 1 nominated by the University of California, 1 nominated by the California Association of Museums, and 1 from a non-federally-recognized tribe.

Meetings and duties, Health & Safety § 8026

The Commission's duties include the following: ordering repatriation of human remains and cultural items; establishing mediation procedures; administering the budget; managing a website; advise tribes and state agencies; prepare an annual report; report noncompliance with NAGPRA; and impose civil penalties against agencies and museums that violate repatriation requirements.

Compensation, reimbursement, and chairperson, Health & Safety § 8027

Commission members cannot receive a salary, but may be reimbursed for expenses incurred during the performance of their duties. The members elect the Commission chairperson.

Terms and vacancies, Health & Safety § 8028

Member terms are 3 years and no member may serve more than 2 consecutive terms. In the event of a vacancy, the replacement is named by the constituency that was represented by the exiting member and will only serve for the remainder of the exiting member's term.

Failure to comply, Health & Safety § 8029

Any agency or museum that fails to comply with the repatriation procedures may be fined a maximum of \$20,000 for each violation. Factors considered in assessing the penalty are the archaeological, historical, and commercial value of the item involved, the cultural and spiritual significance of the item, the damages suffered, and the number of violations that occurred. If the agency or museum fails to pay, the Attorney General may initiate a civil action in court to collect the money. Actions in good faith to comply with NAGPRA are exempt from a civil penalty.

i. How are Indian sacred sites regulated?

Inventory of sacred places, Public Resources § 5097.96

The Commission may create an inventory of sacred places located on public lands and review existing protections for these sacred places.

Investigations and hearings, Public Resources § 5097.97

The Commission may conduct investigations into proposed state actions that may severely and irreparably damage sacred sites. Following a public hearing, the

Commission may recommend mitigation measures to the agency overseeing the project. If the agency ignores the recommendations, the Commission may request that the Attorney General intervene with appropriate legal action to avoid severe and irreparable damage to Native American sacred sites.

ii. Is there a state Indian Affairs Commission or equivalent?

Yes, it is called the Native American Heritage Commission.

iii. How is the state Indian Affairs Commission or equivalent composed?

Membership, Public Resources § 5097.92.

At least 5 of the 9 members must be elders, traditional people, or spiritual leaders of California Native American tribes who have been nominated by Native American organizations, tribes, and groups. The governor appoints the executive secretary of the Commission.

Compensation and expenses, Public Resources § 5097.93.

The Commission members are not compensated, but may be reimbursed for expenses incurred while performing their duties.

iv. What are the powers and duties of the state Indian Affairs Commission?

Powers and duties, Public Resources § 5097.94.

Cooperation of state and local agencies, Public Resources § 5097.95.

State and local agencies must cooperate with the Commission to assist it in performing its duties.

Inventory of sacred places, Public Resources § 5097.96.

The Commission may create an inventory of sacred places located on public lands and review existing protections for these sacred places.

Investigations and hearings, Public Resources § 5097.97.

The Commission may conduct investigations into proposed state actions that may severely and irreparably damage sacred sites. Following a public hearing, the Commission may recommend mitigation measures to the agency overseeing the project. If the agency ignores the recommendations, the Commission may request that the Attorney General intervene with appropriate legal action to avoid severe and irreparable damage to Native American sacred sites.

v. Is there a state Indian cultural heritage commission?

Yes, see the Native American Heritage Commission above.

e. Special Funding

What special funding sources are there for state recognition or acknowledgment of constituent groups?

We are unable to locate information relevant to this question at this time.

Indiana

Protection of Burials

a. Acts Prohibited by Law and Subject to Criminal Sanctions

- i. What is the criminal liability for unlawfully excavating human remains or archaeological resources?

An approved plan is required for excavating. A person who recklessly, knowingly, or intentionally violates this commits a Class A misdemeanor. However, the offense is a Class D felony if the person disturbs buried human remains or grave markers while committing the offense.

<http://www.in.gov/legislative/ic/code/title14/ar21/ch1.html>

- ii. What is the criminal liability for unlawfully selling or purchasing human remains and funerary objects?

IC 14-21-1-36

Possession of looted property; penalty

Sec. 36. A person who knowingly or intentionally receives, retains, or disposes of an artifact, a burial object, or human remains obtained in violation of this chapter commits possession of looted property, a Class D felony. However, the offense is a Class C felony if the fair market cost of carrying out a scientific archeological investigation of the area that was damaged to obtain the artifact, burial object, or human remains is at least one hundred thousand dollars (\$100,000).

<http://www.in.gov/legislative/ic/code/title14/ar21/ch1.html>

- iii. What is the criminal liability for unlawfully taking or possessing human remains and funerary objects?

Kentucky - <http://www.rootsweb.ancestry.com/~kyekg/cemlaws.htm>

<https://louisville.edu/anthropology/faculty-and-staff/dibiasi-site/kentucky-revised-statues-as-they-relate-to.html>

OAG 83-265. Liability for desecration of graves may exist when land that has been previously been used as a cemetery is reused as a cemetery without first removing and reintering the remains of those previously buried there. There is no liability for desecration if the cemetery is abandoned so that nothing indicates there are graves in

the ground, the person is without notice that graves exist, and the public no longer recognizes the land as a cemetery.

Michigan

Protection of Burials

a. Acts Prohibited by Law and Subject to Criminal Sanctions

- i. What is the criminal liability for unlawfully excavating human remains or archaeological resources?

750.160 - It is a felony to unlawfully and willfully dig up, disinter, remove, or convey away a human body (or the remains) from the place where the body is interred or deposited. One cannot mutilate, deface, remove, or carry away a portion of the dead body of a person, unless required for an embalming or postmortem examination, and any accessory before or after the fact is guilty as well. The penalty for violating the law is not more than 10 years of imprisonment, or by a fine of not more than \$5,000.

This law does not prevent representatives of scientific institutions from disinterment of prehistoric persons for scientific purposes assuming they get written consent from the land they excavate.

<http://legislature.mi.gov/doc.aspx?mcl-750-160>

Minnesota - <http://www.wcl.american.edu/burial/mn.cfm>

Protection of Burials

a. Acts Prohibited by Law and Subject to Criminal Sanctions

- i. What is the criminal liability for unlawfully excavating human remains or archaeological resources?

§ 138.41 Penalties.

Whoever willfully removes any historical or archaeological object belonging to the state is guilty of a gross misdemeanor.

- ii. What is the criminal liability for unlawfully selling or purchasing human remains and funerary objects?

§ 609.53 Receiving Stolen Property

Any person who receives, possesses, transfers, buys or conceals any stolen property or property obtained by robbery, knowing or having reason to know the property was stolen or obtained by robbery is subject to the penalties for theft.

- iii. What is the criminal liability for unlawfully taking or possessing human remains and funerary objects?

§ 307.08 Damages; Illegal Molestation of Human Remains; Burials; Cemeteries; Penalty; Authentication

A person who removes human remains without consent of the appropriate authority is guilty of a felony. To be found guilty, a person must intentionally, willfully, and knowingly commit the act. This law applies to public and private cemeteries.

- iv. What is the criminal liability for unlawfully disturbing human remains and funerary objects?

§ 307.08 Damages; Illegal Molestation of Human Remains; Burials; Cemeteries; Penalty; Authentication

A person who destroys, mutilates, or injures human burials or human burial grounds without consent of the appropriate authority is guilty of a felony. To be found guilty, a person must intentionally, willfully, and knowingly commit the act. This law applies to public and private cemeteries.

- v. What is the criminal liability for defacing or destroying historical or archaeological sites?

§ 138.41 Penalties

Whoever willfully defaces, injures, or destroys any historical or archaeological object or data belonging to the state, or willfully interferes with evidence or work on any state site or other site for which a license has been issued is guilty of a gross misdemeanor.

- vi. What is the criminal liability for unlawfully reproducing historic or archaeological artifacts?

§ 333.42 Counterfeiting Or Dealing In Counterfeits; How Punished

Minnesota does not have specific laws relating to unlawful reproductions of historic or archaeological artifacts, but the general counterfeiting laws provide that any person who knowingly makes, sells, intends to sell counterfeit objects shall be

punished by imprisonment in the county jail for not more than three months, or by a fine of not more than \$100.

- vii. What is the criminal liability for unlawfully destroying tombs, monuments, or gravestones?

§ 307.08 Damages; Illegal Molestation of Human Remains; Burials; Cemeteries; Penalty; Authentication

A person who intentionally, willfully, and knowingly destroys, mutilates, or injures human burials or human burial grounds is guilty of a felony.

- viii. What is the criminal liability for unlawfully taking or possessing monuments or gravestones?

§ 307.08 Damages; Illegal Molestation of Human Remains; Burials; Cemeteries; Penalty; Authentication

A person who removes any tombstone, monument, or structure in a public or private cemetery is guilty of a gross misdemeanor. To be found guilty, a person must intentionally, willfully, and knowingly commit the act.

- ix. What is the criminal liability for destroying or damaging petroglyphs and cave surfaces?

§ 138.41 Penalties

Whoever willfully defaces, injures, or destroys any historical or archaeological object or data belonging to the state, or willfully interferes with evidence or work on any state site or other site for which a license has been issued is guilty of a gross misdemeanor.

- x. What is the criminal liability for removing or damaging headstones?

§ 307.08 Damages; Illegal Molestation of Human Remains; Burials; Cemeteries; Penalty; Authentication

A person who removes any tombstone, monument, or structure in a public or private cemetery is guilty of a gross misdemeanor. To be found guilty, a person must intentionally, willfully, and knowingly commit the act.

- xi. What are the general state criminal laws for abuse of corpse?

§ 609.502 Interference With Dead Body; Reporting

A person in charge of a cemetery who has knowledge that the body of a deceased person interred in the cemetery has been unlawfully removed shall immediately report the occurrence to local law enforcement authorities, and inform the next of kin of the deceased person, if known, within three business days of the discovery of the body's removal unless the person making the report has been instructed in writing by law enforcement authorities that informing the next of kin would compromise an active law enforcement investigation. A person who does not complete of these actions is guilty of a misdemeanor.

§ 307.08 Damages; Illegal Molestation of Human Remains; Burials; Cemeteries; Penalty; Authentication

A person who intentionally, willfully, and knowingly destroys, mutilates, or injures human burials or human burial grounds is guilty of a felony.

Okiahoma

Unauthorized Removal of Dead Bodies, Okla. Stat. tit. 21, § 47-1161.

It is a felony to remove the dead body of a human being or any part thereof from any grave or other place of burial with the intent to sell the remains, dissect the remains, or out of malice or wantonness. The penalty for this crime may include a term of imprisonment in the State Penitentiary not exceeding five years, or in the county jail not exceeding one year, or by a fine not exceeding \$5,000.00, or by both such fine and imprisonment.

1. What is the criminal liability for unlawfully selling or purchasing human remains and funerary objects?

Unlawfully Purchasing or Receiving Dead Body, Okla. Stat. tit. 21, § 47-1162.

It is a felony to purchase or receive human remains with knowledge that the body has been removed. This crime is punishable by imprisonment in the State Penitentiary not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding \$500.00, or by both such fine and imprisonment.

Penalty for Buying or Selling Human Skeletal Remains for Profit, Okla. Stat. tit. 21, § 47-1168.1.

It is a felony to knowingly buy, sell, or barter for profit human skeletal remains.

Penalty and Fine, Okla. Stat. tit. 21, § 47-1168.6

A violation of Okla. Stat. tit. 21, § 47-1168.1. is punishable by a fine not exceeding \$1,000.00, by imprisonment in the State Penitentiary not exceeding two years, or by both such fine and imprisonment.

- ii. What is the criminal liability for unlawfully taking or possessing human remains and funerary objects?

Unauthorized Removal of Dead Bodies, Okla. Stat. tit. 21, § 47-1161.

It is a felony to remove the dead body of a human being or any part thereof from any grave or other place of burial with the intent to sell the remains, dissect the remains, or out of malice or wantonness. The penalty for this crime may include a term of imprisonment in the State Penitentiary not exceeding five years, or in the county jail not exceeding one year, or by a fine not exceeding \$5,000.00, or by both such fine and imprisonment.

Opening Grave or Place of Burial, Okla. Stat. tit. 21, § 47-1163.

It is a felony to open any grave or any place of burial, temporary or otherwise, to steal the coffin or any articles buried with the body. The penalty for this crime is a term of imprisonment not to exceed two years in a State Penitentiary, or a term of imprisonment in a county jail not to exceed six months, or by a fine of up to \$250, or by both a fine and imprisonment.

- iii. What is the criminal liability for unlawfully disturbing human remains and funerary objects?

Duty to Report Discovered Remains, Okla. Stat. tit. 21, § 47-1168.4.

It is a felony to knowingly disturb or permit the disturbance of human skeletal remains or funerary objects except by a law enforcement officer, registered mortician, a representative of the Office of the Chief Medical Examiner, a professional archaeologist or physical anthropologist, or other officials designated by law in performance of official duties.

Pennsylvania: Historical Burial Places Preservation Act (April 29, 1994)

http://www.phmc.state.pa.us/Portal/Communities/Cemetery/HISTORIC_BURIAL_PLACES_PRESERVATION_ACT.pdf

This Act defines "Historic burial place" as "A tract of land that has been in existence as a burial ground for more than 100 years wherein there have been not burials for at least 50 years and wherein there will be no future burials or listed in or eligible for the

National Register of Historic Places as determined by the Pennsylvania Historical and Museum Commission."

It further states that municipalities may not use eminent domain to take a historic burial ground for an alternate use. PHMC approval must be given before a burial ground is taken for "public use." If the burial ground is taken for public use, then the burial ground authority must preserve a record of what was removed. This record must be sent to the county and PHMC.

Furthermore, this Act also stipulates that the following actions are illegal: the removals of a fence, tomb, monument, gravestone, or fragment. These actions are legal only if the object(s) is being removed with consent of the owner or descendent and a court order for the purpose of "repair or replacement, reproduction or preservation and display in an accredited museum."

West Virginia: <http://www.wcl.american.edu/burial/wv.cfm>

Protection of Burials

a. Acts Prohibited by Law and Subject to Criminal Sanctions

- i. What is the criminal liability for unlawfully excavating human remains or archaeological resources?

Protection of human skeletal remains and grave artifacts; penalties. W. Va. Code § 29-1-8A

It is unlawful to excavate without a permit human skeletal remains, grave artifacts, or archaeological resources from unmarked graves or archaeological sites. This prohibition does not apply to two groups of people, who do not need to get a permit: (1) archaeologists complying with the Archaeological Resources Protection Act (16 U.S.C. § 470(aa)); and (2) people working on projects that comply with section 106 of the National Historic Preservation Act.

A person who intentionally excavates a burial ground or archaeological site either without a permit or in violation of a permit's terms and conditions is guilty of a misdemeanor. This crime is punishable by a prison sentence in county jail for between ten days and six months, or a fine of between \$100 and \$500, or both. However, if a person intentionally excavates human skeletal remains either without a permit or in violation of a permit's terms and conditions, then that person is guilty of the felony of disinterment or displacement of a dead human body (W. Va. Code § 61-8-14). This crime is punishable by a prison sentence in state penitentiary for between two and five years. Furthermore, each instance of excavation constitutes its own separate offense. Finally, any person who knows that another person is illegally excavating a burial ground or archaeological site and intentionally fails to

alert law enforcement is guilty of a misdemeanor punishable by a fine of up to \$100 and a prison sentence in county jail of up to 10 days.

IC 14-21-1-36

Possession of looted property; penalty

Sec. 36. A person who knowingly or intentionally receives, retains, or disposes of an artifact, a burial object, or human remains obtained in violation of this chapter commits possession of looted property, a Class D felony. However, the offense is a Class C felony if the fair market cost of carrying out a scientific archeological investigation of the area that was damaged to obtain the artifact, burial object, or human remains is at least one hundred thousand dollars (\$100,000).

<http://www.in.gov/legislative/ic/code/title14/ar21/ch1.html>

- iv. What is the criminal liability for unlawfully disturbing human remains and funerary objects?

IC 14-21-1-28

Penalty for disturbing human remains or grave markers

Sec. 28. A person who recklessly, knowingly, or intentionally disturbs human remains or grave markers while moving, uncovering, or removing artifacts or burial objects either without a plan approved by the department under or in violation of such a plan commits a Class D felony.

<http://www.in.gov/legislative/ic/code/title14/ar21/ch1.html>

- v. What is the criminal liability for defacing or destroying historical or archaeological sites?

IC 14-21-1-27

Duties when buried human remains or burial grounds are disturbed; penalty

Sec. 27. (a) A person who disturbs buried human remains or burial grounds shall do the following:

(1) Notify the department within two (2) business days of the time of the disturbance;

(2) Treat or rebury the human remains in a manner and place according to rules adopted by the commission or a court order and permit issued by the state department of health under IC 23-14-57.

(b) A person who recklessly, knowingly, or intentionally violates this section commits a Class A misdemeanor.

IC 14-21-1-28

Penalty for disturbing human remains or grave markers

Sec. 28. A person who recklessly, knowingly, or intentionally disturbs human remains

or grave markers while moving, uncovering, or removing artifacts or burial objects either:

(1) without a plan approved by the department under:

(A) section 25 of this chapter; or

(B) IC 14-3-3, 4-14 (before its repeal); or

(2) in violation of such a plan;

commits a Class D felony.

<http://www.in.gov/legislative/ic/code/title14/ar21/ch1.html>



Department of Veterans Services

John R. Kasich, Governor
Timothy C. Gorrell, Director

Assistant Director Jason Dominguez Ohio Department of Veteran Services Ohio Cemetery Law Task Force

Members of the Ohio Cemetery Law Task Force, thank you for the opportunity to provide testimony on behalf of the Ohio Department of Veteran Services. Ohio has the 6th largest veterans' population in the nation and currently there are approximately 900,000 veterans residing within the state—not including their spouses. Without question, the proper burial, recognition and honor of all veterans is of paramount importance to our department and our partners at the county level.

The Ohio Department of Veteran Services, ODVS, maintains the Ohio Veterans Home Cemetery located onsite of our Sandusky Veterans Home in Erie County. Our Sandusky Cemetery is proud to be the final resting place of over 4,000 Ohio veterans. Any veteran residing in the state of Ohio can request a burial in the cemetery, and approximately 24 veterans are buried each year. While ODVS staff maintains the grounds, we do so in conjunction with federal cemetery standards and federal VA funding. Ohio has only one official veterans' cemetery, we predominantly rely on our County Veteran Service Officers in all 88 counties to provide for burial of neglected and indigent veterans within their county.

Ohio Revised Code section 5901 charges that County Veteran Service Officers shall:

- Provide for the burial of neglected and indigent veterans.
- Provide for the purchase and maintenance of those plots of ground for deceased veterans and their spouses.
- Care for and properly preserve the portions of cemeteries set apart for the burial of veterans.

County Veteran Service officers are employees of the county and are required to maintain accreditation by the ODVS. The activities of every County Veteran Service Office are funded by local inside millage county dollars. ODVS supports the efforts of the service officers and also responds to the questions and concerns of all Ohio veterans and their family members. Every county has its own unique challenges and history as it pertains to the burial of veterans. Many private family-run cemeteries have lost resources and funding over the years causing veterans gravesites to become vandalized or robbed. Creeks or rivers have eroded cemeteries with veterans' remains that were buried in the early 1900s.

ODVS does hear from County Veteran Service Officers and family members of deceased veterans, their frustration with providing funds for plot maintenance without the evidence of proper care of the cemetery grounds. ODVS also has stories of counties restoring the cemeteries of veterans and seeking national grants and local partnerships to cover the costs. The creation of the Ohio Cemetery Law Task Force has provided a new partnership opportunity we may have overlooked in our brief time as an agency. ODVS trains County Veteran Service Officers quarterly in many cases, and with appropriate materials from the Department of Commerce I believe we could give our county partners the tools they

need to hold private cemetery owners accountable. The Division of Real Estate & Professional Licensing can only investigate when they are aware of a potential issue, and we are committed to passing along all issues that come to our office relating to veterans cemeteries or veterans plots. The Federal Department of Veterans Affairs will cover the cost of a new headstone; but we will always rely on the local cemetery owner to provide for the care of the plot and surround land. ODVS will only be able to ensure proper care in partnership with the Department of Commerce.

ODVS is also proud to share that we partnered with Congressman Tiberi, Congressman Stivers and Senator Portman to pass the federal "Missing in America Act," which is working to bring about proper burial for veterans unclaimed remains that have been sitting on shelves in hospitals and funeral homes awaiting dignified burial. These burials will be occurring around the state are possible because of our local dedicated County Veteran Service Officers, veteran service organizations and committed local volunteers. One last issue we are aware of is the act of stolen grave markers for scrap metal across the state. We at ODVS would like to engage in discussion about the potential of increasing the penalty for stealing the grave markers from a veteran's tombstone.

Ohio Revised Code Provisions for Veteran Burial & Care

5901.16 Application or petition for veterans plot in cemetery.

Upon application in writing by a veterans organization in any municipal corporation or township, or upon a petition in writing by five or more veterans in any municipal corporation or township where no veterans organization exists, the veterans service commission of any county shall purchase or provide a veterans plot in any cemetery in such county or municipal corporation where no burial plot is provided, for the burial, removal, and reinterment of the bodies of neglected and indigent veterans.

The expense of such purchase shall be filed with and audited by the county auditor, who shall issue a warrant for it upon the county treasurer, who shall pay such warrant from the general fund of the county.

5901.22 Contracts with cemetery associations for purchase and maintenance of plots.

The board of county commissioners, the board of township trustees, or the legislative authority of a municipal corporation may enter into contracts with cemetery associations providing for the purchase and maintenance, in cemeteries within the county, of plots of ground for the burial of deceased veterans and the deceased spouses of veterans. Any such purchase may be made either by cash or by installment payments. The purchase price and maintenance cost of all such burial plots shall be paid from the treasury of the county, township, or municipal corporation contracting for such plots.

5901.24 Burial in cemetery not provided with plot.

If it is desired to bury the body or cremated remains of any deceased veteran in any cemetery not having a burial plot as provided by section 5901.22 of the Revised Code, the board of county commissioners, any board of township trustees, or the legislative authority of any municipal corporation in the county in which the cemetery is situated may purchase a space for the grave of the veteran or the veteran's cremated remains, provide for the care of the plot, and pay the amount of the purchase price and maintenance cost from the funds in the treasury of the county, township, or municipal corporation.

5901.37 Care of portion of cemetery set apart for burial of veterans.

In any county having a cemetery or part of it set apart for the burial of veterans, or containing a monument erected to their memory, or containing monuments and memorials erected by private or public expense to the memory of veterans, the board of county commissioners shall care for and properly preserve that portion of the cemetery so set apart for the burial of such veterans, and shall care for and properly preserve the monuments or memorials, and the board shall pay all expenses incident to such care and preservation from the general fund of the county.

**Anne M. Petit
Superintendent
Ohio Department of Commerce
Division of Real Estate & Professional Licensing**

February 13, 2014

Dear Ms. Petit,

The Foxfield Preserve nature preserve cemetery opened in the summer of 2008. It was founded by The Wilderness Center with the guidance of national leaders in the natural burial movement, along with a regulatory review by former Department of Commerce cemetery inspector Ted Hornyak. We were among the first nature preserve cemeteries in the country, and brought recognition to Ohio as the first nature preserve cemetery in the country to be operated by a nonprofit conservation organization.

At Foxfield Preserve we perform natural burials. Burials take place in biodegradable containers, such as simple pine caskets or burial shrouds. No embalming, vaults, or metal caskets are used. The goal is to encourage the body's natural return to the earth. Most importantly, we are providing families across the state of Ohio – and many from across the country – with a simple, respectful and meaningful burial alternative. Our families find a great deal of comfort in the thought that their burial will provide many benefits to the community. In this way they are able to make their last act a gift.

As a nature center and land conservancy, The Wilderness Center has a 50-year history of service to our community. Foxfield Preserve builds on that proud tradition. At Foxfield Preserve, 43 acres of abandoned farmland is being restored to a natural state. As a part of The Wilderness Center's conservation efforts, Foxfield provides our community with cleaner air, a cleaner watershed, wildlife habitat and public walking trails.

Foxfield Preserve is a nature preserve first. It does not look like a modern cemetery. There are no paved roads, stone monuments or mowed lawns. Visitors are greeted by tall prairie grasses and wildflowers, and a reforested hillside. While our cemetery is surveyed and plotted as any other cemetery in the state, families are provided with GPS coordinates to assist in locating a gravesite.

This unique setting requires a more modest maintenance approach. Healthy growth of our prairie is maintained through occasional prescribed fire. Natural reforestation is guided by naturalists. To the benefit of all involved, these maintenance techniques are comparatively low-cost because they simply assist natural processes. Our families understand and appreciate the science-based principles which govern the management of our cemetery. This fundamental difference should be taken into account by the Cemetery Law Task Force in considering any alteration to maintenance standards in our state laws.

The outlook for the future of natural burial is bright, and indicates that natural burial is here to stay. National polls by the AARP reflect that this alternative should be expected to increase in popularity in coming years. As leaders in this movement, Foxfield Preserve has been called on to consult with organizations in Ohio and across the nation to help establish other nature preserve cemeteries. Several variations of the natural burial cemetery model are being planned in Ohio.

As a burgeoning market emerges for natural burial, it has brought with it reports of consumers being misled by reportedly "green" services across the country. We were dismayed to hear of this reported 'greenwashing,' and are anxious to protect Ohio consumers. We have been working with a national nonprofit group, the Green Burial Council, to establish standards for independent certification of natural burial grounds across the country. This certification requires the cemetery to operate with a conservation easement, and establishes guidelines advising best practices in land restoration and management based on the recommendations of an independent professional in the field of biology/restoration ecology. We encourage the Cemetery Law Task Force to review the attached draft of standards under development by the Green Burial Council for guidance, as the emerging natural burial market in Ohio will only continue to grow in the future.

We would welcome a visit from any member of this Task Force, and would be pleased to offer you a tour of our facility. Thank you for the opportunity to share our concerns, and participate in this process. We look forward to answering any questions during the meeting on February 21, 2014.

Sincerely,

**Sara Brink
Foxfield Preserve Steward
The Wilderness Center**

The following standards are part of an ongoing review process by the Standards Review Committee, and have not yet been approved by the Green Burial Council's Board of Trustees.

- **Conduct a biological evaluation including baseline information on existing geology, hydrology, soils, and topography, and on both existing and potential vegetation and wildlife. This evaluation must be used by the facility designers and operators to ensure that existing site resources are not degraded, and that the potential for re-introducing native species is given appropriate consideration in design and planning.**
- **Conduct an assessment (to be done by an independent professional in the field of biology/restoration ecology) that identifies any issues related to endangered species of plants/animals, cultural resources, and hydrology.**
- **The land must represent a historic native/natural community of the region either through preservation, enhancement or restoration. Cemeteries that are contiguous to or that provide connectivity to other protected are preferable.**
- **Adherence to the certification requirements at any level (except for hybrids) must be guaranteed by deed restriction, conservation easement, or other legally binding and irrevocable agreement.**
- **Establish an endowment fund to ensure the long-term maintenance of the land and its trail system by setting aside at least 10% of all burial plot sales.**
- **The facility, or a designated portion of the facility, must be reserved for burial that does not require the use of a vault (partial, inverted, or otherwise), a vault lid, concrete box, slab or partitioned liner.**
- **Be owned by, or operated in conjunction with a government agency or a nonprofit conservation organization that is recognized by the Internal Revenue Service as a public charity and in business for at least five years (the "conservation partner"). The conservation partner must have legally binding responsibility for perpetual stewardship of the land, both in the operational facility and in the conservation area(s), and must set all conservation policies.**
- **Utilize a deed restriction (if operator is a nonprofit conservation organization that has been established for at least five years) or a conservation easement that incorporates these standards. A conservation easement must also conform to all provisions of the Internal Revenue Code Section 170(h) and provide for public access to and through the site, particularly to connect it to adjoining protected open space, to the extent public use of the property is compatible with.**

- **Adherence to the certification requirements at any level (except for hybrids) must be guaranteed by deed restriction, conservation easement, or other legally binding and irrevocable agreement. Such agreement(s) must run with the land and be enforceable in perpetuity, equivalent to the force of requirements for perpetual maintenance of conventional cemeteries. In some instances, the GBC will allow for nonprofit operators of to utilize cemetery "rules and regulations" as a means of memorializing the GBC approved protocols/practices.**

Name – Rich Finn

Title - Director of Cemeteries, Catholic Diocese of Columbus.

Representing ~~Catholic Cemeteries of Ohio~~, an organization of small, medium and large Catholic Cemeteries within the six Catholic Diocese in the state of Ohio.

I would like to thank the Task Force Committee for the opportunity to provide testimony today on behalf of our organization.

Our Catholic faith teaches that the care and burial of the dead is a Corporal Work of Mercy. We view our work in helping families and caring for their burial places as more of a ministry rather than the operation of a business.

Many of our members are involved with our national organization, the Catholic Cemetery Conference, and have many years of experience in cemetery management.

The state of Ohio has been progressive in the regulation of cemeteries and the current structure seems to be working well. The Cemetery Dispute Resolution Commission has provided a valuable service to both consumers and cemetarians.

We have concerns regarding the vandailism and desecration of cemeteries and wish to look at ways to better deter those that enter our properties with bad intentions.

We offer our experience to the Task Force and hope to be able to provide input to the Task Force as your goals are formed.

Again, thank you for the opportunity.

**TESTIMONY OF
TIMOTHY C. LONG
ON BEHALF OF THE
OHIO CEMETERY ASSOCIATION, INC.
BEFORE THE
OHIO CEMETERY LAW TASK FORCE
FEBRUARY 21, 2014**

Chairman Petit, Chairman Neenan and members of the Ohio Cemetery Law Task Force, my name is Timothy C. Long. Since January 1, 2011, I have served as Legislative Agent and attorney for Ohio Cemetery Association, Inc. ("OCA"), a statewide trade association with all types of Ohio cemeteries comprising its membership. Prior to that time, I represented one of the OCA's constituent entities, the OACS&O, from 1994 through the end of 2010, when the OACS&O was merged into the newly formed OCA.

In connection with my representation of such cemetery trade associations, I have authored three legal guidebooks regarding Ohio cemetery law and have participated in every legislative effort involving cemeteries for the last two decades.

I am pleased to inform this body that the legislative effort during such time period which gave rise to the most pervasive embellishments to the statutes pertaining to cemeteries was brought about through the efforts of the cemetery industry itself. Such effort, which occurred in the late 1990s, expanded Ohio Revised Code 1721.211 to preclude sales of any type of cemetery merchandise and services, revised both ORC 1721.21 and 1721.211 to require that funds held pursuant to such sections be held in formal "Trusts" by qualified "Trustees" and greatly expanded the power and authority of the Ohio Cemetery Dispute Resolution Commission ("OCDRC").

I am also pleased to offer our opinion that the vast majority of Ohio cemetery laws accomplish their intended purposes very well. Ohio cemeteries are regulated where they need to be regulated. For instance, the Department of Commerce, Division of Real Estate, Cemetery Section oversees each cemetery's required Trust funds. Conversely, cemeteries all have broad rule making authority and, therefore, are not over regulated and can appropriately deal with "local" challenges and characteristics.

Similar to such balance, the Legislature has appropriately differentiated between cemeteries and funeral homes. Although such entities share space and responsibility in the overall "death industry", their differences far outnumber their similarities. Specifically, most cemeteries are nonprofit establishments while funeral homes are for profit businesses. Cemeteries must maintain their grounds in perpetuity, while funeral homes can and do, on occasion, simply close their doors forever. There are many other differences upon which the Legislature likely focused over time as it continued to treat these dissimilar businesses with the requisite degree of specificity.

Additionally, we would like to emphasize that from the OCA's perspective, the OCDRC is working well and is critical. While others here can provide the statistics on the number of cases opened and resolved per annum, our members routinely confirm that both consumers and the cemeteries benefit by the Commission's more cemetery specific handling and knowledge of any issues than they would via a general consumer protection vehicle. Specifically, many matters are closed simply after a third party with industry knowledge intervenes to explain some facet of the industry and serve as a line of communication.

While the OCA is generally pleased with the statutory environment within which its members operate, there are always areas that could be improved. In that regard, we have participated since last fall in efforts to discuss and revise the "Department Bill" and, subject to agreeing to precise language, support the many initiatives contained therein.

There is also an area where Ohio law pertaining to the death care industry is lagging behind many other states. The OCA believes that alkaline hydrolysis should be a sanctioned method of final disposition in Ohio.

Finally, there is one area where the Ohio laws are being unfairly applied to Ohio cemeteries. Ohio Cemetery salespersons are being wrongfully rated by the Ohio Bureau of Worker's Compensation. Specifically, if a cemetery salesperson shows any grave spaces to customers as part of his or her duties, the Bureau rates such person identical to a cemetery grounds worker. We know of no other industry where the salesperson is rated identical to a laborer. As you can see from the attached letter, which provides greater detail, we have been working on this issue from quite some time. This matter demands a legislative solution.

I would be pleased to address any questions.

TIMOTHY C. LONG
ATTORNEY AT LAW
455 South Lindlow Alley
Columbus, Ohio 43215
Phone: (614) 469-1001 ext. 111
Fax: (614) 621-4097
Email: tlong@chutegerdeman.com

FILE COPY

June 15, 2007

Via Email

Marsha Ryan
Administrator/CEO
Ohio Bureau of Worker's Compensation
30 W. Spring Street, Level 29
Columbus, Ohio 43215-2256

Re: Reclassification of Cemetery Salespersons

Dear Administrator/CEO Ryan:

I am writing on behalf of my client, the Ohio Association of Cemetery Superintendents & Officials ("Association") to request that you review a situation which is having a detrimental impact on Ohio's cemetery industry and use your discretion as OBWC Administrator/CEO to remedy the situation.

The situation started in the fall of 2004 when the Bureau conducted several audits of cemetery properties (mostly larger properties were audited). Several of the audit reports indicted deficiencies due to what was claimed as improper reporting of cemetery salespersons. Specifically, the cemeteries were told that their salespersons must be reported under Scope 9220 if they show grave spaces as part of their job duties. Scope 9220 is applicable to cemetery maintenance personnel and carries a rate approximately ten times greater than that of the scope traditionally applicable to cemetery salespersons (Scope 8742).

Since the fall of 2004, I have been working through OBWC staff on behalf of the Association (mostly with Michael Glass) to come up with a solution to the situation. We have been told that the Bureau strictly adheres to NCCI's National Scopes. As such, we wrote to NCCI to request that they share their statistical or other basis for including salespersons in Scope 9220. NCCI responded to your staff that the "showing gravesites" clause was added to Scope 9220 as of January 1, 2002, but that they have no empirical data to support that the addition was justified from a risk standpoint *or any record at all as to why the change was made.*

Additionally, the experience of the Association's members indicates that there have been practically no claims by cemetery salespersons in Ohio. The Association conducted a survey of not only its members but of all cemeteries in Ohio known to have sales staffs with exclusive responsibility to the sales process (i.e. one or more persons with only sales duties and no maintenance duties). The survey indicated that over the last five years there were only two injuries to cemetery salespersons (only one of these involved an injury outside of a building!). This information was shared with the Bureau, was initially responded to favorably and led to a "field trip" to a Cincinnati cemetery property to further study the risk (again, initial positive comments and promises only to be followed-up with letter of denial).

As you undoubtedly have discovered, several cemeteries appealed the findings of their respective Audit Reports to the Adjudicating Committee and then appealed to the Administrator's Designee after the Adjudicating Committee blindly followed the language of Scope 9220 to uphold the Audit Report. Thereafter, the Administrator's Designees have been adhering to the black letter of the Scope at issue.

The gravity of this matter dictates that it will not simply disappear at this point. I have enclosed several financial summaries which were prepared in anticipation of our meeting. Each summary indicates the premium difference caused by the revision of Scope 9220 for a particular cemetery. Please take special note of the Spring Grove Cemetery summary. As you will see, Spring Grove's premiums have increased by more than \$195,000.00 over thirty months. Naturally, this has been more than devastating to one of the oldest cemeteries in Ohio.

Throughout the Bureau's handling of this matter, no one has bothered to look at this situation logically. In fact, we feel that the only goal of staff under the previous administration in dealing with us was to delay our member's from filing their respective appeals. Obviously, there are many routes left for my client's members to pursue. However, we truly believe that this is a situation that naturally lends itself to an administrative remedy as it was caused administratively. We understand that you have the power to avoid all of this by directing that a special exception to scope 9220 be enacted and look forward to your "fresh look" at this situation. I will look forward to meeting with you on June 20th to further elaborate on the information provided herein and explore the process to administratively rectify this situation.

Very truly yours,



Timothy C. Long

Cc: OACS&O Legislative Committee (via email)



Department of Commerce

Division of Real Estate &
Professional Licensing
John R. Kasah, Governor
Andre T. Pirtag, Director

Cemetery Registration

1. Process –
 - a. Registration form, list of persons authorized to sell interment rights, for CRCs endowment trust and maybe preneed merchandise and services trust
 - b. Fee – twenty-five dollars for one cemetery, forty dollars for two cemeteries, and fifty dollars for three or more cemeteries; except that no fee shall be required of any political subdivision
 - c. Current registration numbers – total number of cemeteries 3,619
 - i. Cemetery Associations – 282
 - ii. Religious/Benevolent/Fraternal – 575
 - iii. Governmental – 2,762
 - iv. Operators – 1,646

Ohio Cemetery Dispute Resolution Commission

1. 9 member commission – 7 representing the three types of cemeteries and 2 public members, that assist in resolving complaints against registered cemeteries using informal techniques of mediation.
2. Complaint process – currently registered cemeteries only
3. Authority
 - a. Review financial records (ORC 1721.21 and 1721.211) at renewal or upon proposed transfer of assets or stock of a cemetery;
 - b. Refer alleged violations of ORC 1721.19, 1721.20, 1721.21, 1721.211, 4767.02, 4767.03 to county prosecutor;
 - c. Refer alleged violations of Consumer Sales Practices Act to Attorney General
 - d. Minimum Maintenance Guidelines

Modernization of ORC 4767

1. See attached



**Department
of Commerce**

Division of Real Estate &
Professional Licensing
John H. Kasich, Governor
Andrea T. Porter, Director

**Cemetery Minimum Maintenance Guidelines
By The Ohio Cemetery Dispute Resolution Commission**

ORC Section 4767.06(H) Adopt and publish suggested maintenance guidelines for all cemeteries registered in the state of Ohio under ORC Chapter 4767

Definitions

- **"Person"** means any corporation, company, partnership, individual or other entity owning or operating a cemetery for the disposition of human remains.
- **"Cemetery"** means any one or a combination of more than one of the following: a burial ground for earth interments, a mausoleum for crypt entombments, a columbarium for the deposit of cremated remains, a scattering ground for the spreading of cremated remains.
- **"Interment"** means the disposition of human remains by earth burial, entombment or inurnment.
- **"Burial Right"** means the right of earth interment.
- **"Entombment right"** means the right of entombment in a mausoleum.
- **"Columbarium right"** means the right of inurnment in a columbarium for cremated remains.

Grounds and Structure

- Cut grass once per month during the growing season.
- Trim around markers and/or monuments three times a year.
- Remove underbrush, leaves, tree seedlings, and dead trees and flowers.
- Remove trash and funeral flowers once a month (artificial flowers once a year).
- Sod or seed graves as necessary within one year of interment.
- Foundations for new markers that have been ordered should be set within one calendar year.
- Roads, buildings, structures, and fencing should be maintained and repaired as needed.
- Cemetery perimeter should be marked.

Management/Maintenance of Rules, Regulations, and Records

- Electronic or paper cemetery records pertaining to interment, entombment or inurnment right owners and interment, entombment or inurnment records indicating the deceased name, place of death, date and location of the interment, entombment or inurnment should be maintained in the cemetery's office. Paper copies of records required for the verification of interment, entombment or inurnment rights and cemetery interment, entombment or inurnment records as indicated above should be maintained in a fireproof container within the cemetery office. If possible duplicate copies of all cemetery records should be maintained off-site. It is permissible to maintain records in an electronic format so long as the electronic copies are true copies of all the original documents.
- All graves or lots should be identified by a map that is stored in the office of the cemetery per Ohio Revised Code Section 1721.09.
- Each lot should be pinned and the owner's name should be recorded.
- Cemeteries should conduct all interments within seven days of the date of the order unless waived by the next of kin or other responsible party.
- Rules regarding flowers and decorations should be posted at the cemetery.
- The vault or any other burial container should be placed at least twelve inches below grade.
- The cemetery's rules and regulations should be provided upon request.
- Cemetery management contact information should be posted at the main public entrance of the cemetery and at the onsite office, if one exists.

2013

77 South High Street
20th Floor
Columbus, Ohio 43215-6133 U.S.A.

514 | 466 4100
Fax 614 | 644 0584
TTY/TDD 800 | 750 0750
www.com.ohio.gov

An Equal Opportunity Employer and Service Provider

Chapter 4767: CEMETERY REGISTRATION

4767.01 Cemetery registration definitions.

As used in sections 4767.01 to ~~4767.08~~ 4767.89 of the Revised Code:

(A) "Cemetery," "interment," "burial right," "entombment right," and "columbarium right" have the same meanings as in section 1721.21 of the Revised Code.

(B) "Political subdivision" means one or more municipal corporations, townships, or other bodies corporate and politic authorized to operate and maintain a cemetery under the law of this state.

(C) "Division of real estate" may be used interchangeably with, and for all purposes has the same meaning as, "division of real estate and professional licensing."

(D) "Superintendent" or "superintendent of the division of real estate" means the superintendent of the division of real estate and professional licensing of this state. Whenever the division or superintendent of real estate is referred to or designated in any statute, rule, contract, or other document, the reference or designation shall be deemed to refer to the division or superintendent of real estate and professional licensing, as the case may be.

4767.02 Registration required - duties of division of real estate in department of commerce superintendent - confidentiality.

(A) Except as otherwise provided in division ~~(C)~~ of this section, no person, church, religious society, established fraternal organization, or political subdivision of the state shall own, operate, or maintain a cemetery unless the cemetery is registered pursuant to section 4767.03 of the Revised Code.

~~(B)~~ (C) The division of real estate in the department of commerce superintendent shall perform all of the following duties:

(1) Administer this chapter;

(2) Issue all orders necessary to implement this chapter;

(3) Administer the cemetery grant program;

~~(1) Adopt, amend, and rescind rules in accordance with Chapter 119. of the Revised Code to carry out sections 4767.02 to 4767.04 of the Revised Code governing the registration of cemeteries;~~

(24) Prescribe the form and content of all applications to be used for registration and renewal of registration pursuant to section 4767.03 of the Revised Code;

(35) Review applications for registration and issue registration certificates to cemeteries that meet the qualifications for registration pursuant to sections 4767.03 and 4767.04 of the Revised Code;

(46) Collect all fees related to the registration and renewal of registration certificates for cemeteries;

(57) Maintain a written record of each cemetery registered with the division, which shall include such documentation as required in division (A) of section 4767.04 of the Revised Code. The record shall be available for inspection by the public and copies shall be made available pursuant to division (B) of section 149.43 of the Revised Code.

(68) Revoke the registration of any cemetery owner or operator convicted of a violation of section 1721.21 or 1721.211 of the Revised Code immediately upon receipt of notice of the conviction pursuant to section 119.06 of the Revised Code;

(79) Hire all division personnel necessary to implement this chapter;

~~(810) Prohibit the sale of the assets or stock of a cemetery by refusing to issue a registration certificate to the purchaser of management rights, assets, or stock of a cemetery until the dispute resolution commission has either received audited financial statements audited by a certified public accountant showing to the commission's satisfaction that all current funds required to be deposited and maintained pursuant to sections 1721.21 and 1721.211 of the Revised Code have been deposited and maintained on an agreed plan approved by the commission in accordance with section 4767.05(C) of the Revised Code;~~

~~(9) With the dispute resolution commission's advice and consent, subpoena cemetery personnel to attend hearings before the commission.~~

(11) Establish and maintain an investigation and audit section to conduct investigations pursuant to division (A) of section 4767.08 of the Revised Code and to audit the financial records of a cemetery to ensure compliance with sections 1721.21 and 1721.211 of the Revised Code whenever it deems necessary and at least once every five years. The investigators or auditors have the right to review and audit the business records of registrants during normal business hours.

~~(B)~~ Sections 4767.02 to 4767.04 of the Revised Code do not apply to or affect a family cemetery or a cemetery in which there have been no interments during the previous twenty-five calendar years. As used in this division, "family cemetery" means a cemetery containing the human remains of persons, at least three-fourths of whom have a common ancestor or who are the spouse or adopted child of that common ancestor.

(D) All information that is obtained by investigators and auditors performing investigations or conducting inspections, audits, and other inquiries pursuant to division (C)(11) of this section, from registrants, complainants, or other persons, and all reports, documents, and other work products that arise from that information and that are prepared by the investigators, auditors or

other personnel of the department, shall be held in confidence by the superintendent, the investigators and auditors, and other personnel of the department.

4767.021 Subpoena power.

The Ohio cemetery dispute resolution commission or the superintendent of real estate may compel, by order or subpoena, the production of any book, paper, or document in relation to any matter over which the commission or superintendent has jurisdiction and which is the subject of inquiry and investigation by the commission or superintendent. The commission or superintendent may also compel, by order or subpoena, the attendance of witnesses to testify in a hearing held pursuant to section 4767.07 of the Revised Code.

For such purpose, the commission or superintendent shall have the same power as judges of courts of common pleas to administer oaths, compel the attendance of witnesses, and compel the production of any book, paper, or document. Service of the subpoena may be made by sheriffs or constables, or by certified mail, return receipt requested, and the subpoena shall be deemed served on the date delivery is made or the date the person refused to accept delivery. Witnesses shall receive, after their appearance before the commission or superintendent, the fees and mileage provided for under section 119.094 of the Revised Code. If two or more witnesses travel together in the same vehicle, the mileage fee shall be paid to only one of those witnesses, but the witnesses may agree to divide the fee among themselves in any manner.

In addition to the powers granted to the commission and superintendent under this section, in case any person fails to file any statement or report, obey any subpoena, give testimony, answer questions, or produce any books, records, or papers as required by the commission or superintendent under this chapter, the court of common pleas of any county in the state, upon application made to it by the commission or superintendent setting forth such failure, may make an order awarding process of subpoena or subpoena duces tecum for the person to appear and testify before the commission or superintendent, and may order any person to give testimony and answer questions, and to produce books, records, or papers, as required by the commission or superintendent. Upon the filing of such order in the office of the clerk of the court of common pleas, the clerk, under the seal of the court, shall issue process of subpoena for the person to appear before the commission or superintendent at a time and place named in the subpoena, and each day thereafter until the examination of such person is completed. The subpoena may contain a direction that the witness bring with the witness to the examination any books, records, or papers mentioned in the subpoena. The clerk shall also issue, under the seal of the court, such other orders, in reference to the examination, appearance, and production of books, records, or papers, as the court directs. If any person so summoned by subpoena fails to obey the subpoena, to give testimony, to answer questions as required, or to obey an order of the court, the court, on motion supported by proof, may order an attachment for contempt to be issued against the person charged with disobedience of any order or injunction issued by the court under this chapter. If the person is brought before the court by virtue of the attachment, and if upon a hearing the disobedience appears, the court may order the offender to be committed and kept in close custody.

4767.03 Applying for registration.

(A)

(1) The owner or the person responsible for the operation and maintenance of a cemetery shall apply to the division of real estate in the department of commerce to register the cemetery on forms prescribed by the division. With the application, the applicant shall submit the documentation required in division (A) of section 4767.04 of the Revised Code and a registration fee of twenty-five dollars for one cemetery, forty dollars for two cemeteries, and fifty-five dollars for three or more to nine cemeteries, and seventy dollars for ten or more cemeteries except that no fee shall be required of any political subdivision.

(2) The director of commerce, by rule adopted in accordance with Chapter 119. of the Revised Code, may reduce the amount of the registration fee required by this section in any year if the director determines that the total amount of funds the fee is generating at the amount specified by this section exceeds the amount of funds the division of real estate and the Ohio cemetery dispute resolution commission created by section 4767.05 of the Revised Code need to carry out their powers and duties under this chapter. If the director so reduces the amount of the registration fee, the director shall reduce it for all owners or other persons required to pay the fee under division (A)(1) of this section and shall require that the reduced fee be paid according to the number of cemeteries owned, operated, or maintained as required under that division. If the director has reduced the fee under division (A)(2) of this section, the director may later raise it up to the amounts specified in division (A)(1) of this section if, in any year, the director determines that the total amount of funds the fee is generating at the reduced amount is insufficient for the division of real estate and the Ohio cemetery dispute resolution commission to carry out their powers and duties under this chapter.

(B) Upon receipt of the completed application form, documentation, and, if required, registration fee, the division of real estate shall issue a certificate of registration to the applicant. The applicant shall display the certificate in a conspicuous place on the premises of the cemetery for which the registration was obtained, except that, if the applicant is the governing body of a political subdivision or person acting on behalf of that governing body, the certificate shall be kept on file and be available for public inspection at the office of the governing body.

(C) Except as otherwise provided in this division, each registration issued pursuant to this section shall expire annually ~~on the thirtieth day of June~~ September and ~~may~~ shall be renewed. The renewal fee shall be the same as the initial registration fees prescribed in division (A) of this section. The registration of a cemetery operated and maintained by a political subdivision shall not expire unless the political subdivision ceases to operate and maintain the cemetery. A political subdivision operating and maintaining a cemetery is not required to renew or update the registration of that cemetery unless there is a change in the information required under division (A) of section 4767.04 of the Revised Code or unless additional land is acquired to increase the size of the cemetery.

(D) The Division shall impose upon any cemetery that fails to file a complete renewal on or before the thirtieth day of September a penalty of five dollars for each and every day the

cemetery remains delinquent in submitting the annual renewal. The penalty incurred shall be no more than three hundred dollars and the Superintendent or Commission may abate all or part of the penalty for good cause shown. A failure to renew may result in an investigation pursuant to section 4767.08 of the Revised Code.

(DE) All registration and renewal fees collected pursuant to this section shall be paid into the state treasury to the credit of the division of real estate in the department of commerce to be used by the division to carry out its powers and duties under this chapter and by the Ohio cemetery dispute resolution commission created by section 4767.05 of the Revised Code.

4767.031 Registration of persons engaged to sell interment rights.

(A) The owner or the person responsible for the operation of each cemetery required to register under section 4767.03 of the Revised Code shall provide the division of real estate in the department of commerce, on a form prescribed by the division, at the same time the owner or other person applies for registration or renewal of registration as required by section 4767.03 of the Revised Code, a list of the names and residence addresses of all persons employed or otherwise engaged by the cemetery to sell interment rights. The provision of this information constitutes the registration of these persons to sell interment rights. In order for an independent contractor to sell interment rights for a cemetery, the cemetery shall sponsor and register the independent contractor with the division. More than one cemetery may sponsor and register the same independent contractor.

(B) The owner or the person responsible for the operation of each cemetery required to register under section 4767.03 of the Revised Code shall provide the division with a revised list of the names and residence addresses of all persons employed or otherwise engaged by the cemetery to sell interment rights within the calendar quarter immediately following the date of the termination of the cemetery's relationship with an existing salesperson or the commencement of a relationship with a new salesperson. As used in this division, "calendar quarter" means the three-month period that commences on the first day of each January, April, July, and October.

4767.04 Qualifications of registrants.

(A) To qualify a cemetery for a certificate of registration, the applicant shall submit to the division of real estate the following information:

- (1) The name of the cemetery;
- (2) The street address, city, village, or township, and county where the cemetery is located, and the mailing address if different from the street address;
- (3) The name and address of the person who owns the cemetery;
- (4) The name and address of the person responsible for the operation and maintenance of the cemetery;

(5) A copy of the ~~most recent annual report~~ financial statement for the previous fiscal year of the cemetery if required by the division of real estate pursuant to section 1721.211 of the Revised Code or if required by the Ohio cemetery dispute resolution commission. If the cemetery is owned by a cemetery company or association, a copy of the ~~annual report~~ financial statement for the previous fiscal year of all of the assets and investments of the endowment care trust of the company or association as prepared pursuant to section 1721.21 of the Revised Code shall be submitted to the division;

(6) A copy of the cemetery's current rules and regulations in either written or electronic format.

(7) A copy of the cemetery's trust agreement or proof of bonding as required in sections 1721.21 or 1721.211 of the Revised Code. Such cemetery need only submit revised trust agreements or proof of bonding with the cemetery's next annual renewal.

(B) If any of the information required in division (A) of this section changes at any time, the owner or the person responsible for the operation and maintenance of the cemetery shall submit written notification of the change to the division within thirty days of the change occurring provided, however, that the owner or other person responsible for the operation and maintenance of the cemetery need only submit revised rules and regulations with the cemetery's next annual renewal.

(C) In addition to satisfying the requirements set forth in divisions (A) and (B) of this section, if a political subdivision intends to acquire additional land to increase the size of an existing cemetery that it is operating and maintaining or intends to open a new cemetery, its governing body shall notify the division at least thirty days before the acquisition or opening to renew the registration of the existing cemetery or to register the new cemetery.

4767.05 Ohio cemetery dispute resolution commission.

(A) There is hereby created the Ohio cemetery dispute resolution commission, which shall consist of nine members to be appointed by the governor with the advice and consent of the senate as follows:

(1) One member shall be the management authority of a municipal, township, or union cemetery and shall be selected from a list of four names submitted to the governor. Two of the four names shall be submitted by the Ohio township association and two names shall be submitted by the Ohio municipal league.

(2) Four members shall be individuals employed in a management position by a cemetery company or cemetery association and shall be selected from a list of names submitted to the governor by the Ohio Cemetery Association. ~~Two of the four members shall be selected from a list of four names submitted to the governor by the Ohio association of cemeteries and two shall be selected from a list of four names submitted by the Ohio association of cemetery superintendents and officials.~~

(3) Two members shall be employed in a management position by a cemetery that is owned or operated by a religious, fraternal, or benevolent society and shall be selected from a list of four names submitted by the ~~Ohio association of cemetery superintendents and officials~~ Ohio Cemetery Association.

(4) Two members, at least one of whom shall be at least sixty-five years of age, shall be representatives of the public with no financial interest in the death care industry.

Each member of the commission, except for the two members who represent the public, shall, at the time of appointment, have had a minimum of five consecutive years of experience in the active administration and management of a cemetery in this state.

(B) Within ninety days after the effective date of this section, the governor shall make initial appointments to the commission. Of the initial appointments, two shall be for terms ending one year after the effective date of this section, two shall be for terms ending two years after that date, two shall be for terms ending three years after that date, and three shall be for terms ending four years after that date. Thereafter, terms of office shall be for four years, with each term ending on the same day of the same month as did the term that it succeeds. Each member shall hold office from the date of appointment until the end of the term for which the member was appointed. Vacancies shall be filled in the manner provided for original appointments, with each appointee, other than a representative of the public, being appointed from a list of two names submitted to the governor by the association or organization that was required to nominate candidates for initial appointment to the position that has become vacant. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed shall hold office for the remainder of that term. A member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office or until a period of ~~sixty~~ ninety days has elapsed, whichever occurs first. No person shall serve as a member of the commission for more than two consecutive terms, excluding any term served to fill an initial appointment to a term of less than four years or an unexpired term caused by a vacancy.

(C) The commission annually shall elect from among its members a chairperson, vice-chairperson, and secretary, each of whom shall serve a term of one year in that office. The commission shall meet at least four times a year. Additional meetings may be called by the chairperson, or by the vice-chairperson when the chairperson is disabled, or by a majority of the members of the commission. A majority of the members constitutes a quorum to transact and vote on business of the commission.

The chairperson or vice-chairperson may:

- (1) Administer oaths;
- (2) Issue subpoenas;
- (3) Summon witnesses;
- (4) Compel the production of books, papers, records, and other forms of evidence;
- (5) Fix the time and place for hearing any matter related to compliance with sections 1721.19, 1721.20, 1721.21, 1721.211, 4735.02, and 4767.02, 4767.03 and 4767.09 of the Revised Code.

The chairperson shall designate three members of the commission to serve on the crematory review board in accordance with section 4717.03 of the Revised Code for such time as the chairperson finds appropriate. Members designated to serve on the crematory review board shall perform all functions

necessary to carry out the duties of the board as described in section 4717.03 of the Revised Code. Members who serve on the crematory review board shall receive no compensation for such service.

(D) Before entering upon the duties of office, each member of the commission shall take the oath pursuant to section 3.22 of the Revised Code. The governor may remove any member for misconduct, neglect of duty, incapacity, or malfeasance in accordance with section 3.04 of the Revised Code.

(E) Members of the commission shall receive no compensation but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as members of the commission.

(F) The division of real estate in the department of commerce shall provide the commission with meeting space, staff services, and other technical assistance required by the commission in carrying out its duties pursuant to sections 4767.05 to 4767.08 of the Revised Code.

4767.06 Duties of commission.

The Ohio cemetery dispute resolution commission shall perform all of the following duties:

(A) Adopt, amend, and rescind such rules in accordance with Chapter 119. of the Revised Code as are necessary in carrying out sections 4767.05 to 4767.08, 4767.02 to 4767.13 of the Revised Code, including rules relative to the following:

- (1) Transacting the commission's business and managing its affairs;
- (2) Establishing procedures for receiving, reviewing, and responding to complaints filed pursuant to section 4767.07 of the Revised Code;
- (3) Conducting investigations in response to complaints filed pursuant to division (A) of section 4767.07 of the Revised Code;
- (4) Resolving complaints by using informal techniques of mediation, conciliation, and persuasion, including requiring the parties involved in a complaint to be given prompt notice of any offers to resolve disputes and responses thereto;
- (5) Advising all parties making a complaint, or who are the subject of a complaint, of any recommendations or findings of fact made by the commission with respect to the complaint;
- (6) Requesting the party who has filed a complaint or is the subject of a complaint, and is affected by recommendations of the commission made with respect to the complaint, to notify the commission within a time specified by the commission of any action the party has taken in response to the commission's recommendations;
- (7) Conducting nonpublic hearings and maintaining commission proceedings and records as confidential, notwithstanding sections 121.22 and 149.43 of the Revised Code when the commission determines that the nature of the complaints merits that action;

(8) Determining the method to be used in serving notices as required by section 4767.07 of the Revised Code.

(9) Conducting audits of the financial records of a cemetery to ensure compliance with sections 1721.21 and 1721.211 of the Revised Code;

(10) Establishing procedures for registrations and renewals;

(B) Publicize information concerning the existence and duties of the commission and the procedure for filing complaints pursuant to section 4767.07 of the Revised Code;

(C) Conduct hearings on complaints pursuant to section 4767.07 of the Revised Code;

(D) Submit at least annually by the thirty-first day of March a report on the commission's activities of the immediately preceding calendar year to the governor and the majority and minority leaders of the senate and house of representatives. The report shall indicate the total number of complaints received, initiated, and investigated under sections 4767.07 and 4767.08 of the Revised Code; the total number of complaints for which hearings were held; and the total number of referrals made to prosecuting attorneys, the attorney general, and the real estate commission pursuant to section 4767.08 of the Revised Code.

(E) Review, at least once each year, all actions taken by the prosecuting attorneys, the attorney general, and the real estate commission in response to referrals made to them by the cemetery dispute resolution commission or by the superintendent of the division of real estate in the department of commerce. The commission shall include in the report required in division (D) of this section information regarding the nature of the inappropriate conduct alleged in each referral and the status or disposition made of each referral occurring during the preceding two years.

(F) Perform all functions as are necessary in administering and enforcing sections 4767.05 to 4767.08 ~~4767.13~~ of the Revised Code, including the rendering of all advice necessary under divisions ~~(B)(6) to (12)~~ ~~(C)(8) to (11)~~ of section 4767.02 of the Revised Code;

(G) Review all proposed transfers that would transfer substantially all of the management rights, assets or stock of a cemetery; require an audit of the cemetery's funds on deposit under sections 1721.21 and 1721.211 of the Revised Code; and formulate an agreed plan pursuant to which the buyer and the seller of the cemetery will cause those funds to be properly funded;

(H) Adopt and publish suggested maintenance guidelines for all cemeteries registered in the state of Ohio under Chapter 4767. of the Revised Code.

4767.07 Complaints.

(A) Any person may file a complaint regarding the activity, practice, policy, or procedure of, or regarding an alleged violation of section 1721.19, 1721.20, 1721.21, 1721.211, 4735.02, 4767.09 or 4767.02 of the Revised Code by, any person operating or maintaining a cemetery registered pursuant to section 4767.03 of the Revised Code or that should be registered pursuant to section 4767.02 of the Revised Code that adversely affects or may adversely affect the interest of an owner or family member of

the owner of a cemetery lot or burial, entombment, or columbarium right. All complaints shall be in writing and submitted to the division of real estate in the department of commerce on forms provided by the division.

(B) With respect to complaints filed pursuant to division (A) of this section, the division of real estate shall do all of the following:

(1) Acknowledge receipt of the complaint by sending written notice to the person who filed the complaint not more than twenty days after receipt of the complaint;

(2) Send written notice of the complaint within seven days after receipt of the complaint to the person responsible for the operation and maintenance of the cemetery that is the subject of the complaint;

(3) Before taking further action, allow the owner or the person responsible for the operation and maintenance of the cemetery that is the subject of a complaint thirty days after the date the division sends notice of the complaint to respond to the division with respect to the complaint.

(C) The cemetery dispute resolution commission shall hear each complaint filed pursuant to division (A) of this section within one hundred eighty days after its filing, unless it has been resolved by the parties to the complaint.

4767.08 Conduct of investigations.

(A) The ~~superintendent or the Ohio~~ cemetery dispute resolution commission, on its own motion or as a result of a complaint received pursuant to section 4767.07 of the Revised Code and with good cause shown, shall investigate or cause to be investigated alleged violations of sections 1721.19, 1721.20, 1721.21, 1721.211, 4735.02, 4767.02, 4767.09 and 4767.03 of the Revised Code. If the commission or the superintendent of the division of real estate in the department of commerce believes that a violation has occurred, the commission or superintendent shall do all of the following:

(1) Review the financial records of the cemetery to ensure compliance with sections 1721.21 and 1721.211 of the Revised Code;

(2) Request the prosecuting attorney of the county in which the alleged violation occurred to initiate such proceedings as are appropriate.

(B) If, as a result of an investigation, the commission or the superintendent believes that a person has violated Chapter 1345. of the Revised Code, the commission or superintendent shall report the findings to the attorney general.

(C) The commission, at any time, may dismiss a complaint if it determines there is not good cause shown for the complaint. If the commission dismisses a complaint, it shall notify the person who filed the complaint within twenty days of reaching its decision and identify the reason why the complaint was dismissed.

(D) When necessary for the division of real estate to perform the duties required by sections 4767.07 and 4767.08 of the Revised Code, the superintendent of the division, after consultation with at least a majority of the members of or the cemetery dispute resolution commission, may issue subpoenas and compel the production of books, papers, records, and other forms of evidence. If, as a result of an investigation or after a hearing held pursuant to 4767.07, the commission or the superintendent finds a violation of section 4767.09 of the Revised Code, an advisory letter shall be issued. If a cemetery is advised of a second violation within nine consecutive months, the cemetery shall be fined \$100. Each additional violation found within the nine consecutive months shall result in a fine of \$100. For purposes of this section, multiple complaints concerning maintenance within the same ten day period shall constitute a single violation. All fines collected pursuant to this section shall be credited to the cemetery grant program, created in the state treasury under section 4767.18 of the Revised Code.

4767.09 Maintenance and record keeping

(A) The owner or person responsible for the operation of the registered cemetery shall provide reasonable maintenance of the cemetery property and of all lots, graves, mausoleums, scattering grounds and columbariums in the cemetery based on the type and size of the cemetery, topographic limitations, and contractual commitments with consumers.

(B) In determining whether the owner or person responsible for the operation of the registered cemetery provides reasonable maintenance of the cemetery property, the Division or commission may consider:

- (1) the size of the cemetery;
- (2) the type of cemetery;
- (3) the extent and use of the financial resources available;
- (4) the contractual obligations for care and maintenance of the owner or person responsible for the operation of the registered cemetery;
- (5) the standard of maintenance of one or more similarly situated cemeteries; in determining whether a cemetery is similarly situated, the division shall consider the cemetery's size, type, location, topography, and financial resources;
- (6) the minimum maintenance guidelines;
- (7) other relevant sections of the Revised Code related to cemetery maintenance;
- (8) any advisory letters or fines previously issued pursuant to section 4767.08(D) of the Revised Code.

(C) Reasonable maintenance by the owner or person responsible for the operation of the registered cemetery shall not preclude the exercise of lawful rights by the owner of an interment, inurnment, or entombment right, or by the decedent's immediate family or other heirs, in accordance with the rules and regulations of the cemetery or other agreement of the cemetery authority.

(D) In the case of a cemetery dedicated as a nature preserve, reasonable maintenance by the owner or person responsible for the operation of the registered cemetery shall be in accordance with the rules and regulations of the cemetery and/or the master plan governing the cemetery.

(E) Electronic or paper cemetery records pertaining to interment, entombment or inurnment right owners and interment, entombment or inurnment records indicating the deceased name, place of death, date and location of the interment, entombment or inurnment shall be maintained in the cemetery's office. Records may be maintained in an electronic format so long as the electronic copies are true copies of all the original documents.

4767.10 Statement

Every cemetery shall include a statement in the cemetery's rules and regulations that contains the Division's phone number, address, and information on how to file a complaint with the Ohio Cemetery Dispute Resolution Commission.

4767.12 Cemetery ceasing to operate, division's duties

When the division has information that the owner or person responsible for the operation of a registered cemetery has ceased operation, the division may investigate the cemetery to determine the cemetery's current status. If the division finds evidence that the cemetery has ceased operation and a municipality or township has not taken control of such cemetery, the division may apply to the appropriate court of common pleas for appointment of a temporary receiver or trustee. The order appointing the temporary receiver or trustee shall order the trustee or trustees of the endowment care trust of the cemetery to make distributions in accordance with this section.

The receiver shall be compensated by the owner or person responsible for the operation of the cemetery as indicated in Division records. If the owner or person responsible for the operation of the cemetery has no assets available to pay the receiver, the receiver shall only be paid from the income of interest and dividends in the endowment care trust being held pursuant to section 1721.21 of the Revised Code. The receiver may not invade the principal or capital gains of the trust.

4767.13 Grant program

(A) There is hereby created in the state treasury a cemetery grant fund. The general assembly shall initially appropriate to the cemetery grant fund one hundred thousand dollars from the Cemetery Program operating fund balance. Thereafter, one dollar of every two dollars and fifty cents of each fee collected for a burial permit by the division shall be credited to the cemetery grant fund. The Division shall use it in advancing grants to registered cemeteries, except for for-profit cemeteries, to defray the costs of the maintenance of the cemetery or the training of cemetery personnel in the maintenance and operation of cemeteries. Such grants shall be made according to rules established by the commission under the procedures of Chapter 119. Of the Revised Code. No more than eighty percent shall be paid out of that fiscal year's appropriation made for the purpose of the cemetery grant fund.

(B) The director of commerce, by rule adopted in accordance with Chapter 119. of the Revised Code, may increase the amount of total grants paid out in any one fiscal year if the director

determines that the total amount of funds generated exceeds the amount of funds the division needs to carry out its powers and duties under this section. If the director has increased the total grants paid out in a fiscal year under division (A) of this section, the director may later lower it down to the amount specified in division (A) of this section if, in any year, the director determines that the total amount of total grants paid out at the increased amount depletes the amount of funds the division needs to carry out its powers and duties under this chapter.

(C) For the purposes of this section "maintenance" means the care of a cemetery and of the lots, graves, crypts, niches, mausoleums, memorials, and markers therein, outside of the reasonable maintenance standard set forth in section 4767.09 of the Revised Code, to include but not limited to: (a) the cutting, trimming and removal of trees; (b) repair of drains, water lines, roads, fences, and buildings; and (c) payment of expenses necessary for maintaining necessary records of lot ownership, transfers, and burials.

4767.99 Penalty.

Whoever violates division (A) of section 4767.02 of the Revised Code is guilty of a misdemeanor of the ~~third~~ first degree.

DRAFT

From: Linda Jean Limes Ellis [mailto:llellis_2000@yahoo.com]
Sent: Sunday, February 02, 2014 4:52 PM
To: Petit, Anne; corvnoonan12@gmail.com
Subject: RE: Exploring almost forgotten gravesites in Ohio

To Anne and Cory,

I am writing to you both, as co-chairs of the Ohio Cemetery Law Task Force, on behalf of Ohio's inactive and abandoned cemeteries.

Ohio's earliest cemeteries have become the state's most endangered burial grounds due to their age. So many have fallen victim to vandalism, and neglect of care to the point that they are hardly recognizable as cemeteries today.

Unfortunately, inactive and abandoned cemeteries are not granted the same status as active cemeteries and are not registered in Ohio under the current laws. As I am sure you both know, complaints can only be filed to the Ohio Cemetery Dispute Resolution Commission regarding registered cemeteries; which leaves the rest of Ohio's cemeteries out of the process. Surely, changes can be made to include them as well so all of Ohio's cemeteries are afforded the same protection.

Too much Ohio history has been lost and what is left needs to be preserved and saved.

Thank you for reading my message. I appreciate your consideration of my appeal on behalf of Ohio's inactive and abandoned cemeteries for the reasons cited above.

I would be pleased to hear from you. I wish you both and the Ohio Cemetery Law Task Force great success with its work and ultimate recommendations.

Sincerely,

Linda Ellis

Linda Jean (Limes) Ellis
1587 Edgefield Road
Lyndhurst, OH 44124
Exploring Ohio's Almost Forgotten Gravesites
www.limesstones.blogspot.com



OHIO TOWNSHIP ASSOCIATION

MATTHEW J. OETEMPLE, Executive Director
HEIDI M. FOUGHT, Director of Governmental Affairs
8500 Taylor Road, Suite A • Blacklick, Ohio 43864
(614) 863-0045 • Fax (614) 863-9751
www.OhioTownships.org

Ohio Cemetery Law Task Force March 7, 2014

On behalf of the Ohio Township Association (OTA), thank you for the opportunity to address you this morning. As I mentioned at the first meeting, the OTA receives many questions about cemeteries over the course of a year. We appreciate the opportunity to work with this body to address issues and concerns raised by our members about cemetery rights and responsibilities.

Townships maintain over 2400 cemeteries in Ohio. Township cemetery law may generally be found in Chapter 517 of the *Ohio Revised Code*. Townships, per ORC §517.11, are charged with the protection and preservation of cemeteries under their jurisdiction. If a public cemetery or a cemetery association wishes to have a board of township trustees take over responsibility of said cemetery, the board of trustees shall accept the transfer (ORC §517.27). Furthermore, a municipal corporation may abandon a cemetery outside the boundaries of the municipality and the trustees shall assume responsibility for the cemetery (ORC §517.28).

A township is required to have a cemetery laid out in lots, number the lots, and the township fiscal officer must keep careful records of said actions (ORC §517.06). The board of trustees is required to make and enforce all needful rules and regulations for the division of the cemetery into lots and the allotment of lots to families or individuals, and for the care, supervision and improvements of said lots. ORC §517.06 further requires that the grass and weeds in the cemetery be cut at least twice a year. In 1964 the Attorney General opined that a township may contract with an independent contractor when reasonably necessary to maintain and care for a cemetery (OAG 64-991).

The Ohio Revised Code mandates that a township provide for the protection and preservation of cemeteries under its jurisdiction (ORC §517.11). While the Code states that townships may re-erect any fallen tombstones, a 1975 Attorney General Opinion (OAG 75-083) states that "boards of township trustees *have a duty* to repair and re-erect monuments and tombstones in public cemeteries within their jurisdiction when the repair is necessary to keep the cemetery in good repair." The opinion further states that "a board of township trustees has a duty to repair and re-erect monuments in a cemetery that has been vandalized."

The township may choose to enclose township cemeteries with a fence or hedge but should they do so, the township is required to keep the fence or hedge in good repair (ORC §517.11). When a board of county commissioners has enclosed with a fence all abandoned public cemeteries in the county from which remains have not been removed, the board of township trustees shall keep the fence in good repair and remove the undergrowth and weeds at least once a year (ORC §517.32).

The board of township trustees may make rules specifying times when cemeteries under its jurisdiction shall be closed to the public (ORC §517.12). When a board decides to adopt such rules, the board must publish the rule once a week for two consecutive weeks in a paper of general circulation within the township. Whoever violates these rules is guilty of a minor misdemeanor.

Being that the care and maintenance of the cemeteries is mandated by law, a township must find the funds to care for the cemeteries. Townships have seen the following revenue

2014-2015 Officers

Tom Wilsey, President
3421 New London Road
Hamilton, Ohio 45013

Connie Flak, 1st Vice President
2645 Fawn Lane
Zanesville, Ohio 43701

Tim Lynch, 2nd Vice President
7481 N. Township Road 70
Tiffin, Ohio 44803

Ed Huff, Jr., Secretary-Treasurer
P.O. Box 335
Ansonia, Ohio 45303

2014-2015 Board of Directors

Lynda Bowers
8440 Ryan Road
Medina, Ohio 44256

Perry Brock
554 County Road 120
South Point, Ohio 45880-8770

John Carlisle
6767 Palmer Road
Etna, Ohio 43046

Deana DeWitt
2299 County Road 89
Edison, Ohio 43329

David Dilly
28520 Township Road 171
Frasco, Ohio 43824

Scott Pabian
128 Montgomery Lane
Mingo Junction, Ohio 43935

Daniel Frederick
22 Lockwood Road
Milan, Ohio 44846

Roy Hollenbacher
168 St. Andrews Blvd.
Lima, Ohio 45804

R.J. Lombrezer
11475 State Route 120
Lyons, Ohio 43533

Run Miller
4181 Bethel Road
Bucyrus, Ohio 44820

Darril Bhaier
4071 Mayham Road
Carrollton, Ohio 44915

Amy Szmania
50133 New London Eastern Road
New London, Ohio 44851

Jackie Terwilliger
10609 Roachester-Cozzadale Road
Goshen, Ohio 45122

Robert Wakefield
6828 Ory Run Road
Kington, Ohio 46844

Steven Woolf
8803 Baltimore-Phillipsburg Road
Brookville, Ohio 45309

John Zizka
9177 Asbury Road
Mantua, Ohio 44255

"Serving Ohio since 1928"



sources reduced or eliminated over the last five years: 50% reduction of Local Government Fund, the accelerated phase-out of the Tangible Personal Property (TPP) tax and electric deregulation reimbursements, and the elimination of the estate tax. With reduction in revenue that is primarily used for general township purposes, townships have been forced to seek additional revenue. In November 2013, there were 58 cemetery levies on the ballot across Ohio. While a good majority of those levies passed, funding continues to be an issue.

The OTA, like many organizations, sets legislative priorities at the start of each general assembly. For the last several general assemblies, the OTA has repeatedly sought additional funding for cemetery care and maintenance. Below is language currently in our legislative platform.

Funding

Under current law a township may sell plots and set fees for services performed at township cemeteries. The revenue received must be used to help offset the cost of the maintenance and upkeep of the cemeteries. Townships may also submit a cemetery levy before the voters to raise additional revenue. The OTA recommends language be included to permit townships to sell items such as headstones and vaults, in addition to plots, and to allow the funds received to be used to ensure the perpetual care of the cemetery.

In the 126th General Assembly (2005-2006), a township requested legislation that would permit a township to sell cemetery related items. Then Representative, now Senator, Widener introduced HB 382 to permit just such a thing (*attached for reference*). Municipalities in Ohio have the ability to sell cemetery related items and the OTA simply requests that townships be afforded the same right to assist with their mandated responsibilities to care for cemeteries. Townships need additional means to care and preserve all of the current cemeteries under their jurisdiction and all future abandoned cemeteries.

Pursuant to ORC §5705.19 (T), a township may place before the voters a levy for which funds would be used for maintaining and operating cemeteries. A cemetery levy may only be levied for five (5) years at a time and then must be placed before the voters again. There are certain types of levies that may be continuous, specifically safety service levies. The OTA respectfully requests consideration of allowing cemetery levies to be continuous. As previously stated, townships are mandated to provide for the care and maintenance of over 2400 cemeteries in Ohio and a continuous levy option would emphasize the importance of this responsibility.

Another plank from our 130th General Assembly legislative platform was the following:

Grant Program for Abandoned Cemeteries

With the discovery of abandoned cemeteries, townships become responsible for their maintenance and upkeep. Procedures for the takeover of an abandoned cemetery need to be clarified in the Revised Code. The OTA strongly urges the Department of Commerce - Real Estate Division to set up a grant program to assist townships in maintaining abandoned cemeteries using revenue derived from cemetery registration fees.

Last year, the Ohio Township Association, Ohio Municipal League, Ohio Cemetery Association, Ohio Cemetery Foundation and the Ohio Department of Commerce met to discuss potential

updates to Ohio's cemetery law. I believe this draft document was distributed at the last meeting as part of testimony by Laura Monick. The OTA is supportive of the changes included in the draft document you received. Specifically, the OTA is supportive of the proposed cemetery grant fund that would be used to help defray the costs of cemetery maintenance or the training of cemetery personnel in the maintenance and operation of cemeteries (Proposed 4767.13).

As you have heard from interested parties, a very serious issue facing Ohio is the care and preservation of abandoned cemeteries or burial grounds. This issue is one that has been discussed in the past. Included as part of the Ohio Archaeological Council's testimony last meeting was the 2002 "Report to the Select Committee to Study the Effectiveness of Ohio's Historical Programs & Partnerships." The Report states:

"It was recognized that financial resources are needed for the maintenance of cemeteries, a burden shared by 1,300 townships and over 600 municipalities. Financial incentives for those who protect abandoned cemeteries on private property and a dedicated source of funds to implement new legislation were considered important to the group."

The OTA respectfully requests that the Ohio Cemetery Law Task Force place the same importance on this issue. If Ohio's townships are to be expected to provide care and maintenance for over 2,400 current cemeteries and the possible influx of additional abandoned cemeteries or burial grounds, a stable and reliable revenue source is needed.

Definition of Abandoned Cemetery

Where in the ORC is the definition of abandoned cemetery? Are townships responsible for ALL abandoned cemeteries or burial grounds? These are routine questions we receive in our office. The OTA respectfully requests the Task Force define "abandoned" for the purposes of cemeteries or burial grounds to help clarify ORC §517.27.

Definition of Maintenance Schedules and Standards

In reviewing testimony from the previous meeting, it has been suggested numerous times that cemeteries be subject to certain maintenance requirements and schedules. As previously stated, township cemetery maintenance standards can be found in ORC §517.06 and §517.11.

§517.06 "...The board also may make and enforce all needful rules and regulations for burial, interment, reinterment, or disinterment. The board shall require the grass and weeds in the cemetery to be cut and destroyed at least twice each year."

§517.11 "The board of township trustees shall provide for the protection and preservation of cemeteries under its jurisdiction, and shall prohibit interments therein when new grounds have been procured for township cemeteries or burial grounds. Where such old cemeteries are in or near village plats, and the public health is liable to be injured by further interments therein, the board shall institute suits to recover possession thereof, remove trespassers therefrom, and may recover damages for injuries thereto or any part thereof, or to any fence or hedge enclosing them, or to any tomb or monument therein. The board may enclose such cemeteries with a substantial fence or hedge, and shall keep any such fence or hedge in good repair. It may re-erect any fallen tombstones, regardless of the cause of the falling, in such cemeteries."

The OTA works with the Department of Commerce - Division of Real Estate & Professional Licensing to provide our members with pertinent cemetery information. A few weeks ago, department officials participated in our annual conference held in Columbus. We also work closely with the Ohio Cemetery Association and Ohio Cemetery Foundation to provide educational workshops and articles for our members. We are willing to explore additional educational opportunities and tools to assist our townships in understanding their cemetery responsibilities. The OTA encourages the Ohio Cemetery Task Force to consider suggested maintenance requirements for cemeteries but cautions against requirements that will result in increased costs to townships without providing a stable and reliable funding source.

Reselling of Cemetery Lots

Pursuant to a legislative change in 1986, a township that sells a cemetery lot may include requirements about the transfer of said lot and the right of reentry by the township (ORC §517.07). Additionally, a township may limit the terms of sale or the deed for a lot by specifying that the owner, a member of the owner's family or an owner's descendant must use the lot within a specified time frame of at least 20 but not more than 50 years. These requirements are only applicable to any lot sold by a township on or after July 24, 1986. The question that is often asked by townships is "How do we handle lots sold prior to that date?"

An Attorney General Opinion addressed this specific issue in 2009 (OAG 2009-006, attached). The opinion states:

R.C. 517.07 does not allow any retroactive application to deeds executed on or before July 24, 1986. Existing Ohio law provides no clear and direct legal means by which a township may reclaim and resell cemetery lots that were sold on or before July 24, 1986, and remain unused.

The OTA respectfully requests that language be included in ORC §517.07 to allow townships to resell or reclaim cemetery lots that were sold prior to July 24, 1986 but remain unused.

Chairs Petit and Noonan, members of the Task Force, thank you for the opportunity to present our cemetery issues and concerns today. The OTA appreciates your consideration of suggestions and we look forward to working with you on them. I would be happy to answer any questions you may have.

As Introduced

**126th General Assembly
Regular Session
2005-2006**

H. B. No. 382

**Representatives Widener, Brown, Reidelbach, Coley, Fende, Evans, C.,
Faber**

—

A BILL

To enact section 517.16 of the Revised Code to permit 1
boards of township trustees to sell 2
cemetery-related items, with the proceeds to go to 3
the care and maintenance of their township 4
cemeteries. 5

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 517.16 of the Revised Code be enacted 6
to read as follows: 7

Sec. 517.16. A board of township trustees may sell 8
cemetery-related items. All revenue received from their sale shall 9
be used to provide for the care and maintenance of any township 10
cemetery in that township, in the manner approved by the board. 11

As used in this section, "cemetery-related items" include, 12
but are not limited to, monuments, vaults, outer burial 13
containers, markers, and urns, but exclude burial lots. 14

February 2, 2009

The Honorable Kevin J. Baxter
Erie County Prosecuting Attorney
247 Columbus Avenue, Suite 319
Sandusky, Ohio 44870-2636

SYLLABUS:

2009-006

1. A board of township trustees may not reclaim its interest in sold but unused cemetery lots under a theory that the burial easement has been extinguished by abandonment on the basis of nonuse alone, and it is highly unlikely that the board will be able to establish intent to abandon a sold but unused cemetery lot. (1972 Op. Att'y Gen. No. 72-031, modified.)
2. R.C. 517.07 does not allow any retroactive application to deeds executed on or before July 24, 1986.
3. Existing Ohio law provides no clear and direct legal means by which a township may reclaim and resell cemetery lots that were sold on or before July 24, 1986, and remain unused.



RICHARD CORDRAY
OHIO ATTORNEY GENERAL

February 2, 2009

OPINION NO. 2009-006

The Honorable Kevin J. Baxter
Erie County Prosecuting Attorney
247 Columbus Avenue, Suite 319
Sandusky, Ohio 44870-2636

Dear Prosecutor Baxter:

We have received your request for an opinion concerning the ability of a board of township trustees to reacquire and resell gravesites that were sold many years ago, that have not been used, and whose owners cannot be located. Your request refers to 1972 Op. Att'y Gen. No. 72-031, which addressed this question, and to subsequent amendments to R.C. 517.07. You have asked the following questions:

1. Has Opinion No. 72-031 been supplanted or does it remain a valid interpretation, especially regarding the theory of abandonment?
2. Does the current version of R.C. 517.07 allow for any retroactive application to deeds executed several decades ago, such as the one provided by way of example [dated March 10, 1923]?
3. What legal recourse exists for township trustees under the circumstances outlined [in your request letter]?

For the reasons set forth in this opinion, we conclude:

1. A board of township trustees may not reclaim its interest in sold but unused cemetery lots under a theory that the burial easement has been extinguished by abandonment on the basis of nonuse alone, and it is highly unlikely that the board will be able to establish intent to abandon a sold but unused cemetery lot. (1972 Op. Att'y Gen. No. 72-031, modified.)

2. R.C. 517.07 does not allow any retroactive application to deeds executed on or before July 24, 1986.
3. Existing Ohio law provides no clear and direct legal means by which a township may reclaim and resell cemetery lots that were sold on or before July 24, 1986, and remain unused.

Background Information

R.C. 517.07 authorizes a board of township trustees to sell lots in township cemeteries.¹ As explained in your request letter, that provision was amended in 1986 to permit the “terms of sale” and “any deed for lots” executed after July 24, 1986, to include various provisions that enable the township to stay in contact with persons who may acquire an interest in a cemetery lot, and to reenter and resell the lot in certain circumstances. *See* 1985-1986 Ohio Laws, Part I, 370 (Am. Sub. S.B. 139, eff. July 24, 1986).

As amended in 1986 and modified slightly in subsequent legislation, R.C. 517.07 now provides that the terms of sale and deeds for township cemetery lots may require the grantee to provide notification of the names and addresses of persons to whom the grantee’s property would pass by intestate succession, may require those who acquire an interest in a cemetery lot to keep

¹ It is clear under R.C. 517.07 that a cemetery lot may include more than one burial place. The statute authorizes the delivery, without charge, of a deed “for a suitable lot for the burial of the applicant’s family,” if payment would be oppressive. R.C. 517.07. It also permits the terms of sale or deed to specify that “the owner, a member of the owner’s family, or an owner’s descendant must use the lot, or at least one burial place within the lot, within a specified time period.” R.C. 517.07; *see also, e.g., Lanham v. Franklin Township*, Clermont App. Nos. CA2002-07-052, CA2002-08-068, 2003-Ohio-2222, 2003 Ohio App. LEXIS 2080, at ¶3 (a “full lot” was capable of holding eight graves); *Metzger v. Dayton Mem’l Park & Cemetery*, No. CA 9882, 1987 Ohio App. LEXIS 5689 (Montgomery County Jan. 29, 1987).

Your questions ask about a situation in which a cemetery lot contains several gravesites and all the gravesites remain unused. 1972 Op. Att’y Gen. No. 72-031 was based upon a situation in which one or two bodies were buried in a lot that contained several gravesites. In neither instance is it suggested that the burial easement be extinguished in a burial site in which a body has been buried. With respect to gravesites in which no bodies have been buried, essentially the same analysis regarding extinguishment of the burial easement applies whether an entire cemetery lot or only part of a cemetery lot remains unused. *Cf. note 7, infra* (certain issues may be raised by an attempt to resell part of a family plot). For purposes of this opinion, we use the term “gravesite” to refer to a “burial place” as that term is used in R.C. 517.07—that is, a portion of a cemetery that holds or is designed to hold a single grave. We use the term “unused” in connection with a cemetery lot to refer to whichever gravesites within a cemetery lot have not been used for burial purposes.

the township informed of their names and addresses, and may grant the board of township trustees the right of reentry to the cemetery lot if the notification requirements are not met. The board may limit the terms of sale or deed by specifying that at least one burial place in the cemetery lot must be used within a specified time period (at least twenty and no more than fifty years), with a right of renewal provided at no cost, and that the board has a right of reentry if the lot is not used within the time period or renewed for an extended period. To establish reentry, the board must pass a resolution stating that the conditions of the sale or deed have not been fulfilled and that the board reclaims its interest in the cemetery lot. The board must compensate owners of unused lots who do not renew by paying eighty percent of the purchase price, and may repurchase any cemetery lot from its owner at any time at a price agreed upon by the board and the owner. R.C. 517.07. The 1986 amendments to R.C. 517.07 thus authorize the board of township trustees to create an easement that is subject to extinguishment if the conditions stated in the deed are not met, and in this way to reclaim its interest in a cemetery lot that is not used in accordance with the stated conditions. *See* 1990 Op. Att'y Gen. No. 90-066, at 2-279.²

Prior to the 1986 amendments to R.C. 517.07, the Attorney General was asked whether a township could take legal action to reacquire and resell cemetery lots that had been sold but had not been used and whose owners were not known or could not be contacted. The Attorney General concluded, in 1972 Op. Att'y Gen. No. 72-031, that a board of township trustees could not appropriate, or otherwise regain title to, unused cemetery lots sold under R.C. 517.07.

You have described the situation at issue in your county as follows:

The problem that exists with one of the township cemeteries in Erie County, and we suspect this may be a statewide problem, is that in years past, and prior to 1986, cemetery lots with multiple gravesites (family plots), were sold under deeds that would not have had the language permitting re-entry under the most recent version(s) of R.C. 517.07. In Opinion No. 72-031, then Attorney General Brown opined that: "A board of trustees may not appropriate, or otherwise regain title to, unused cemetery lots sold under authority of Section 517.07." In that Opinion, the Attorney General would not recognize the theory of abandonment as it pertains to gravesites. Thus, it appears for deeds executed

² As discussed more fully later in this opinion, an interest in a cemetery lot is considered an easement under Ohio law, rather than a fee simple ownership. Thus, a township that grants a burial interest in a cemetery lot is granting an easement for burial purposes and is not forfeiting its title to the lot. Therefore, to regain a grantee's interest in a cemetery lot, a board of township trustees must extinguish the easement. *See* 1990 Op. Att'y Gen. No. 90-066, at 2-277; 1959 Op. Att'y Gen. No. 643, p. 335, at 336 (in speaking of a sale and deed, R.C. 517.07 does not authorize an outright deed of conveyance in fee simple, but only an instrument that will evidence the right to use the lot for burial purposes). For purposes of this opinion, we refer to the process of extinguishing an easement for burial purposes as reclaiming the cemetery lot.

before 1986, especially ones executed 50-100 years ago, township trustees are without any means of re-entry where no action is taken with respect to those gravesites for decades and families do not interact with Cemetery Boards. It may be after decades family members forget that such sites exist or have no interest in using them.

We are enclosing a deed to a family lot dated March 10, 1923. No one has ever used these gravesites and the trustees would like to re-sell the sites if no one is going to use them. The trustees do not know who or where the lineal descendants of the initial grantee reside. The deed does state that the conveyance is "subject to the Cemetery Laws of the State"

We understand your practical concerns and regret that Ohio law does not currently provide a clear and direct remedy for the problem you have described.

Township Trustees' Authority over Cemeteries

It is firmly established under Ohio law that boards of township trustees have only the powers and privileges granted by the General Assembly and those that exist by necessary implication. *In re Petition for Incorporation of the Village of Holiday City*, 70 Ohio St. 3d 365, 369, 639 N.E.2d 42 (1994); *Trustees of New London Township v. Miner*, 26 Ohio St. 452, 456 (1875); 2003 Op. Att'y Gen. No. 2003-034, at 2-283; 1951 Op. Att'y Gen. No. 802, p. 558 (syllabus, paragraph 2).³ As described in 1972 Op. Att'y Gen. No. 72-031, a board of township trustees is empowered by R.C. 517.07 to sell lots in township cemeteries to the public. *See also* 1999 Op. Att'y Gen. No. 99-047, at 2-296 to 2-297.

The owner of a cemetery lot possesses only an easement for burial purposes, rather than an absolute title to real property. *See In re Estate of Joiner*, No. 92-L-170, 1993 Ohio App. LEXIS 3344, at *8-9 (Lake County June 30, 1993) ("the grantee of a burial lot takes an easement; to wit, rights of burial, ornamentation, and erection of a monument, rather than an absolute title"); *Persinger v. Persinger*, 39 Ohio Op. 315, 316, 86 N.E.2d 335 (C.P. Fayette County 1949); 1990 Op. Att'y Gen. No. 90-066, at 2-277; 1972 Op. Att'y Gen. No. 72-031, at 2-120 ("[a] deed to a cemetery lot does not convey fee simple ownership, but only an easement for purposes of burial"); 1949 Op. Att'y Gen. No. 925, p. 559, at 560; note 2, *supra*.

³ *See also State ex rel. Schramm v. Ayres*, 158 Ohio St. 30, 33, 106 N.E.2d 630 (1952) ("the question is not whether townships are prohibited from exercising such authority. Rather it is whether townships have such authority conferred on them by law"). You have not asked specifically about townships that have adopted a limited home rule government under R.C. Chapter 504 and this opinion does not address those townships. *See, e.g.,* R.C. 504.04; 2007 Op. Att'y Gen. No. 2007-036, at 2-373 n.10; 2005 Op. Att'y Gen. No. 2005-042, at 2-436 n.1.

Under Ohio law, if a decedent's will does not specifically provide who is to receive the decedent's interest in a cemetery lot, that interest does not pass under the general residuary clause but, instead, descends to heirs through intestate succession. *See In re Estate of Joiner*, 1993 Ohio App. LEXIS 3344, at *11 (under Ohio common law, a cemetery lot does not pass under a general residuary clause in a will but descends to heirs as intestate property); *Persinger v. Persinger*, 39 Ohio Op. at 316; 1972 Op. Att'y Gen. No. 72-031, at 2-121 to 2-122. When the interest in a cemetery lot passes to heirs in this manner, it may be difficult to identify and locate the heirs.

Once a body is buried in a gravesite, the body is entitled to remain there unless the land ceases to be used as a cemetery or removal is authorized under R.C. 517.23-.24 by a court or by persons with authority over the cemetery. *See* 1972 Op. Att'y Gen. No. 72-013, at 2-120 to 2-121; *see also In re Disinterment of Frobose*, 163 Ohio App. 3d 739, 2005-Ohio-5025, 840 N.E.2d 249 (Wood County); *Fraser v. Lee*, 8 Ohio App. 235 (Cuyahoga County 1917); C. Allen Shaffer, Comment, *The Standing of the Dead: Solving the Problem of Abandoned Graveyards*, 32 Cap. U. L. Rev. 479, 486 (2003) (in discussion of the development of the American view of the permanence of a gravesite, quoting *King v. Frame*, 216 N.W. 630, 633 (Iowa 1927), as follows: "a due respect for the memory of the dead and for the feelings of the living friends and relatives requires that when a body is once interred it shall so remain unless extreme necessity demands its disinterment").

A board of township trustees may discontinue use of an abandoned cemetery or of a cemetery whose further use for burial purposes is believed to be detrimental to the public welfare or health, as provided in R.C. 517.21. *See also* 1999 Op. Att'y Gen. No. 99-047. After giving notice to family, friends, or next of kin, the board of township trustees may provide for the bodies to be removed and reinterred elsewhere and may then sell the property for other uses. R.C. 517.21-.22; *see also* R.C. 517.11; 1999 Op. Att'y Gen. No. 99-047. These provisions do not authorize the trustees to reclaim and resell unused cemetery lots in a cemetery that continues to be used as a cemetery.

Analysis Set Forth in 1972 Op. Att'y Gen. No. 72-031

In 1972 Op. Att'y Gen. No. 72-031, the Attorney General considered how a burial easement in a cemetery lot might be terminated. The opinion stated that "[a]n easement is 'property' within the meaning of the constitutional prohibition against the taking of property without just compensation, and any extinguishment of such property right must, of course, be strictly in accord with statutory requirements." 1972 Op. Att'y Gen. No. 72-013, at 2-121. We concur in this statement.

The opinion then considered whether a burial easement could be terminated by appropriation under the power of eminent domain and concluded that it could not, stating that an appropriation of property rights must be accomplished in accordance with R.C. Chapter 163 and finding that the board of township trustees "does not have the power to appropriate such individual grave sites." 1972 Op. Att'y Gen. No. 72-031, at 2-121. The opinion noted that, by

statute, the board of township trustees' appropriation authority with respect to cemeteries extends only to land for a new cemetery, *see* R.C. 517.01, or to land used to enlarge an existing cemetery, *see* R.C. 517.13. It noted the presumption against the delegation of the power of eminent domain and found no basis for an implication that the power of eminent domain could be used to acquire sold but unused gravesites. 1972 Op. Att'y Gen. No. 72-031, at 2-121; *see Pontiac Improvement Co. v. Bd. of Comm'rs*, 104 Ohio St. 447, 454-58, 135 N.E. 635 (1922); *Miami Coal Co. v. Wigton*, 19 Ohio St. 560 (1869); 1985 Op. Att'y Gen. No. 85-032.

We concur in the appropriation analysis set forth in the 1972 opinion and conclude that a board of township trustees has no authority under existing statutes to use the power of eminent domain to appropriate sold but unused cemetery lots. A township "has no powers to appropriate any property except as explicitly granted by the legislature." *Bd. of Township Trustees v. Lambrix*, 60 Ohio App. 2d 295, 298-99, 396 N.E.2d 1056 (Summit County 1978). With regard to cemeteries, the appropriation authority of a township extends to new land or land used to enlarge an existing cemetery, but does not encompass gravesites that have been sold and remain unused. *See* R.C. 517.01 (if suitable lands for a cemetery cannot be procured by contract on reasonable terms, the board of township trustees may appropriate not more than ten acres under R.C. 163.01-.22); R.C. 517.08 (proceeds from the sale of cemetery lots under R.C. 517.07 may, upon unanimous consent of the board of township trustees, "be used in the purchase or appropriation of additional land for cemetery purposes in accordance with [R.C. 517.01 and 517.13]"); R.C. 517.13 (the board of township trustees, acting under R.C. 163.01-.22, may appropriate lands "for the expansion of an existing cemetery" in certain circumstances).

The 1972 opinion next considered whether a burial easement, like other types of easements, could be extinguished by abandonment and concluded that it could not, stating:

I have . . . found no authority which applies such a rule to a cemetery lot easement. The elements of the theory are stated in *West Park Shopping Center v. Masheter*, 6 Ohio St. 2d 142, 144 (1966), as follows:

" 'An abandonment is proved by evidence of an intention to abandon as well as of acts by which the intention is put into effect; there must be a relinquishment of possession with an intent to terminate the easement.' "

See also *Schenck v. The Cleveland, Cincinnati, Chicago & St. Louis Railway Co.*, 11 Ohio App. 164 (1911); *Wheaton v. Fernenbaugh*, 8 Ohio App. 182 (1917). While these Opinions recognize the theory of extinguishment of an easement by abandonment, they do so only in dictum. It has actually been applied in Ohio law rarely, if at all.

Because of the special characteristics of a cemetery lot easement, I am reluctant to analogize it to other types of easement. Hence, the mere fact that a theory of extinguishment applies to, e.g., a footpath or railway easement, does not

mean that it also applies to an easement for burial purposes. In addition, it is difficult to see how the theory could be applied. Its elements are nonuser plus clear evidence of intention to abandon. Nonuser could not be established, because a lot may not be needed for a great many years, and of course it is not used until needed. Intention to abandon could not be clearly inferred, since there is always the possibility that someone in a family which has moved away may wish his body returned for burial. It must also be remembered that title to the easement remains in the heirs. I conclude, therefore, that an easement for burial purposes cannot be extinguished by abandonment.

1972 Op. Att'y Gen. No. 72-031, at 2-121 to 2-122. The 1972 opinion thus concluded that a board of township trustees cannot use a claim of abandonment to regain its interest in cemetery lots that have been sold but remain unused.

Analysis Set Forth in 1990 Op. Att'y Gen. No. 90-066

Issues concerning the reclaiming and reselling of unused cemetery lots were subsequently addressed in 1990 Op. Att'y Gen. No. 90-066, which concerned a union cemetery created under R.C. 759.27 by a combination of municipal corporations and townships. That opinion considered, *inter alia*, whether the boards of township trustees and legislative authorities of municipal corporations, acting under R.C. 759.35, could promulgate rules under which they could regain their interests in unused cemetery lots and concluded that they could not. In reaching this conclusion, the 1990 opinion quoted from the discussion of abandonment set forth in 1972 Op. Att'y Gen. No. 72-31 and stated: "Since the theory of abandonment is virtually impossible to apply to an easement in a cemetery lot, it follows that a rule pursuant to R.C. 759.35 could not effectively employ the theory of abandonment to extinguish such an easement." 1990 Op. Att'y Gen. No. 90-066, at 2-278.

1990 Op. Att'y Gen. No. 90-066 thus modified the analysis of the 1972 opinion slightly. The 1990 opinion did not adopt the 1972 finding that an easement for burial purposes cannot be extinguished by abandonment, but concluded, instead, that it is "virtually impossible" to apply the theory of abandonment to a burial easement in a cemetery lot. *See Merriam-Webster's Collegiate Dictionary* 1397 (2005) ("virtually" means "almost entirely" or "for all practical purposes").

This minor change in wording reflects the practical difficulty of establishing the intent to abandon a burial easement in a cemetery lot, but recognizes the possibility that, because the determination as to whether an easement has been abandoned is a question of fact, there may be circumstances in which it is possible to establish the intent to abandon a burial easement.

Current Analysis of Abandonment

The elements of the theory of abandonment continue to be as they were described in the 1972 and 1990 opinions. For example, *Crane Hollow, Inc. v. Marathon Ashland Pipe Line, LLC*,

138 Ohio App. 3d 57, 72, 740 N.E.2d 328 (Hocking County 2000), states that, to demonstrate the abandonment of an easement, it is necessary to establish both nonuse of the easement and an intent to abandon the easement. Further, the intent to abandon an easement must be demonstrated by unequivocal and decisive acts that are inconsistent with the continued use and enjoyment of the easement. Thus, the determination of whether an easement has been abandoned is a question of fact. *Crane Hollow, Inc. v. Marathon Ashland Pipe Line, LLC*, 138 Ohio App. 3d at 72; *see also Bauerbach v. LWR Enterprises, Inc.*, 169 Ohio App. 3d 20, 2006-Ohio-4991, 861 N.E.2d 864, at ¶18-20 (Washington County 2006); *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Ryska*, Lake App. No. 2003-L-192, 2005-Ohio-3398, 2005 Ohio App. LEXIS 3146, at ¶56; *Snyder v. Monroe Township Trustees*, 110 Ohio App. 3d 443, 457-58, 674 N.E.2d 741 (Miami County 1996).

Consistent with the findings in 1972 Op. Att’y Gen. No. 72-031 and 1990 Op. Att’y Gen. No. 90-066, our research has disclosed no Ohio authority establishing that an easement for burial purposes may be extinguished by abandonment. *See generally* 1999 Op. Att’y Gen. No. 99-047.

Certain authorities from other jurisdictions assert that the owner of a cemetery lot may forfeit the lot through abandonment; however, these assertions are generally supported by citations to statutes that expressly authorize the return of property rights to the public body in certain circumstances (as in the current version of R.C. 517.07) or to cases involving the abandonment of an entire cemetery, rather than the abandonment of particular gravesites within an existing cemetery. *See* 14 Am Jur. 2d *Cemeteries* § 31 (2000) (stating that purchase of a lot in a public cemetery grants the purchaser a right of burial, commonly designated an easement, which “can be extinguished only by abandonment,” and citing in support *Boyd v. Brabham*, 414 So. 2d 931 (Ala. 1982), *appeal after remand*, 442 So. 2d 86 (Ala. 1983), which considered whether a family cemetery had been abandoned so that the land could be used for a non-cemetery purpose); 2-18 *Powell on Real Property* § 18.02 (2008) n.66 (even as the interest of a cemetery lot owner in an unused lot is terminated when the cemetery is abandoned, “[a]n individual may also lose rights to the lots through abandonment of the lot,” citing statutes that set forth criteria for establishing abandonment); *see also* Jennifer L. Romeo, Annotation, *Loss of Private Easement by Nonuse*, 62 A.L.R. 5th 219, 227, 416-17, 473 (1998) (indexing only one cemetery case, *Walker v. Georgia Power Co.*, 339 S.E.2d 728 (Ga. App. 1986), which concerns a power company that condemned and relocated a family cemetery in accordance with state statutes and with the acquiescence of the appellant heir).

In 1987, the Arkansas Attorney General considered the issue of reclaiming cemetery lots on a theory of abandonment and suggested that a city seeking to reclaim unused cemetery lots might be able to pursue a theory of abandonment if, in a particular case, the facts were sufficient to establish intent to abandon. The Arkansas Attorney General’s opinion states, in part:

The above-cited authority [general statement of cemetery law] indicates that the interest in the lots is still vested in the original owner or, if he is dead, in his heirs or lineal descendants, unless he voluntarily relinquished possession of the lots. It may be argued, however, that the owner did voluntarily relinquish his

interest in the lots by abandonment. To show abandonment, it must be proven that the owner meant to relinquish all claim to the lots with the intention of never again asserting such a claim. See *Hyde v. Hyde*, 240 Ark. 463, 400 S.W.2d 288 (1966). Mere non-use, without more, does not constitute abandonment. The facts provided in the present situation are insufficient to form a conclusive opinion on the abandonment issue. If the facts taken as a whole do, however, sufficiently indicate voluntary relinquishment, the interest in the lots will revert to the city as the grantor for the lots. See 14 Am. Jur. 2d *Cemeteries* § 24. It should also be noted in this regard that the doctrine of abandonment allowing abandoned property to become appropriated by the first taker does not apply to cemeteries. *Phinney v. Gardner*, 121 Me. 44, 115 A. 523 (1921). The interest will therefore revert to the city upon a showing of abandonment, and the city may then resell the lots.

1987 Arkansas Op. Att'y Gen. No. 87-267, at 2-3. Like 1972 Op. Att'y Gen. No. 72-031 and 1990 Op. Att'y Gen. No. 90-066, this Arkansas opinion states that nonuse in itself is not sufficient to establish abandonment. It also asserts, however, that a public body wishing to reclaim a cemetery lot in a particular instance may seek a determination as to whether the facts support a claim of abandonment and may reclaim the lot if a sufficient showing is made.

On the basis of the authorities discussed above, we conclude that nonuse of a cemetery lot is not sufficient to establish abandonment of the lot, and that it is highly unlikely that it will be possible to establish intent to abandon a cemetery lot. However, because the question whether an easement has been abandoned is one of fact, we cannot discount the possibility that, in particular circumstances, there may be facts sufficient to support a finding that a cemetery lot easement has been abandoned. If such facts can be established, it may be possible for a township to reclaim cemetery lots that have been sold and remain unused. See generally *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Ryska*, 2005-Ohio-3398, at ¶56 (“[a]n intention to abandon is a material question, and it may be proved by an innumerable variety of acts. It is a question of fact to be ascertained from the circumstances of the case, and, in effect, no one case can be authority for another” (citations omitted)); *Crane Hollow, Inc. v. Marathon Ashland Pipe Line, LLC*, 138 Ohio App. 3d at 72.

Therefore, we modify 1972 Op. Att'y Gen. No. 72-031 on the basis of 1990 Op. Att'y Gen. No. 90-066 and conclude that a board of township trustees may not reclaim its interest in sold but unused cemetery lots under a theory that the burial easement has been extinguished by abandonment on the basis of nonuse alone, and it is highly unlikely that the board will be able to establish intent to abandon a sold but unused cemetery lot.

The 1972 opinion found no other theory on which the interests in unused gravesites could be reacquired by the township and concluded that the reentry and resale could not occur. Our

research, similarly, has disclosed no theory of legal action directly authorizing a township to reclaim and resell cemetery lots in the circumstances you have described.⁴

Retroactive Application of R.C. 517.07

Your second question asks whether the current version of R.C. 517.07 allows for any retroactive application to deeds executed several decades ago, such as the one provided by way of example, which was executed in 1923. This question must be answered in the negative.

By its terms, R.C. 517.07 permits provisions governing the reentry and reselling of cemetery lots to be included in “[t]he terms of sale and any deed for lots executed after July 24, 1986.” This was the effective date of the legislation that enacted the reentry provisions. *See* 1985-1986 Ohio Laws, Part I, 370 (Am. Sub. S.B. 139, eff. July 24, 1986) (as initially enacted, the language authorizing a board of township trustees to place conditions on the conveyance of cemetery lots stated: “The terms of sale and any deed for lots executed after the effective date of this amendment may include the following requirements”). The language of the legislation is prospective, authorizing the board of township trustees to include certain terms and conditions in deeds executed after July 24, 1986, and describing actions the grantee or later recipient “shall”

⁴ Even though our research has disclosed no Ohio authority establishing that an easement for burial purposes may be extinguished by abandonment, we are unable to predict what action a court might take in a particular case. Accordingly, it may be possible, in particular circumstances, for a township to seek a judicial remedy if it finds, under provisions of contract or property law, an argument in support of its authority to reclaim sold but unused cemetery lots. *See* 1999 Op. Att’y Gen. No. 99-047, at 2-297 (general principles of basic contract and property law apply to governmental entities except as otherwise provided). *See generally, e.g., Harvest Land Co-op, Inc. v. Sandlin*, Butler App. No. CA2005-08-360, 2006-Ohio-4207, 2006 Ohio App. LEXIS 4140 (action to quiet title to an easement, asserting abandonment), *appeal after remand*, Butler App. No. CA2007-07-161, 2008-Ohio-5417, 2008 Ohio App. LEXIS 4542 (appeal of declaratory judgment extinguishing an easement due to abandonment, reversed and remanded); *Gannon v. Klockenga*, Summit App. No. 22946, 2006-Ohio-2972, 2006 Ohio App. LEXIS 2867 (action to quiet title and declare rights under easement, including claims of expiration, laches, and abandonment); *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Ryska*, Lake App. No. 2003-L-192, 2005-Ohio-3398, 2005 Ohio App. LEXIS 3146 (declaratory judgment action to determine easement rights, including issues of extinguishment by estoppel, laches, or abandonment); 1990 Op. Att’y Gen. No. 90-066, at 2-278 (an easement may be extinguished by adverse possession, which generally encompasses possession that is open, notorious, continuous, hostile and adverse to the enjoyment of the easement by the owner for a period of twenty-one years or more); 1-15 *Ohio Real Property Law and Practice* § 15.06 (2007) (duration and extinguishment of easements); 36 Ohio Jur. 3d *Easements and Licenses* §§ 69-79 (2002) (termination or extinguishment of easements); notes 7 and 8, *infra*.

take, provisions the deed "shall" contain, and actions the board of township trustees "shall" take with regard to those deeds.

The provisions of R.C. 517.07 operate by allowing a township to grant limited rights to the purchaser of a cemetery lot and to place conditions upon the ownership of the lot. There is no basis in the terms of R.C. 517.07 for applying any of the notification or reentry terms or conditions to a deed executed on or before July 24, 1986. *See State v. Consilio*, 114 Ohio St. 3d 295, 2007-Ohio-4163, 861 N.E.2d 1167 (syllabus, paragraph 1) ("[a] statute must clearly proclaim its own retroactivity to overcome the presumption of prospective application. Retroactivity is not to be inferred"); R.C. 1.48 ("[a] statute is presumed to be prospective in its operation unless expressly made retrospective"); *see also* Ohio Const. art. 11, § 28 ("[t]he general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts").

The deed attached to your letter provides the grantee with a burial easement in a lot of ground, "subject to the Cemetery Laws of the State, and to the rules and regulations prescribed by the Trustees of said Township with reference to the said Cemetery." The grant was unrestricted when made, and the board of township trustees is not empowered to unilaterally and retroactively impose conditions upon the easement, either by rule or under R.C. 517.07. *See* 1990 Op. Att'y Gen. No. 90-066 (boards of township trustees and legislative authorities of municipal corporations in charge of a union cemetery under R.C. 759.27 cannot use their rulemaking authority under R.C. 759.35 to promulgate rules under which the property interest of an unknown owner of an unused cemetery lot is terminated or a right of reentry is acquired);⁵ *see also* 1999 Op. Att'y Gen. No. 99-047, at 2-297 to 2-298. *See generally Crane Hollow, Inc. v.*

⁵ Boards of township trustees are authorized to adopt rules and regulations with respect to township cemeteries, provided that the rules and regulations are reasonable and in compliance with relevant statutory and constitutional provisions. *See* R.C. 517.06 (the board of township trustees "shall make and enforce all needful rules and regulations for the division of the cemetery into lots, for the allotment of lots to families or individuals, and for the care, supervision, and improvement of the lots"); 1987 Op. Att'y Gen. No. 87-042, at 2-276 to 2-277 (under R.C. 517.06, which authorizes the board of township trustees to make rules governing a township cemetery, the rules must be reasonable and in compliance with relevant statutory and constitutional provisions); 1949 Op. Att'y Gen. No. 925, p. 559, at 561 (whether the board of township trustees may grant a purchaser of cemetery lots the privilege of erecting a monument that is located on a path between his lots depends on whether the board of trustees has reserved this right in its rules and regulations). *See generally Kuhn v. German Township Bd. of Trustees*, No. 11733, 1990 Ohio App. LEXIS 607, at *7 (Montgomery County Feb. 21, 1990) (duty of township trustees under R.C. 517.11 to protect and preserve cemeteries is a general public duty that "necessarily involves broad discretion").

Marathon Ashland Pipe Line, LLC, 138 Ohio App. 3d at 75-76 (Grey, J., concurring) (although no one would grant so broad an easement today, “[t]he courts and the parties . . . are bound to follow the terms of the easement as originally granted” in 1916). As stated in 1990 Op. Att’y Gen. No. 90-066, at 2-280 n.6: “The authority to establish conditions on which a cemetery lot is held must be exercised prior to the sale of the lot since the nature and the extent of an easement is determined by the words used in the deed.” *See also* 1949 Op. Att’y Gen. No. 925, p. 559, at 560 (“[t]he purchaser’s title to a [cemetery] lot being an easement, its extent may be restricted by the express terms of the instrument creating it”).⁶

We conclude, therefore, that R.C. 517.07 does not allow any retroactive application to deeds executed on or before July 24, 1986.

Recourse for Township Trustees

Your third question asks what legal recourse exists for township trustees facing a situation in which cemetery lots are going unused. Our research reveals no existing Ohio law under which a township may reclaim and resell cemetery lots that were sold on or before July 24, 1986, and remain unused.

Two competing interests are at play in this situation. On one hand, the township is interested in having all gravesites in its cemetery used, and in reselling unused cemetery lots if owners of record will not be using them. On the other hand, the owners of record and their heirs have acquired legal rights to their cemetery lots, and there is a need to recognize and respect these rights. *See generally In re Estate of Joiner; Persinger v. Persinger.*

As discussed above, our research has disclosed no theory of legal action directly authorizing a township to reclaim cemetery lots in the circumstances you have described, although on the basis of specific facts it may be possible to seek some sort of judicial remedy in particular circumstances. *See note 4, supra.*

⁶ Other provisions pertaining to cemeteries appear in R.C. Chapter 4767. *See, e.g.,* R.C. 4767.02-.03 (governing cemetery registration and requiring every person, church, religious society, established fraternal organization, or political subdivision of the state that owns, operates, or maintains a cemetery (except a family cemetery or a cemetery in which there have been no interments in the previous twenty-five years) to register the cemetery with the Division of Real Estate and Professional Licensing in the Department of Commerce, created under R.C. 121.08(H)); R.C. 4767.05-.08 (establishing the Ohio Cemetery Dispute Resolution Commission, which receives, reviews, investigates, and conducts hearings on complaints about cemetery practices or procedures; assists in resolving complaints through informal techniques of mediation, conciliation, and persuasion; and makes referrals to prosecuting attorneys or the Ohio Attorney General); *see also* 2007 Op. Att’y Gen. No. 2007-005.

As a practical matter, it might be argued that a township could take reasonable action to try to locate owners of sold but unused cemetery lots and, if the township is convinced that no persons remain who are interested in using the lots, simply proceed to resell the lots and accept the consequences. Although this procedure could make previously unused lots available, it might raise concerns about propriety and charges of lack of respect for an individual's rights to a cemetery lot.⁷

Further, if cemetery lots are resold and used without a definitive resolution of the rights of a previous owner, the township could be subject to a number of legal consequences. For example, a township might be required to pay financial damages to a previous owner or to remove and reinter a body buried in a previous owner's lot. See, e.g., *Lanham v. Franklin Township*, Clermont App. Nos. CA2002-07-052, CA2002-08-068, 2003-Ohio-2222, 2003 Ohio App. LEXIS 2080, at ¶29 (in a situation in which the vault of a nonfamily member encroached upon a family cemetery lot in a township cemetery, stating that the owners of the family cemetery lot had a remedy in the form of a breach of contract action against the township, in which action the owners could have requested, *inter alia*, specific performance of the contract, including that the deceased be interred outside the family's burial lot);⁸ *Cobb v. Mantua*

⁷ Some courts have recognized an interest in not having strangers buried in a family plot, even if this means that some gravesites remain unused. In *Ebenezer Baptist Church, Inc. v. White*, 513 So. 2d 1011 (Ala. 1987), it was found that, by establishing boundaries and providing maintenance of family cemetery plots, certain families acquired easements by prescription that prevented the church from reselling unused burial places located within a family plot, even in the absence of a deed. See also *Corp. of the Roslyn Presbyterian Church & Congregation v. Perlman*, 193 Misc. 2d 60, 64, 747 N.Y.S.2d 304 (Sup. Ct. Nassau County 2002) (quoting *Matter of Turkish*, 48 Misc. 2d 600, 600, 265 N.Y.S.2d 888 (Sur. Ct. Kings County 1965): "Survivors of close blood should not be denied the solace of burial together, or that those already interred should have strangers buried in their family plot").

⁸ In the *Lanham* case, summary judgment was granted against the family cemetery lot owners on claims for damages on grounds of intentional infliction of emotional distress, obstruction of justice, civil conspiracy, trespass, nonfeasance, negligence, violation of 42 U.S.C. § 1983, and criminal vandalism under R.C. 2909.05(C). *Lanham v. Franklin Township*, 2003-Ohio-2222, at ¶6-7. The case was remanded for consideration of a taxpayer derivative action, which was not successful. See *Lanham v. Franklin Township*, Clermont App. No. CA2003-07-057, 2004-Ohio-2071, 2004 Ohio App. LEXIS 1790 (affirming dismissal of taxpayer derivative action). See generally *Corp. of the Roslyn Presbyterian Church & Congregation v. Perlman*, 747 N.Y.S.2d at 305-08 (in a situation in which a religious corporation mistakenly sold to a widow for the burial of her husband a gravesite included in a lot deeded to a family in 1873, the court (under a New York State statute) granted an order authorizing the disinterment of the husband; the family claiming ownership had entered into a perpetual care agreement for its lot in 1940 and reconfirmed it in 1969, and the most recent burial by the family was in 1968); *Gallaher*

Township Bd. of Trustees, Portage App. No. 2003-P-0112, 2004-Ohio-5325, 2004 Ohio App. LEXIS 4806, at ¶33 (political subdivisions, including townships, are granted immunity from certain tort claims under R.C. Chapter 2744, but are subject to actions for breach of contract); 1999 Op. Att’y Gen. No. 99-047, at 2-297 to 2-298 (when a governmental entity is a party to a valid deed or contract, it is ordinarily bound by the terms of the instrument either to comply with it or to be liable for damages; a township that prohibits future interments in a cemetery operated under R.C. Chapter 517 may be required to provide compensation to persons who have property interests in lots in the cemetery).

Although existing Ohio law provides no clear and direct legal means by which a township may reclaim and resell cemetery lots that were sold on or before July 24, 1986, and remain unused, this matter might be addressed by appropriate legislation. For example, townships might be given authority, after a specified period of time, to appropriate sold but unused cemetery lots under the power of eminent domain, with the understanding that, if the previous owner should subsequently claim the cemetery lot, the township would be responsible for paying any compensation that might be due. *See, e.g.*, Ohio Const. art. I, § 19 (“[p]rivate property shall forever be held inviolate, but subservient to the public welfare”); R.C. Chapter 163; R.C. 517.01, .08, .13; *Bd. of Township Trustees v. Lambrix*, 60 Ohio App. 2d at 295 (the right to appropriate property under the power of eminent domain is a right of sovereignty, and a township has the powers of appropriation that are explicitly granted by the legislature); 1972 Op. Att’y Gen. No. 72-031. The General Assembly is empowered to take cognizance of the consequences of existing law and, within constitutional limits, to change the law to achieve the desired results. *See, e.g.*, *State ex rel. Nimberger v. Bushnell*, 95 Ohio St. 203, 116 N.E. 464 (1917) (syllabus, paragraph 4); Ohio Const. art. II, § 1; R.C. 1.47.

Conclusions

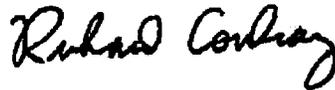
For the reasons discussed above, it is my opinion, and you are advised, as follows:

1. A board of township trustees may not reclaim its interest in sold but unused cemetery lots under a theory that the burial easement has been extinguished by abandonment on the basis of nonuse alone, and it is highly unlikely that the board will be able to establish intent to abandon a sold but unused cemetery lot. (1972 Op. Att’y Gen. No. 72-031, modified.)
2. R.C. 517.07 does not allow any retroactive application to deeds executed on or before July 24, 1986.

v. Trustees of the Cherry Hill Methodist Episcopal Church of Cherry Hill, Inc., 42 Md. App. 186, 399 A.2d 936 (1979).

3. Existing Ohio law provides no clear and direct legal means by which a township may reclaim and resell cemetery lots that were sold on or before July 24, 1986, and remain unused.

Respectfully,

A handwritten signature in black ink, reading "Richard Cordray". The signature is written in a cursive, flowing style.

RICHARD CORDRAY
Ohio Attorney General

Monick, Laura

From: trailmixin@windstream.net
Sent: Wednesday, February 26, 2014 9:48 AM
To: Monick, Laura
Subject: RE: cemetery task force

Laura,

My name is Gini Chandler and I'm a Wayne Twp. Trustee in Jefferson Co. I had spoken with you at the Winter Conference concerning our rural township's cemetery issue...mostly maintenance and the cost there of.

I know the newly formed Cemetery Task Force has been meeting regularly. I was wondering if there is any chance of getting financial help just for maintenance. I'm speaking mostly of mowing Our 3 cemeteries cover over 11 acres of ground and some the grounds are on an incline. We do have a man that does the mowing but the cost is over \$16,000 per season with other bids being higher. The cost is crippling our budge, especially with the extreme weather season we've had this year.

Please let me know if there is any direction I can look to for help. I would like the Task Force to know of our dilemma, because I'm sure it affects others as well.

Thank you for your time and consideration in this matter.

Sincerely,
Gini Chandler
trailmixin@windstream.net
740-944-1404

Willow View Cemetery Association

2500 Neff Ave.
Dayton, OH. 45414
(937) 277-2021

April 8, 2014

Department of Commerce
Ohio Department of Real Estate
77 S. High Street, 20th Floor
Columbus, OH 43215
Attn: Ms Laura Monick

RECEIVED

APR 08 2014

Ohio Division of Real Estate

Subject: Input for the Task Force

Hello Ms. Monick,

If you would be so kind, I would like you to present these three items on my behalf to the Task Force for their consideration. If they need me to appear before them for presentation or discussion I am more than willing to do so. Thank you.

1. As you are aware I have been asking for a change in the O.R.C. Rules concerning when a cemetery should put 10% or of the grave sale into the Perpetual Care (PC) Fund. You informed me that you must follow existing law, that says, whenever a grave or burial right is sold, the PC must be put in. With the creation of the Task Force, I see this as an opportunity to advise them of our dilemma and possibly other cemeteries. More precisely, whenever a grave is bought back from the original owner or becomes the property of Willow View Cemetery again and can be resold, cemeteries are forced by law to put a PC amount into the fund a second time. I realize I could deduct the perpetual care amount on the the buy-back arrangement from original owners which would solve that problem. However, we also have a second problem, that is, we have a substantial number of graves (254) that we have reclaimed due to 50 years or more of inactivity. In this case, the perpetual care cannot be deducted and when we re-sell those graves we currently have to put the money in a second time. At today's prices of graves, that represents roughly \$22,000 that will be placed in the PC fund again when the same graves are eventually resold. I would like the law changed to add the word "originally" sold place 10% or more into the perpetual care fund, thereby allowing cemeteries to use these funds for operating costs. Willow View Cemetery has a substantial PC Trust Fund and we are not trying to skirt the law, just allow more of our funds to be utilized for the

operating costs, keeping us open to continue our reason for being. Of course, the cemeteries must maintain a way to keep track of graves sold for the second time and that can be done through labeling them as Re-Sale Inventory on the invoice.

2. The second item of interest that I would like the Task Force to consider is this:

I would like to see cemeteries be able to keep 50% or greater of the capital gains/year achieved on the PC Trust fund in addition to the 100% of the dividends and interest. The reason for this request is that cemeteries need the money for operating costs. I think we know what happens to the funds once the cemetery is closed and the PC Trust is passed on to the municipalities, the money is placed in their "general fund" and the cemetery typically will suffer the consequences. So it is important to keep the cemetery operating for as long as it can with an infusion of cash from the capital gains each year. Cemetery Equipment is very expensive and can drain the operating fund quite drastically in one year if old equipment starts failing. In fact, equipment besides salaries is the largest expense a cemetery has. The longer the cemetery stays open, the bigger the PC Trust fund will become. In my opinion, the principal and 50% of capital gains will still grow over the years and provide sufficient funds for long term maintenance.

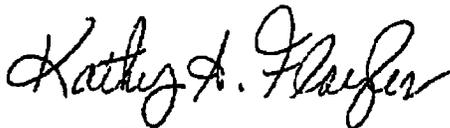
3. The third item:

I agree with Mr. Tim Long about the Ohio Bureau of Workers Compensation rating salespersons the same as grounds workers. They should not. If you have any power or influence on that issue we certainly would appreciate your help. Once again, that affects our financial operations by putting an unnecessary drain on our finances. Anything that does that shortens the life span of continuing to operate a cemetery.

Thank you Laura for your cooperation in this matter and for presenting my concerns.

Thanking you in advance, Task Force, for hearing my three items of interest.

Regards,

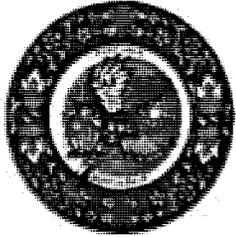


Kathy Flayler
Manager
Willow View Cemetery Association

RECEIVED

APR 08 2014

Ohio Division of Real Estate



Pokégnek Bodéwadmik • Pokagon Band of Potawatomi
Department of Language and Culture

32142 Edwards Street • Dowagiac, MI 49047 • www.PokagonBand-nsn.gov
(269) 462-4325 • (269) 783-0452 fax

April 25, 2014

Anne M. Petit
Superintendent
Ohio Department of Commerce
Division of Real Estate & Professional Licensing

Dear Ms. Petit:

My name is Marcus Winchester and I serve as the Tribal Historic Preservation Officer for the Pokagon Band of Potawatomi Indians. As a Tribal Nation, we have an interest in any matters that concern the treatment of our ancestors' remains. It is to my understanding that the Ohio Cemetery Law Task Force has invited Ohio's historical tribes to contribute testimony regarding Native American burial sites. As the representative of the Pokagon Potawatomi, a historical tribe of Ohio, I would ask the task force to consider the following when making their recommendations.

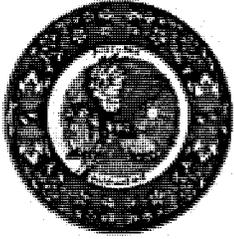
1. In all respects, the Native American Graves Protection and Repatriation Act (NAGPRA) will be complied with and is the guide to be used where applicable and all state laws will comport with the requirements and spirit of NAGPRA.
2. The State of Ohio will create a committee composed of the SHPO and the THPO's and /or NAGPRA representatives of the historic tribes of Ohio, including the Pokagon Band of Potawatomi. Those parties will have an equal seat on the committee and may form their structure for meeting times and places and officers according to their consensus. They will make the determinations as required by the State of Ohio for protection of burial sites and human/ancestral remains.
3. Disposition of the remains will be made with full and transparent consultation of the appropriate representatives of the historic federally recognized tribes of Ohio, as in accordance with NAGPRA.
4. Ask criminal and civil penalties for those found in non-compliance with laws concerning the protection of burial sites and human remains.

Thank you for reaching out to us and respecting our concern in making sure that our ancestors are respected.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Winchester".

A proud, compassionate people committed to strengthening our sovereign nation.
A progressive community focused on culture and the most innovative opportunities for all of our citizens.



Pokégnek Bodéwadmik • Pokagon Band of Potawatomi
Department of Language and Culture

32142 Edwards Street • Dowagiac, MI 49047 • www.PokagonBand-nsn.gov
(269) 462-4325 • (269) 783-0452 fax

Marcus Winchester
Tribal Historic Preservation Officer
Pokagon Band of Potawatomi Indians
Office: (269) 462-4224
Cell: (269) 783-9269
marcus.winchester@pokagonband-nsn.gov

A proud, compassionate people committed to strengthening our sovereign nation.
A progressive community focused on culture and the most innovative opportunities for all of our citizens.

Chief Glenna Wallace
Eastern Shawnee Tribe of Oklahoma
Testimony
Ohio Legislative Commission on the Education and Preservation of State History
May 13, 2010

Chairman Seitz and members of the Legislative Commission, my name is Chief Glenna Wallace and I represent the Eastern Shawnee Tribe of Oklahoma, one of three federally recognized Shawnee tribes.

As you know, Federally-recognized tribes are those that are eligible for funding and services from the United States government by virtue of their status. Federally-recognized tribes are the point of contact regarding government-to-government consultation on any project that may impact resources that are of cultural or religious significance to those communities.

Although Ohio has no federally recognized tribes currently residing in the state, that does not mean that there are no indigenous tribal interests in Ohio. The Eastern Shawnee as well as the other Shawnee Tribes, including the Absentee Shawnee and the Shawnee, recognize Ohio as part their aboriginal and treaty lands. As such, we are very concerned about our American Indian Cultural sites in Ohio including the preservation, destruction, or looting of those sites. Even though we were sent to live on reservations in Oklahoma and Kansas, our ancestors are buried here and our connections to the land run deep.

Walk in my moccasins with me for just a few moments as I briefly review the history of the Eastern Shawnee Tribe of Oklahoma. We were known as the Mixed Band of Shawnees living on Lewistown Reservation here in Ohio. Then in 1830 the Indian Removal Act was passed, followed by the enactment of the Lewistown Treaty in 1831. That treaty meant the Mixed Band (Senecas and Shawnees) would be sent in 1832 to Indian Territory, later known as Oklahoma. Sent is a euphemism for forced. We were herded like cattle on a forced migration that covered more than 700 miles and lasted four months. Beginning in September 1832 we walked on foot or rode on horseback through the cold, cold month of December. Almost 30% of the Shawnees died on that infamous march, leaving everything behind: their names, their histories, their stories, their bones. In 1889 only 79 of my ancestors were alive. It was almost an example of total genocide. **We fundamentally believe we are guardians of those bones, that history, that past.**

I am here to ensure that the Commission hears a Native voice. Native American tribes with historical connections to Ohio have a special interest in the collections of the Ohio Historical Society and other historical museums in Ohio. We support the work that these organizations are doing to protect the ancient and historic Native American heritage and sites in the state.

Currently, the Eastern Shawnee and OHS are working together on several projects that promote an understanding of Native American life and the prehistory of Ohio. Our partnership began back in 2005 when we were planning a cultural tour of our Ohio homelands. That tour came to fruition in 2007 when our tribe sponsored approximately 100 individuals to begin our search for

our past. Traveling via two buses, we visited several Shawnee sites in Ohio. For most of our tribal people, it was their first visit to Ohio. On that trip we journeyed to Wapatomica, a revered Shawnee site, but one that no Shawnee had been to in 211 years. This visit was made possible by Bill Laidlaw, then Executive Director of Ohio Historical Society. On that trip we noticed that historical Shawnee presence in various areas in Ohio was frequently not documented. Once again we turned to the Ohio Historical Society, among others, for guidance in constructing and erecting an Ohio Historical Marker in Logan County, which we proudly paid for. We were delighted that approximately 90 of us returned on a second Ohio homeland tour for that dedication in 2009. On that tour one of the places we visited was Ft. Recovery, the subject of our third cooperative endeavor with OHS. We are partnering on the development of new exhibits and interpretive panels at Fort Recovery, site of the historic defeat of General Arthur St. Clair. We are also working with OHS to construct a monument to the Shawnee at the site of Wapatomica, a former Shawnee village in western Ohio that was destroyed by General Logan in 1786. OHS will perform the archaeological work and we will provide the monument itself. In the future, the Eastern Shawnee would like to partner with the state in preserving Ohio's cultural heritage by developing a mound trail which would help promote tourism as well as site preservation.

Several of these mounds are the sites of our ancestors and are being nominated for UNESCO's World Heritage status. They include the Hopewell Culture National Historical Park's five ancient earthworks in Ross County, as well as the Ohio Historical Society's Seip Mound in Ross County, Newark Earthworks in Licking County and Fort Ancient in Warren County. The Eastern Shawnee appreciate these efforts to recognize the cultural achievements of Native American peoples. **But I would like to make one plea on behalf of these ancestors.**

I respectfully ask that the Commission and the State Legislature support a stronger state law protecting prehistoric and historic Native American burial sites. **The current law, which considers desecration of cemeteries and gravesites a misdemeanor, is insufficient. Even more disturbing, graves over 125 years of age may not be protected at all.** There is no effective state law enforcing the protection of any unmarked grave sites on public or private land from looting or vandalism. That means none of my ancestors are protected. Well meaning individuals from Ohio have mailed bones of my people to me. I ask you how you would like to receive bones mailed to you of your grandmothers, your grandfathers? The laxity of the Ohio burial laws contributes to these actions.

For far too long the Eastern Shawnee Tribe of Oklahoma has endured loss. We have lost our homeland. We have lost much of our history. For many of us we have even lost the knowledge of who our forefathers were. I, like so many of my people, can trace my family line no further than my great great grandfather. Where my anglicized name came from, I know not. What the Indian names of my ancestors were, I know not. We left bones of our people along the way in that forced migration. Which people and where, we know not. We have lost our ceremonials. We have lost much of the culture of our people, as well as our language. **I beg of you; I repeat, I beg of you—do not let us lose the bones of our ancestors.**

In conclusion Chairman Seitz and members of the Commission, Native American heritage in Ohio is extremely important. For the Eastern Shawnee, it is our history and a strong part of who we are. For the citizens of Ohio, Native American heritage is a significant part of the state's rich history. Statewide history organizations like the Ohio Historical Society play an important role in preserving Native American heritage and help show the connections between the people that lived here before and those who live here now.

Thank you for your time. If you have any questions, I would be happy to answer them.

**Glenna J. Wallace, Chief
Eastern Shawnee Tribe of Oklahoma**

Monick, Laura

From: Kathy Flayler <ka8zta@willowviewcemetery.com>
Seut: Friday, May 02, 2014 10:25 AM
To: Petit, Anne
Cc: Tom Erickson; Wayne Booher; winifredmick@aol.com; Larry Maxwell; Cindy Feltz; Monick, Laura; Neer, Kelly
Subject: Cemetery Law Task Force Meeting 4/28/2014

Follow Up Flag: Follow up
Due By: Monday, June 02, 2014 2:30 PM
Flag Status: Flagged

Dear Ms. Petit,

Thank you for taking my email. I heard you were not feeling well and I hope this email finds you feeling better.

I saw from the first meeting minutes that you are Chair of the Task Force. In that regard, I would like to introduce myself as the Manager of Willow View Cemetery located on 28 acres in Dayton, Ohio. We are a small well kept cemetery with a large Trust Fund. We have been in existence since 1897 and would like to continue our existence well into the next century with the help of this long overdue Task Force.

Here is the main reason for my note to you: I believe my letter dated April 8, 2014, was read aloud to the Task Force at the April 28, 2014 Meeting addressing 3 issues. I have since added another issue that I would like the Task Force to consider in connection with Cemetery Preservation which I know you have been discussing. Of course, we would like a response by the Task Force acknowledging each of our items if possible.

The 4th issue is the Preservation of Cemeteries by the Cemetery Trust Fund, once it is passed on to the associated agency that is tasked to preserve it.

The trust fund account is given to the municipality for the preservation with all good intentions, however, if there is no law which precludes them from using that money strictly for the cemetery upkeep, chances are, over time, it will be eroded away with the municipality's more pressing budget concerns and with no accountability for its disappearance. If there is an existing law, my apologies for not knowing, but if there is one, it is either not enforced or inefficient or you wouldn't be here today.

The municipality should have no control of where the money is spent except for the perpetual care of the cemetery. It should also be monitored by people such as Kelly Neer of the Real Estate & Professional Licensing group, so that we can all be assured this happens like it was intended. After all, the cemeteries are not able to get at principal or capital gains of the trust fund, only dividends and interest, to be used for the upkeep of the cemetery, therefore the municipality should only use the money for cemetery preservation, which was the presumed intent of creating the Trust Fund in the first place. Cemeteries have been putting the required 10% of each grave sale into this fund officially since 1970, when it was made into law to have a trust fund dedicated for cemetery perpetual care, but many cemeteries, like ours, were using this fund prior to 1970 for the operating fund they needed to keep their cemetery open for business. They put all their monies into this fund, not just 10% of sales, prior to 1970 and this is why our particular Trust Fund is larger than it should be for our sales since 1970. Yes, our fore fathers should have moved a substantial amount to an operating fund prior to making it the trust fund, probably not knowing they couldn't get access to it later on. A cemetery is a

business and one that is necessary for all concerned to be a viable business. All businesses need an influx of substantial amounts of cash flow and property to stay in business. Additional access to the capital gains would go a long way in cemeteries staying viable longer and reducing the turnover to a municipality down the road. I, again, apologize for going on about our Trust Fund dilemma, however it does lead in to what we feel may be a problem with preservation of cemeteries once the operating fund goes to zero or we run out of land to bury people and the trust fund is transitioned to a municipality.

Our thought is to make a law governing the usage of this fund once it is transferred to a municipality and that its usage should be monitored by the same organization that monitors all Ohio cemeteries. The control of that money must be followed to its logical conclusion. You may want to keep it as a separate dedicated account and have it monitored with a quarterly statement to the Department of Commerce, Division of the Real Estate & Professional Licensing Group, listing the usage of the funds, amount, balance and projection as to how long it will last at the current usage rate. This fund should also be invested so the municipality too can get dividends and interest for growth. They would probably have access to the principal and capital gains, one thing the cemeteries could not access, also for the up keep of the cemetery,

I hope the Task Force will endorse this idea along with our other 3 concerns mentioned in our previous letter and once again, please read this letter at the next Task Force meeting. I would be happy to attend any meeting if you or they feel it is warranted.

I want to thank you and the Task Force in advance for your cooperation and interest in keeping the Ohio Cemeteries viable and preserved for all time.

Respectfully submitted,

Kathy A. Flayler

--

Kathy Flayler
Manager
Willow View Cemetery

Petit, Anne

From: Fred Lynch <daytonsuv@gmail.com>
Sent: Friday, May 30, 2014 2:10 AM
To: Petit, Anne
Subject: Cemetery Law Task Force

**Sons of Union Veterans of the Civil War
Department of Ohio
Veterans' Monuments and Memorials Preservation Task Group**

May 30, 2014

Ms. Anne M. Petit
Co-Chair,
Ohio Cemetery Law Task Force
77 South High Street
Columbus, Ohio 43215

Dear Ms. Petit:

The Department of Ohio, Sons of Union Veterans of the Civil War, has great interest in safeguarding veterans' memorials, monuments, and associated artifacts located in Ohio cemeteries and communities. We are also very interested in possibly being of assistance in the efforts of the Ohio Cemetery Law Task Force. Please let us know how and if we may do so.

We SUVCW are the legal heirs of the Grand Army of the Republic, the largest organization formed for Civil War veterans. The GAR established many veterans' memorials located in Ohio cemeteries and communities. Many of our 21 camps within the state are actively involved in the restoration and maintenance of Civil War veterans' sections in Ohio cemeteries.

As a current Department program, we are actively advocating that the Ohio state legislature establish legislation and law to specifically protect veterans' monuments and memorials from desecration. Among specific efforts to date, we have produced a related advocacy package and drafted a suggested addition to Ohio Revised Code 29 Section 2927. We will gladly send you copies if so desired.

If the Ohio Cemetery Law Task Force has an information mailing list, please include us on it. If we may be of service, let us know the way.

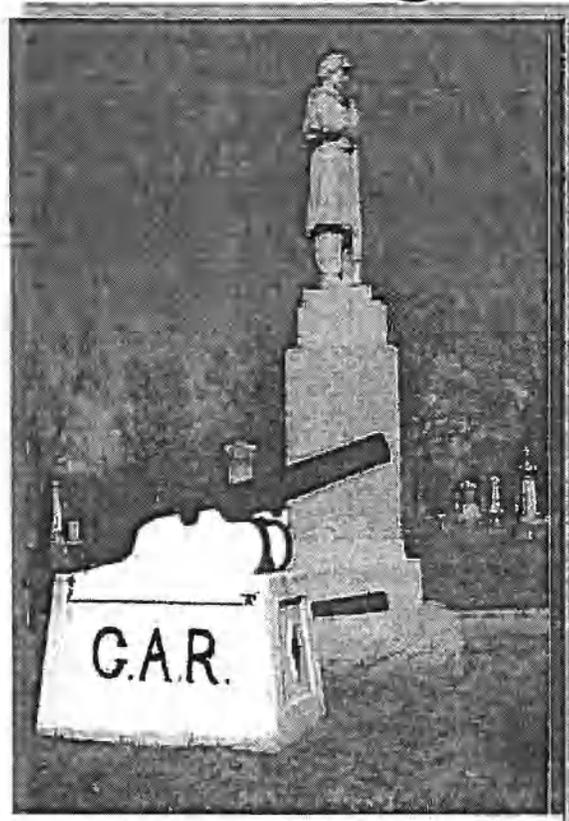
Sincerely,
Fredric C. Lynch
Past Department Commander

Fredric C. Lynch
Past Department of Ohio Commander
Sons of Union Veterans of the Civil War
Member, Ohio Civil War Sesquicentennial Advisory Committee

February 11, 2014

"Poor is the nation that has no heroes . . . Shameful is the one having them that forgets."

Advocacy for Ohio Veterans' Monuments and Memorials Protection Legislation



Endangered GAR Memorial
Soldier's Point Veterans' Section
Sugar Grove Cemetery
Wilmington, Ohio

Fredric C. Lyuch
Past Department of Ohio Commander
Sons of Union Veterans of the Civil War
February 12, 2014

ADVOCACY FOR OHIO VETERANS' MONUMENTS AND MEMORIALS
PROTECTION LEGISLATION

STATEMENT OF NEED: The State of Ohio has no statute that specifically safeguards veterans' memorials and monuments from vandalism, destruction, sale, repurposing, inappropriate use, or violations of the purpose for which they were created. As a consequence, there has occurred, and will continue to happen, desecration of veterans' monuments and memorials established by the Grand Army of the Republic (GAR) following the American Civil War. Similarly veterans' monuments and memorials established by other veterans' organizations and Ohio communities to honor our nation's veterans are being sold, destroyed, and used other than as veterans' monuments and memorials due to the absence of due process needed to safeguard them. These monuments were created for the public good and built through use of private funds with some public support. Vandalism, destruction, sale, repurposing, and misuse of elements of veterans' monuments and memorials should be illegal. Ohio veterans; monuments and memorials need the protection provided by state law. This document offers information that will hopefully be useful developing a very needed Ohio statute.

PROPOSAL: That Senator Schaffer write, sponsor, and advocate approval of legislation that shall permanently safeguard veterans monuments and memorials located on public and private land within the State of Ohio.

CHALLENGES AND FACTS:

1. Unlike many other states, Ohio currently has no specific state statute to safeguard from neglect, illegal sale, inappropriate alteration, destruction, desecration, disposal, misuse, or redirection of purpose of monuments and memorials that honor Armed Forces veterans. (Attachments 1A-E)
2. Ohio laws require counties and townships provide for maintenance of veterans' sections in public and private cemeteries, but do not safeguard veterans' monuments and memorials from desecration. (Attachments 2A-B)
3. There are federal statutes that protect veterans' monuments and memorials located on federal property, but there is no comparable statute to similarly protect veterans memorials located on public and private property within the State of Ohio. (Attachments 3A-C)
4. Ohio veteran's monuments and memorials have been sold, damaged, stolen, and misused. (Attachments 4A-D)
5. There are approximately 300 known public Civil War monuments and memorials in Ohio. They are located in 85 of Ohio's 88 counties. Although created during the decades following the American Civil War, GAR monuments honor all veterans. Veterans' monuments and memorials are located upon state, county, township, municipal, and other property in Ohio including in parks, public locations, and cemeteries. (Attachment 5)
6. It should be unlawful for any person or persons, or the authorities of a county, city, township, or other public entity to disturb or interfere with a veterans' monument or memorial to which they do not have legal title. For purposes of state law, "disturb or interfere with" includes removal of, damaging, or defacing veterans monuments and memorials honoring Armed Forces veterans, or selling elements that are part of them. (Attachments 6A & B)
7. An Ohio veterans' monuments and memorials protection statute should provide that violations are a Class C Felony: 1 to 5 years in prison and a maximum fine of \$10,000 if convicted.
8. Following the Civil War, about 12,000 obsolete cannons were donated to towns and veterans' groups for use as part of veterans' monuments and memorials. Most were loaned to Grand Army of the Republic Posts and used as part of Veterans' monuments and memorials. A register of "Known Surviving Civil War Cannons in Geographic

Order" documents fewer than 5,700 survive. More than 260 registered cannons are or were located in Ohio when the register was completed. Most, but not all, "survivors" remain on public display as veterans' memorials.

9. According to USA TODAY, at least 560 artillery pieces, Union and Confederate collectibles valued from \$20,000 to \$200,000, are in private hands. Most of these cannons were obtained other than through proper legal process. Reportedly, half a dozen collectors possess more than 20 cannons each. Few, if any, "privately owned" (legally government property) cannons are used as veterans' monuments or memorials. (Attachments 7A-B)

10. U.S. Army and Navy surplus cannons loaned to the GAR and communities remain U.S. Government property. A list of artillery loaned to the Grand Army of the Republic and communities by the U.S. Army or Navy exists. Ownership of monuments, memorials, and artifacts that were GAR property as of 1954 was bequeathed and transferred to the SUVCW by Deed of Conveyance that year. (Attachment 8)

11. The Sons of Union Veterans of the Civil War Department of Ohio's 20 Camps and more than 500 members voluntarily continue the efforts of the GAR to honor veterans. Efforts include conducting public ceremonies at existing monuments and memorials and helping to maintain and preserve them. In addition, SUVCW Camps continue the tradition of establishing new monuments. (Attachment 9A-C)

DEFINITIONS:

MONUMENT: (<http://dictionary.reference.com/browse/monument>)

1. Something erected in memory of a person, event, etc., as a building, pillar, or statue.
2. Any building, megalith, etc., surviving from a past age, and regarded as of historical or archaeological importance.
3. Any enduring evidence or notable example of something.
4. An exemplar, model, or personification of some abstract quality, especially when considered to be beyond question.
5. An area or a site of interest to the public for its historical significance, great natural beauty, etc., preserved and maintained by a government.

MEMORIAL: (<http://dictionary.reference.com/browse/memorial>)

Something designed to preserve the memory of a person, event, etc., as a monument or a holiday.

VETERAN - FEDERAL DEFINITION: (http://sudbury.ma.us/services/individual_faq.asp?id=219)

Under federal law a veteran is any person who served honorably on active duty in the Armed Forces of the United States. (Discharges marked GENERAL and UNDER HONORABLE CONDITIONS also qualify.)

JUSTIFICATION FOR MAKING THIS PROPOSAL:

I am a member of the Sons of Union Veterans of the Civil War (SUVCW) and a descendant of a Civil War veteran who after the war was a member of the Grand Army of the Republic (GAR) in Tuscarawas County. The GAR was a fraternal organization composed of veterans of the United States Army, Navy, Marine Corps, and Revenue Cutter Service who served during the American Civil War 1861-65. Founded in 1866, the organization was dissolved in 1956 when its last member died. The GAR was among the first organized advocacy groups in the nation. They supported voting rights for black veterans, worked with the U.S. Congress to establish veterans' pensions, and funded and built monuments and memorials to honor the nation's veterans. The GAR was succeeded by the Sons of Union Veterans of the Civil War (SUVCW), an organization chartered by Congress. The SUVCW membership includes male descendants of Union veterans and others. The group is the legal heir to the mission and property of the GAR. All GAR monuments and memorials still honor veterans. Other veterans' organizations and many Ohio communities have continued the tradition of building monuments and memorials to honor all who have served in the U.S. Armed Forces and in our nation's wars and conflicts. Many veterans, including me, earnestly desire to ensure veterans' monuments and memorials are permanently safeguarded.

SUPPORTING MATERIALS APPLICABLE TO THE PROPOSAL:

Attachment 1 - Other States' Statutes

- A. Virginia Code 15.2-1812 - Memorials for War Veterans P. 5
- B. New York Veterans' Memorials Preservation Act P. 5
- C. New York Veterans' Graves, Monuments, and Memorials Protection Law P. 6
- D. New York Veterans' Graves and Memorials Protection Law Passed P. 7
- E. Maine Veterans' Monuments and Memorials Protection Law P. 8

Attachment 2 - Ohio Cemetery Statutes - County & Township Responsibilities

- A. Ohio Revised Code Title LIX Veteran - Military Affairs Section 5901 P. 8
- B. Ohio Revised Code Title V TOWNSHIPS - Chapter 517: Cemeteries P. 9

Attachment 3 - Federal Statutes to Protect Veterans' Monuments & Memorials

- A. Protection of Veterans' Memorials Act P. 9
- B. News Release Hails Strengthening of Penalties for the Theft of Veterans' Memorials P. 10
- C. Veterans' Memorial Preservation and Recognition Act of 2003 P. 10

Attachment 4 - News Articles Regarding Veterans' Monuments & Memorials

- A. Army Wants Back "Homeless" Memorial Cannon Stolen From Atlanta Park P. 11
- B. Veterans' Memorial Cannon Stolen in Blanchester P. 12
- C. Veterans' Memorial Cannon Stolen in Findlay Found in Virginia Museum P. 13
- D. South Charleston Veterans' Memorial's Cannon Balls Stolen P. 13

Attachment 5 - Some Ohio Monuments & Memorials to Veterans P. 14

Attachment 6 - Examples Why Protective Legislation is Needed

- A. Cemetery in Wilmington, Ohio Tries to Sell two GAR Veterans' Memorial Cannons P. 20
- B. Dayton Cemetery Sells Veterans' Memorial Cannon It Didn't Own P. 21

Attachment 7 - Misuse of Veterans' Monuments & Memorials in Private Hands

- A. Collectors Search for, Buy Veterans' Memorial Cannons for Personal Use P. 22
- B. Government Cannons Once Part of Veterans' Memorials Used as Movie Props P. 23

Attachment 8 - SUVCW Legal Heir to GAR Property P. 24

Attachment 9 - SUVCW Projects Honor Veterans

- A. Gallipolis Camp Replaces "Missing" GAR Civil War Veterans' Monument With New One P. 26
- B. Cincinnati Camp Raises Funds and Replaces Federal Memorial at National Battlefield Park P. 27
- C. Frost Camp Restores, Maintains, and Meets in Original 1896 GAR Building P. 27
- D. Dayton Camp Restores, Maintains Veterans' Section at Abandoned Old Greencastle Cemetery P. 27

ATTACHMENT 1 - OTHER STATES' STATUTES

ATTCH. 1A - Virginia Code 15.2-1812 - Memorials for war veterans

Published on <http://vacode.org/15.2-1812/>

Virginia Code > Title 15.2 > Chapter 18 > § 15.2-1812 - Memorials for war veterans

§ 15.2-1812. Memorials for war veterans.

A locality may, within the geographical limits of the locality, authorize and permit the erection of monuments or memorials for any war or conflict, or for any engagement of such war or conflict, to include the following monuments or memorials: Algonquin (1622), French and Indian (1754-1763), Revolutionary (1775-1783), War of 1812 (1812-1815), Mexican (1846-1848), Confederate or Union monuments or memorials of the War Between the States (1861-1865), Spanish-American (1898), World War I (1917-1918), World War II (1941-1945), Korean (1950-1953), Vietnam (1965-1973), Operation Desert Shield-Desert Storm (1990-1991), Global War on Terrorism (2000-), Operation Enduring Freedom (2001-), and Operation Iraqi Freedom (2003 -). If such are erected, it shall be unlawful for the authorities of the locality, or any other person or persons, to disturb or interfere with any monuments or memorials so erected, or to prevent its citizens from taking proper measures and exercising proper means for the protection, preservation and care of same. For purposes of this section, "disturb or interfere with" includes removal of, damaging or defacing monuments or memorials, or, in the case of the War Between the States, the placement of Union markings or monuments on previously designated Confederate memorials or the placement of Confederate markings or monuments on previously designated Union memorials.

The governing body may appropriate a sufficient sum of money out of its funds to complete or aid in the erection of monuments or memorials to the veterans of such wars. The governing body may also make a special levy to raise the money necessary for the erection or completion of any such monuments or memorials, or to supplement the funds already raised or that may be raised by private persons, Veterans of Foreign Wars, the American Legion or other organizations. It may also appropriate, out of any funds of such locality, a sufficient sum of money to permanently care for, protect and preserve such monuments or memorials and may expend the same thereafter as other funds are expended.

ATTACHMENT 1B - New York Veterans' Memorials Preservation Act

Published on <http://open.nysenate.gov/legislation/bill/S3209-2011>

Bill S3209-2011

Establishes the veterans' memorials preservation act

STATE OF NEW YORK

3209 -
2011-2012 Regular Sessions

IN SENATE February 11, 2011

Introduced by Sen. NOZZOLIO -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs

AN ACT establishing the veterans' memorials preservation act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "veterans' memorials preservation act".

S 2. Definitions. For the purposes of this act:

(a) a "memorial" is any park, monument, field, open land, grove of trees, building, structure, artwork, tablet, plaque, wall, or any other structure that has been donated to, or constructed by, a public entity as a memorial to veterans of any war, conflict, or police action engaged in by the armed forces of the United States, or any one of the United States, or the New York national guard.

(b) a "public entity" is any governmental body of any kind, including, but not limited to, the state, a city, town, village, borough, school district, or public authority.

S 3. Memorials shall be preserved and be open to the public. (a) Any public entity that has created or received a gift of a memorial shall not alter, destroy, reconfigure, adjust, change, modify, or move such memorial, or cause or permit any person to commit such acts; provided, however, that such acts are permitted when reasonably necessary.

(b) Any public entity that has created a memorial or accepted a gift of a memorial shall maintain the memorial in a reasonable manner.

(c) A public entity shall not restrict access to a memorial except as reasonably necessary.

S 4. This act shall take effect immediately.

ATTACHMENT 1C - New York Veterans' Graves, Monuments, and Memorials Protection Law

Published at http://assembly.state.ny.us/leg/?default_fld=&bn=S01728&term=2011&Summary=Y&Actions=Y&Text=Y&Votes=Y

STATE OF NEW YORK

1728

2011-2012 Regular Sessions

IN SENATE

January 11, 2011

Introduced by Sens. LARKIN, ALESI, BONACIC, MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to cemetery desecration and cemetery desecration of a veteran

3 S 4. The penal law is amended by adding two new sections 145.28 and
4 145.29 to read as follows:

5 S 145.28 CEMETERY DESECRATION OF A VETERAN; DEFINITION OF "VETERAN".

6 FOR THE PURPOSES OF SECTION 145.29 OF THIS ARTICLE, THE TERM "VETERAN"

7 MEANS A DECEASED PERSON WHO:

8 1. (A) SERVED IN THE ACTIVE MILITARY, NAVAL, OR AIR SERVICE DURING A
9 WAR IN WHICH THE UNITED STATES ENGAGED; OR

10 (B) SERVED IN THE RESERVE COMPONENT OF THE ARMED FORCES, THE ORGANIZED
11 MILITIA OF THE STATE; OR

12 (C) IS ELIGIBLE TO RECEIVE A STANDARD GOVERNMENT HEADSTONE OR MARKER
13 FOR INSTALLATION IN A PRIVATE CEMETERY OR A STATE VETERANS' CEMETERY
14 PROVIDED BY THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS WHO SERVED
15 IN THE UNITED STATES ARMED FORCES; AND

16 2. WAS DISCHARGED OR RELEASED THEREFROM UNDER CONDITIONS OTHER THAN
17 DISHONORABLE.

18 FOR THE PURPOSES OF THIS SECTION "RESERVE COMPONENT OF THE ARMED FORCES-

19 OF THE UNITED STATES" MEANS THE ARMY RESERVE, THE NAVAL RESERVE, THE
20 MARINE CORPS RESERVE, THE AIR FORCE RESERVE, THE COAST GUARD RESERVE,
21 THE ARMY NATIONAL GUARD OF THE UNITED STATES AND THE AIR NATIONAL GUARD
22 OF THE UNITED STATES AND WHOSE SERVICE WAS DURING A WAR IN WHICH THE
23 UNITED STATES ENGAGED. ORGANIZED MILITIA OF THE STATE, SHALL MEAN
24 SERVICE OTHER THAN PERMANENT, FULL-TIME SERVICE IN THE MILITARY FORCES
25 OF THE STATE OF NEW YORK INCLUDING BUT NOT LIMITED TO THE NEW YORK ARMY
26 NATIONAL GUARD, THE NEW YORK AIR NATIONAL GUARD, THE NAVAL MILITIA AND
27 THE NEW YORK GUARD (NOT INCLUDING THE INACTIVE NATIONAL GUARD AND NOT
28 INCLUDING THE NEW YORK GUARD IN AN INACTIVE STATUS).

29 S 145.29 CEMETERY DESECRATION OF A VETERAN.

30 A PERSON IS GUILTY OF CEMETERY DESECRATION OF A VETERAN WHEN, WITH
31 INTENT TO DAMAGE THE PROPERTY OF ANOTHER PERSON AND HAVING NO RIGHT TO
32 DO SO NOR ANY REASONABLE GROUND TO BELIEVE THAT HE OR SHE HAS SUCH
33 RIGHT, HE OR SHE INTENTIONALLY DAMAGES:

34 (A) ANY REAL OR PERSONAL PROPERTY THAT HE OR SHE KNOWS IS USED OR
35 MAINTAINED AS A CEMETERY, MAUSOLEUM, COLUMBARIUM, LOT, PLOT, GRAVE,
36 BURIAL PLACE, NICHE, CRYPT, VAULT OR OTHER PLACE OF INTERMENT OR TEMPO-
37 RARY STORAGE PLACE OF A VETERAN; OR

38 (B) ANY MONUMENT, HEADSTONE, MARKER, MEMORIAL, PLAQUE, STATUE VASE,
39 URN, DECORATION, FLAG HOLDER, BADGE, SHIELD, ITEM OF MEMORABILIA OR
40 OTHER EMBELLISHMENT THAT IS LOCATED ON OR ADJACENT TO, OR IS OTHERWISE
41 ASSOCIATED WITH, ANY SUCH CEMETERY, MAUSOLEUM, COLUMBARIUM, LOT, PLOT,
42 GRAVE, BURIAL PLACE, NICHE, CRYPT, VAULT OR OTHER PLACE OF INTERMENT OR
43 TEMPORARY STORAGE THAT HE OR SHE KNOWS BELONGS TO A VETERAN.

44 CEMETERY DESECRATION OF A VETERAN IS A CLASS E FELONY.

ATTACHMENT 1D - New York Veterans' Memorials Preservation Act Passed

Published on *New York State Senate* <http://www.nysenate.go>

Senate Passes Legislation to Protect Graves of Civil War Veterans

Posted by Majority Press on Monday, March 5th, 2012

The New York State Senate today passed legislation that would prohibit the unauthorized sale of veteran cemetery markers that are over 75 years old, and would create the new crime of desecration of a veteran cemetery plot, grave or burial place. These bills continue the Senate's commitment to maintain the dignity of veterans' cemeteries and commemorative property.

The Senate passed a bill (S.1504), sponsored by Senator William Larkin (R-C, Cornwall-on-Hudson), that would prohibit the unauthorized sale of veteran's commemorative cemetery markers, flag holders, monuments, statues or other physical memorabilia that are over 75 years old.

The bill addresses a problem first noted by the New York Sons of Union Veterans of the Civil War. According to the organization, cemetery corporations were selling valuable antique cemetery markers, statues, and monuments from the Civil War era.

These monuments were erected over a century ago by Civil War veterans groups to commemorate the sacrifices of their comrades-in-arms. The bill aims to ensure that these Civil War monuments remain where they were originally placed, allowing them to continue to honor the memory of Civil War veterans, rather than be sold off for profit.

In addition, the Senate passed a bill (S.1728), also sponsored by Senator Larkin, which would create the crime of "Cemetery Desecration of a Veteran," a Class E felony. Currently, there is no law that specifically protects veteran grave

sites. The bill also provides that a person convicted of desecrating a veteran's cemetery can be sentenced to community service at desecrated cemeteries as a condition for probation or conditional release.

"Cemeteries should not be able to profit from selling memorials to Civil War soldiers who fought to unite our nation," Senator Larkin said. "Just as we work to ensure that veterans of today's wars are treated with respect, we must work to maintain the final resting places of Civil War soldiers in New York with dignity." The bills were sent to the Assembly

ATTCHMENT 1E - Maine's Veterans' Monuments and Memorials Protection Law

Published on <http://www.mainelegislature.org/legis/statutes/I3/titleI3secI101.html>

Maine Revised Statutes

Title 13: CORPORATIONS

Chapter 83: CEMETERY CORPORATIONS

Article 2: DUTIES OF TOWN OR COUNTY

§1101. MAINTENANCE AND REPAIRS; MUNICIPALITY

1. **Ancient burying grounds.** In any ancient burying ground, as referenced in Title 30-A, section 5723, the municipality in which that burying ground is located shall keep in good condition all graves, headstones, monuments and markers and, to the best of its ability given the location and accessibility of the ancient burying ground, shall keep the grass, weeds and brush suitably cut and trimmed on those graves from May 1st to September 30th of each year. A municipality may designate a caretaker to whom it delegates for a specified period of time the municipality's responsibilities regarding an ancient burying ground. [2013, c. 421, §1 (NEW) .]

2. **Grave sites of veterans in public burying grounds.** In any public burying ground in which a veteran of the Armed Forces of the United States is buried, the municipality in which that burying ground is located shall keep the grave, headstone, monument or marker designating the hural place of any veteran of the Armed Forces of the United States in good condition and repair from May 1st to September 30th of each year, including:

A. Regrading the grave site to make it level when the grave site has sunk 3 or more inches compared to the surrounding ground; [2013, c. 421, §1 (NEW).]

B. Maintaining the proper height and orientation, both vertical and horizontal, of the headstone, monument or marker; [2013, c. 421, §1 (NEW).]

C. Ensuring that inscriptions on the headstone, monument or marker are visible and legible; [2013, c. 421, §1 (NEW).]

D. Ensuring that the average height of grass at the grave site is between 1.5 to 2.5 inches but no more than 3 inches; [2013, c. 421, §1 (NEW).]

E. Keeping a flat grave marker free of grass and debris; and [2013, c. 421, §1 (NEW).]

F. Keeping the hural place free of fallen trees, hranches, vines and weeds. [2013, c. 421, §1

ATTACHMENT 2 - OHIO CEMETERY STATUTES - CO. & TOWNSHIP RESPONSIBILITY

ATTCH. 2A - Ohio Revised Code - County Responsibility

Published on <http://codes.ohio.gov/orc/5901>

· » Title [59] LIX VETERANS - MILITARY AFFAIRS Chapter 5901: VETERANS' SERVICES COMMISSIONS
5901.35 Care of graves of veterans.

The board of county commissioners shall provide for the proper care of the graves of all veterans, and of confederate soldiers, sailors, and marines who are buried in lots used exclusively for the benefit of veterans and confederate soldiers, sailors, and marines in cemeteries or burying grounds. Effective Date: 09-14-1988

5901.37 Care of portion of cemetery sot apart for burial of veterans.

In any county having a cemetery or part of it set apart for the burial of veterans, or containing a monument erected to their memory, or containing monuments and memorials erected by private or public expense to the memory of veterans, the board of county commissioners shall care for and properly preserve that portion of the cemetery so set apart for the burial of such veterans, and shall care for and properly preserve the monuments or memorials, and the board shall pay all expenses incident to such care and preservation from the general fund of the county. Effective Date: 09-14-1988

ATTCH. 2B - Ohio Revised Code - Township Responsibility

Published on <http://codes.ohio.gov/orc/517>

» Title [5] V TOWNSHIPS Chapter 517: CEMETERIES

517.30 Trustees may erect monument commemorating members of armed forces.

A board of township trustees may erect a suitable monument to commemorate the members of the armed forces who died in the service of the United States or of this state. The board, by a majority vote, may appropriate and expend not more than five thousand dollars from township funds for the purpose of erecting the monument, according to plans and specifications furnished or approved by the board. Effective Date: 04-10-2001

517.31 Care of monument.

In any township in which the board of township trustees has erected a memorial monument as provided by section 517.30 of the Revised Code, or in which the citizens thereof have erected such a monument, either upon the public grounds of such township or upon grounds therein donated or procured by the citizens for such use, and have caused such grounds to be enclosed, the board may take charge of such monument, grounds, and enclosure, and keep them in repair. For such purpose the board may appropriate and expend such sum of money as required from the township funds. Effective Date: 04-16-1993

ATTACHMENT 3 - FEDERAL STATUTES TO PROTECT MONUMENTS & MEMORIAL

ATTCH. 3A - Protection of veterans' memorials

Published on <HTTP://WWW.LAW.CORNELL.EDU/USCODE/TEXT/18/1369>

18 U.S. CODE § 1369 - DESTRUCTION OF VETERANS' MEMORIALS

(a) Whoever, in a circumstance described in subsection (b), willfully injures or destroys, or attempts to injure or destroy, any structure, plaque, statue, or other monument on public property commemorating the service of any person or persons in the armed forces of the United States shall be fined under this title, imprisoned not more than 10 years, or both.

(b) A circumstance described in this subsection is that—

- (1) in committing the offense described in subsection (a), the defendant travels or causes another to travel in interstate or foreign commerce, or uses the mail or an instrumentality of interstate or foreign commerce; or
- (2) the structure, plaque, statue, or other monument described in subsection (a) is located on property owned by, or under the jurisdiction of, the Federal Government.

AUTHOR'S NOTE: The President signed the Defense Authorization Act (H.R. 4310) into law January 2, 2012. The Protection of Veterans' Memorials Act was incorporated into H.R. 4310 and is now also law. The Protection of Veterans' Memorials Act makes it a federal felony to steal veterans' memorials of any value, punishable by a maximum of up to 10 years in prison and a minimum fine of \$250,000 or double the amount of the stolen item.

ATTACH. 3B - News release hails strengthening of federal penalties for the theft of veterans' memorials
Published on <http://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-deLauro-and-murphy-laud-senate-passage-of-amendment-protecting-veterans-memorials->

Blumenthal, DeLauro, And Murphy Laud Senate Passage Of Amendment Protecting Veterans' Memorials \ Amendment Introduced In Response To Memorial Thefts In New Britain, Shelton, Derby And Ansonia

Saturday, December 8, 2012

(Washington, DC) – U.S. Senator Richard Blumenthal (D-Conn.), Congresswoman Rosa DeLauro (D-3) and Congressman Chris Murphy (D-5) Sunday hailed passage of a Senate amendment to strengthen federal penalties for the theft of veterans' memorials. The Protection of Veterans Memorials Act was introduced by Blumenthal as an amendment to the National Defense Authorization Act of 2013. Blumenthal's Senate amendment was drafted based on legislation written by Murphy in response to memorial thefts in New Britain, Shelton, Derby and Ansonia. DeLauro joined Murphy in introducing the legislation in the House.

Current federal theft statutes make it a federal felony to transport across state lines stolen goods of more than \$5,000. The Protection of Veterans' Memorials Act makes it a federal felony to steal veterans' memorials of any value, punishable by a maximum of up to 10 years in prison and a minimum fine of \$250,000 or double the amount of the stolen item. "This measure should deter anyone tempted to steal or desecrate these memorials to military heroes. Memorial plaques honor brave service members whose sacrifices make our nation great. They deserve our highest respect and protection. Anyone defiling veteran memorials and stealing them to sell as scrap deserves severe punishment and shame," said Blumenthal.

The Senate NDAA bill now heads to conference where it will be reconciled with the House passed version of the bill. "The theft of these memorials is absolutely sickening," said Murphy. "Our communities' memorials honor the service and sacrifice of America's Veterans and they should stand for all time as a testament to those who have worn our nation's uniform. We hope that the severity of these penalties will serve as a stern warning against would-be thieves taking these memorials out of Connecticut, and help local law enforcement catch perpetrators in the state and bring them to justice."

"I applaud the Senate for taking this important step to prosecute individuals whose deplorable actions against veterans deserve to be punished. Memorials are a testament to our veterans and we owe it to the millions who have served our country to honor their service. The brave men and women who defend America deserve nothing but the utmost respect and I will work to make sure this legislation is included in the final defense bill so the President can sign it into law," said DeLauro.

ATTACH. 3C - Veterans' Memorial Preservation and Recognition Act of 2003

Published on <http://www.gpo.gov/fdsys/pkg/PLAW-108publ29/pdf/PLAW-108publ29.pdf>

Preservation and Recognition Act of 2003

117 STAT. 772 PUBLIC LAW 108-29—MAY 29, 2003

Public Law 108-29 - 108th Congress

An Act to further the protection and recognition of veterans' memorials, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans' Memorial Preservation and Recognition Act of 2003".

SEC. 2. CRIMINAL PENALTIES FOR DESTRUCTION OF VETERANS' MEMORIALS.

(a) IN GENERAL.—Chapter 65 of title 18, United States Code, is amended by adding at the end the following:

“§ 1369. Destruction of veterans’ memorials

“(a) Whoever, in a circumstance described in subsection (b), willfully injures or destroys, or attempts to injure or destroy, any structure, plaque, statue, or other monument on public property commemorating the service of any person or persons in the armed forces of the United States shall be fined under this title, imprisoned not more than 10 years, or both.

“(b) A circumstance described in this subsection is that—

“(1) in committing the offense described in subsection (a), the defendant travels or causes another to travel in interstate or foreign commerce, or uses the mail or an instrumentality of interstate or foreign commerce; or

“(2) the structure, plaque, statue, or other monument described in subsection (a) is located on property owned by, or under the jurisdiction of, the Federal Government.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 65 of title 18, United States Code, is amended by adding at the end the following: “1369. Destruction of veterans’ memorials.”.

Approved May 29, 2003.

ATTACHMENT 4 - NEWS ARTICLES REGARDING MONUMENTS & MEMORIALS

ATTCH. 4A - Army wants back "homeless" memorial cannon stolen from Atlanta park

Civil War cannon found among stolen goods in Ga.

Published on http://www.chokeetribune.com/view/full_story/6708652/article-Civil-War-cannon-found-among-stolen-goods-in-Ga-#ixzz2soFMLCEs

Associated Press March 14, 2010

ATLANTA - When a 5-foot-long Civil War cannon turned up during a search for stolen goods at a Spalding County house, that was just the beginning of a mystery.

Now investigators have to sort through multiple claims and determine who owns it. There is no shortage of would-be takers.

Georgia officials say the antique artillery piece belongs to them. Atlanta representatives say it's the city's. Federal officials say it could be the U.S. Army's. And then there is Arkansas, where the cannon was once used to train cadets.

Spalding County Sheriff's Investigator Josh Pitts says he's waiting on the proper paperwork to determine the owner. And he knows, "I'll probably never discover another cannon in my career."

The 26-year-old lawman said that the 780-pound cannon was discovered when officers searched a home Feb. 8. First, they found a stolen pickup and a 53-foot trailer full of fireworks. Inside the house was a wooden box. Tucked away in the box was the bronze cannon barrel adorned with an eagle.

"I was never a history enthusiast in school," Pitts said. "But I've learned a lot in the last month." The cannon's trip to Georgia began more than 150 years ago in Boston, where the Cyrus Alger Co. produced 12-pound howitzers. Records show that it next went to the Arkansas Military Institute, An Atlanta newspaper reported Saturday. About 10 years later, the institute's cadets used it in the Civil War.

Steve McAteer, director of the MacArthur Museum of Arkansas Military History in Little Rock, said the museum's records trace the cannon to Virginia, where it was lost in battle. It turned up in 1887 when Georgia officials delivered four cannons, including one with an eagle on the barrel, to the city of Atlanta for display.

Michael Hitt, a Roswell police officer and Civil War enthusiast, said he helped restore the cannons in 1984 in Atlanta's Grant Park, and recorded their characteristics. One, he noted, bore an eagle. It had lost the knob at the barrel's base, like the one recovered in Spalding County. In the late 1980s, the city moved the cannons, with two going to the Cyclorama at Grant Park and one into storage.

Camille Love, who heads the cultural affairs division of Atlanta's parks department, asserted that the recovered barrel is definitely from Grant Park. She said thieves either stole it from a monument in the park or swiped it while it was in transit to a city storage facility.

McAteer doesn't know how the cannon got to Georgia, but he said he would like to have it in Arkansas - at least on an extended loan to mark the 150th anniversary of the start of the Civil War in 1861.

The U.S. Army Donations Office in Warren, Mich., has also made contact about the cannon.

David Carmichael, who heads the Georgia Archives, has spoken to Spalding County investigators and wants the cannon to stay in Georgia.

Love said she plans to file a police report and take steps to return the cannon to Atlanta. Pitts said his message about ownership has never varied: "You bring me the paperwork, and it's yours."

ATTCH. 4B - Veterans' Memorial Cannon Stolen in Blanchester

STOLEN CANNON

Published on http://www.cannonsuperstore.com/stolen_cannons.htm



Stolen during the night of April 17, 1985 from Blanchester IOOF Cemetery in the city of Blanchester, (Clinton County), Ohio. A bronze a 1,300 lb. Napoleon 12 pounder American GAR Civil War cannon. Inscribed on the end of the muzzle: "Model M1857 No. 40". (registration number #40). Inscribed on the trunnion: "Greenwood Company" (build in 1862 in Cincinnati, Ohio). Inscribed around the muzzle: "Cannon used at battle of Chickamauga". Reported to be fitted with new gun carriage by Royal Carriage Company of New Richmond, Ohio (it may have company logo on carriage). Reportedly last seen in the Middletown (Butler County), Ohio area.

The following is reprinted from the Wilmington News-Journal, Wilmington, Ohio April, 1985.

The Cannon Caper

All is not well in the Blanchester IOOF Cemetery. The concrete slab facing the front of the cemetery lies empty right now. The veterans who supposedly lugged the brass cannon barrel back from the Civil War that stood on that spot would probably shutter at the sight. The 1,500-pound cannon was reported missing about 7:30 a.m. Wednesday, April 17, by John Simpson, according to Blanchester Police Chief Richard Payton. The cannon was made in Cincinnati and dated 1862, Payton noted, "I think it was brought back from the Battle of Chickamauga." The chief indicated he had had one

out-of-county lead that did not pan out. "At this point there are no leads — I hope it was a prank," he added. However, "the longer it's gone, the less it seems like a prank," Payton said, "I keep hoping that it might turn up one morning on the high school lawn." Tire tracks indicate that a pick-up truck had pulled through neighboring backyards. "A three-quarter ton truck drove off Baldwin and Mill and into the cemetery," Payton said. He added that tracks were visible and one witness recalled a truck driving through the backyard about 8 p.m. the evening before the cannon was discovered missing. "They probably backed up and may have used a wrench to get the cannon," the chief continued.

"Sure, I feel bad about it," he said. "Shoot, it's a part of Blanchester's heritage and can't be replaced. "The school year is still young for pranks," he concluded.

If anyone possesses information about this case please contact the Clinton County Ohio Sheriff's Office, Lt. Brian Edwards at (937) 382-1611 and or Mac McKibben, Investigator of the Clinton County Veterans' Service Commission at (937) 382-3233.

ATTCH. 4C - Veterans' Memorial Cannon Stolen in Findlay Found in Virginia Museum

Published on http://www.enquirer.com/editions/2000/09/30/loc_civil_war_cannon.html

Civil War cannon turns up decade after theft

The Associated Press - Saturday, September 30, 2000

FINDLAY, Ohio — A Civil War cannon stolen from a cemetery monument more than 10 years ago was back in the city Friday after being found in a Virginia museum. But the mystery surrounding the heist might never be solved. The half-ton cannon was stolen in 1987 or 1988. Some suspect that a forklift from a nearby construction site was used.

Police were notified on Sept. 8 that the cannon had been found in a Civil War museum in New Market, Va. The Confederate Parrott gun was made in 1864 and is valued at about \$75,000. The museum's owner isn't suspected of any wrong doing and agreed to give the cannon back when told it was stolen, Findlay police Detective Mike Ring said.

"It was sold to him as a replica," Detective Ring said. "He's had it since the early '90s."

ATTCH. 4D - South Charleston Veterans' Memorial's Cannon Balls Stolen

Published on http://blog.cleveland.com/metro/2011/05/civil_war-era_cannon_balls_sto.html

CLEVELAND PLAIN DEALER

Civil War-era cannon balls stolen from Ohio memorial

May 4, 2011

SOUTH CHARLESTON, Ohio (AP) — Police say someone has stolen the remaining Civil War-era cannon balls from a military memorial in a western Ohio cemetery.

The Springfield News-Sun reports that the nine cannon balls were all that remained of a pyramid of 30 or 40 believed to have been installed in 1909 to honor those who served or died in the Civil War. They were atop a soldier's memorial in South Charleston's Greenlawn Cemetery.

The president of the village's heritage commission says the hollowed-out cannon balls were part of a larger grouping gradually reduced over a century of theft. George Berkhofer says they weighed between 32 to 40 pounds each and were

ATTACHMENT 5 - SOME OHIO MONUMENTS & MEMORIALS TO VETERANS

Civil War Monuments in Ohio

Published on <http://library.cincymuseum.org/civilwar/ohio-monuments.htm>

Introduction

The Civil War lasted four long years and Ohio played a pivotal role with 310,654 men enrolled in 230 regiments. Nearly all were volunteers as only 8750 were drafted. There were 5092 Black soldiers from Ohio. Over 200 Ohioans reached the rank of general. To insure that future generations would remember Ohio's contributions to the Civil War, Ohioans constructed monuments, statues, plaques and buildings.

Even while war still waged, Ohioans began to build monuments. In 1863, the citizens of Bristolville, Trumbull County, erected a monument to honor thirteen local men who were "Defenders of the Union from Bristol, Ohio." The square-shaped stone monument is topped with a funerary urn and decorated with crossed swords, cannon and rifles. Also in 1863, Cincinnatians contributed funds for a suitable monument. Randolph Rogers received the commission in 1864. His statue of a Union soldier on guard, "The Sentinel," was installed in Spring Grove Cemetery in 1865.



Bristol, Ohio

Early Monuments



Mesopotamia, Ohio
Monument Designs

Between the end of the Civil War and 1869, eight Ohio cities and towns erected monuments to their valiant soldiers. Seven of the eight were located in northeast Ohio, the home of Ohio's most vocal and active abolitionists. Seven of these early monuments have eagles as their decorative element—four with wings spread as if in flight and three with wings closed. Howard Bridgen carved the marble eagle that tops the 1867 monument in Mesopotamia, Trumbull Co.

Eagles

Eagles were the dominant design element for Civil War monuments in Ohio in the 1860s when they comprised 70% of the monuments. Although there were an additional seven eagle monuments constructed between 1870 and 1889, they represented only 12% of the 58 monuments dedicated during that time.

Soldiers

By far, the dominant design theme for Civil War monuments in Ohio (and across the country) was the "soldier at parade rest." One historian has given credit to the Antietam National Cemetery Board for its selection of a design by the James G. Batterson firm of Hartford, CT on September 16, 1867. The Board selected a soldier at parade rest design, the first known use of this soldier motif that would become a common sight across the country.

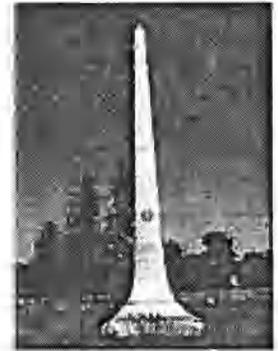


Memorial Park, Springfield, Ohio

On May 30, 1870, the Union Soldiers Monument of Clark County was dedicated in Memorial Park in Springfield. Henry H. Lovie of Philadelphia cast the bronze statue in 1869. The Clark County monument does not show the soldier at parade rest. Instead the soldier is depicted stand on arms, reversed – the musket is muzzle down and his hands crossed over the butt-plate. From 1870 until 1931, soldiers were the most popular monument design with the soldier at parade rest figure by far the most common. There are 120 soldier monuments and 89 of these are soldier at parade rest. This number does not include the monument bases in Oregon and Wellston that are missing their soldier at parade rest statues.

Other Monument Designs

First eagles and then soldiers dominated Civil War monuments in Ohio but there were other popular designs. The simple obelisk, a four-sided monument that tapers to a point, is found in New Castle, Sandusky, Oregon and Toledo. Several monuments consist of artillery pieces and flagpoles. There are examples of these in Spring Grove Cemetery, Cincinnati (1907); Doanville in Athens County; and Franklin, Warren County (1903). New Lexington has the only monument in the shape of a cross (1876).



Sandusky, Ohio

Monument Honorees

Local Soldiers

One common element of Civil War monuments is that they were erected to honor local citizens who fought to preserve the Union. Following is a sample of inscriptions on Ohio monuments:

"The heroic dead of Youngstown Twp."

"To the memory of the fallen soldiers of Ross Township, Jefferson County."

"In memory of those brave men of Champaign County who died in the war to save the Union."

"In memory of our soldiers of Salem."

"In memory of the soldiers of Hancock County who fought to suppress the Great Rebellion."

"Erected in memory of the soldiers of Washington County, OH."

"Lamented sons and soldier's of Knox Co."

"Erected by the citizens of Nelson to the memory of her soldiers who fell in defense of our country."



Cleveland, Ohio

Abraham Lincoln

Abraham Lincoln, the Civil War president, is well represented with monuments in Ohio. The statehouse in Ohio contains the earliest. On January 19, 1870, the Lincoln-Vicksburg Memorial was dedicated. The memorial includes a marble bust of Abraham and a relief of the surrender of the Confederate Army at Vicksburg. Cincinnati has two statues of Lincoln while Cleveland, Alliance, and Wooster have one statue each.

Mansfield has a granite monument to Lincoln that evidently perpetuates a hoax. The monument reads: "The first public and official endorsement of Abraham Lincoln as a candidate for President of the United States was given him in Mansfield at a county convention held November 5, 1858. Erected by the Richland County Lincoln Association/Sep. 22, 1925." According to a Mansfield newspaper article from March 10, 1946, there was no county convention held on that date in 1858. The newspaper notice that served as the basis for the monument was the work of pro-Lincoln David Ross Locke, a reporter who gained fame with his satirical letters written using the penname Petroleum V. Nasby.



Mansfield, Ohio

Notable Individuals

Several Civil War generals and other important figures are remembered with statues and busts. Cincinnati has busts for Colonel Robert McCook and Friedrich Hecker and statues of Stephen Foster and James A. Garfield. Ohio also has statues of General George Armstrong Custer (New Rumley), John A. Bingham (Cadiz), Edwin M. Stanton (Steubenville), Johnny Clem (Newark), General Giles W. Shurtleff (Oberlin), General James B. Steedman (Toledo), General James B. McPherson (Tiffin) and Rev. Gordon Batelle (Newport). William McKinley has monuments in Canton, Columbus and Niles. General Philip Sheridan has the distinction of the only Civil War equestrian statue in Ohio, located in the center of Somerset, his hometown.



Columbus, Ohio

On display on the capitol grounds in Columbus is a large monument called "These are My Jewels," designed by Levi Scofield. The monument has heroic-size figures of William Tecumseh Sherman, U.S. Grant, Salmon P. Chase, James A. Garfield, Rutherford B. Hayes, Edwin Stanton and Phillip Sheridan. The monument was first exhibited at the Columbian Exposition in Chicago in 1893 and then installed on the capitol grounds in 1894. Although Ulysses Grant is remembered in other ways in Ohio, the figure of Grant in the "Jewels" monument is the only statue of him.

Abolitionists

Although most Civil War monuments in Ohio remember the valor of soldiers, there are some that commemorate abolition and the fight to end slavery. In 1860 residents of Oberlin erected an obelisk to honor three African Americans who fought and died with John Brown at Harpers Ferry. The grave monument for Edwin Coppock in the Mt. Hope Cemetery in Salem notes that he was "A martyr to the cause of Liberty." Also with John Brown at Harpers Ferry, Coppock was hanged on December 16, 1859.

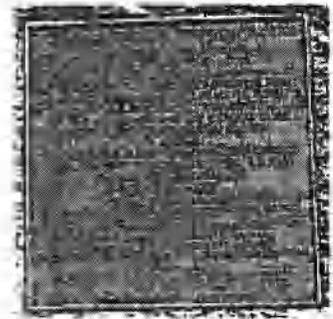


Oberlin, Ohio

In the Maple Grove Cemetery in Ravenna, there is a large grave monument to Henry and Rebecca Brantley who escaped from slavery in Tennessee in 1862 and settled in Ravenna where they "lived honest and industrious lives." This monument is inscribed with the word "Emancipation" and the symbol of the hand with a broken manacle.

Akron built a monument to John Brown in 1901. In 1912 Ripley dedicated a monument to "The Men Who Wrought for Liberty." The bronze plaque located on the bank of the Ohio River lists 13 men who "were the leaders of a large host of men who co-operated in the abolition movement."

Two soldier monuments include inscriptions about the abolition of slavery. The 1877 monument in the Mt. Vernon town square states "they laid down their own lives that the life of the Nation might be preserved and shared in the glory of securing to every dweller in the land a heritage of human freedom." There is a 1910 monument for the "Brave boys of Southington" who fought "for the preservation of our national union and the abolition of human slavery."



Southington, Ohio

Women and Children

Few Civil War monuments in Ohio recognize women or children. The large Peace monument on the Capitol grounds in Columbus includes two bronze plaques—one for soldiers and one for those on the home front: "Men win glory in the fierce heat of conflict but the glory of woman is more hardly won. Upon her falls the burden of maintaining the family and the home, nursing the sick and wounded, and restoring the courage of the broken. She endures the suspense of battle without its exaltation. The memorial is erected in grateful tribute to the loyal women of 61-65, without whose help no victory or lasting peace could ever have been won." The monument was dedicated in 1923.



Greenlawn Cemetery

Two soldier monuments include inscriptions that recognize the role of women. The 1897 monument in Wood reads "To the patriotic women of 1861-1865 whose noble virtues and loyal deeds are ably perpetuated by the Ladies Neibling Relief Corps." The 1909 soldier at parade rest monument in Delphos is "Dedicated to our country's defenders and preservers, the men and women of 1861-1865."

The soldier monument in Greenlawn Cemetery in Columbus includes a figure of a boy. Ohio has two drummer boys: a drummer boy on the Hillsboro monument and a statue of Johnny Clem in Newark.

Confederates

Ohio has four memorials that relate to the Confederacy. In 1902, a monument was erected on the site of Camp Chase Confederate Cemetery, Columbus, where 2260 Confederate soldiers are buried. The Cincinnati Chapter of the United Daughters of the Confederacy erected a monument on Johnson Island in Lake Erie, another Confederate prison site, in 1910. There is a bronze plaque in memory of Robert E. Lee in Franklin, Warren County. At the dedication in 1928, the Ohio director of highways accepted the plaque from the Ohio Division of the United Daughters of the Confederacy. The fourth Confederate site is the grave of Confederate Captain William C. Quantrill in Dover, Tuscarawas County. Quantrill died and was buried in Louisville, KY in 1865 but in 1887 his mother had his remains moved to the Fourth Street Cemetery in Dover, the family home.



Camp Chase Confederate Cemetery

Monument Builders

Two firms built many of the soldier monuments in Ohio. The Monumental Bronze Co. of Bridgeport, CT, specialized in a zinc or white bronze monument. Because the material could be stamped, bases could contain elaborate decorations and inscriptions. The monument at Kipton in Lorain County is a good example. The front of the monument includes the Grand Army of the Republic emblem, a profile of Abraham Lincoln, a list of soldiers, "Lincoln" in large letters and a verse from the poem, "Coat of Blue." The other three sides are similarly embellished. The same zinc soldier can be found in Cardington, Defiance, Grafton, New California, Wauseon, and Windsor. The Monumental Bronze Co. also made the Confederate monument at Camp Chase Confederate Cemetery in Columbus.



Windsor, Ohio



Elyria, Ohio

The W. H. Mullins Company of Salem, Ohio produced Civil War monuments that were sold across the country, both North and South. In Ohio, there are at least fourteen Mullins figures. The Mullins Company produced a variety of monuments as shown by the soldier at parade rest monuments in Applecreek, Circleville, Delphos, Pickaway, Washington Court House and Wooster; the skirmisher in Eaton and Elyria; the standard bearer in Salem and Wadsworth; and eagles in Ashtabula and Elyria. Mullins also created statues of Abraham Lincoln (Wooster) and John A. Bingham (Cadiz).

Several monuments are original works created by local artisans or well-known Ohio artists. In addition to "The Sentinel" by Randolph Rogers, other original monuments include the colossal Soldiers and Sailors Monument in Cleveland designed by architect Levi Scofield, the Butler County monument by Roland Hinton Perry and the cavalry officer by Thomas Dow Jones in Urbana.

Other Types of Civil War Memorials

Markers

Many Civil War memorials in Ohio are plaques attached to boulders, slabs of granite or interior walls of buildings. There are also inscribed marble plaques. Only two of these plaques were done in the 19th century. In 1885 Antioch College remembered its Civil War dead with a marble plaque. In the courthouse in Upper Sandusky, there is a bronze plaque listing all the soldiers from Wyandot County.



Battle of Buffington Island

Outside Piqua, there is a stone marker for the 94th and 100th Ohio Volunteer Infantry regiments (1906). Otterbein College recognized its Civil War soldiers in 1915 with a bronze plaque on a granite slab. Meigs County features several plaques: one for the Battle of Buffington Island; one for General Daniel McCook (1933); and two 1999 markers for Union and Confederate forces. In Indian Hill, there is a bronze plaque to recognize Camp Dennison (1932).

Structures

Ohioans built structures as memorials to the Civil War. These include a bandstand in Gallipolis (1876); chapels in Akron (1876), Portsmouth (1884) and Marion (1888); memorial halls in Sidney (1877) and Cincinnati (1908); and gazebos in Middleport (1927) and Sandusky (1929). The U.S. Grant Memorial Bridge in Point Pleasant was first constructed in 1927 but then replaced in 1985. The modern bridge incorporates design elements from the original. The inventory also includes the homes of John Parker, John Rankin, the McCooks, William T. Sherman, Benjamin Hanby and three structures associated with U.S. Grant.



Marion, Ohio

Individual Grave Markers

This inventory includes a few individual grave markers—chosen either for the significance of the individual or the elaborate nature of the marker itself. Some, such as the monument for General William Haines Lytle, fit both those criteria. Located in Spring Grove Cemetery in Cincinnati, the monument to Lytle is a tall granite column with an eagle at the top and a bronze plaque depicting the Battle of Chickamauga where Lytle died. Several Ohioans received the first Congressional Medals of Honor for their valiant efforts to capture the Confederate locomotive, *The General*. Six of these soldiers are included.



Martin Robison Delany, buried in the Massies Creek Cemetery in Wilberforce, served as a recruiter for the 54th Massachusetts Infantry Regiment. He was commissioned a major, the first African American line field officer in the United States Army in March 1865, and given command of 104th US Colored Troops. Clement Vallandigham was a vocal opponent of Lincoln and the war. He is buried in Woodlawn Cemetery in Dayton.

Delany Marker

Recent Monuments

Most Civil War monuments in Ohio were constructed between 1865 and 1930. However a couple of dozen have been built since then. The Grand Army of the Republic evidently mounted a campaign to place sundials as memorials in state capitals in the 1930s and 1940s. The same GAR sundial can be found in Baltimore, Maryland (1933), Des Moines, Iowa (1938), Springfield, Illinois (1940), Denver, Colorado (date not known) and Columbus (1941). Ohio has a second GAR sundial in Hamilton, also dedicated in 1941.

Only two monuments were erected in Ohio during the centennial of the Civil War. Ripley erected a monument to Cockerill's Battery F in 1962 and the Methodist Church put a marker on the courthouse in Harrison to honor Bishop Matthew Simpson.



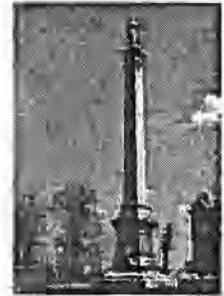
Wellington Rescue Marker

Oberlin added a monument to the Underground Railroad in 1977 and a marker for the Wellington Rescue in 1990. In 2000, Canal Winchester in Fairfield County recognized the heroic act of Private Alfred Cannon. Cannon had been captured in Mississippi and was imprisoned at Andersonville. In an exchange of prisoners determined by lottery, Cannon drew a lucky ticket. Cannon, who was single, gave the ticket to a friend who had a family, saying "Go to your family." Cannon was later transferred to the Confederate Stockade in South Carolina and died of typhoid fever, January 21, 1865.

Conclusion

There are reminders of the Civil War in practically every county in Ohio. Clinton, Noble and Pike Counties are the only Ohio counties not included in the inventory, although Carroll County is here only because of the McCook House and Crawford County's single entry is for Frank, a horse that served in Co. A, 12th Ohio Cavalry Regiment. There are several counties with ten or more monuments and memorials. You might expect numerous monuments in Franklin (10), Hamilton (17) and Lucas (15) counties as they all include large cities. However Brown County boasts 12 monuments and Lorain has 13.

The size and grandeur of the monuments testify to the impact of the Civil War on even small communities. John T. Wilson spent \$5000 on the Adams County soldier at parade rest monument in West Union. Dedicated in 1893, the granite monument soars to a height of 50 feet. Ohio's Civil War monuments are remarkably well maintained. Many have recently been refurbished, cleaned and restored. Some have been relocated to safer spots. We know of one Civil War statue that has been destroyed—a soldier at parade rest statue that resided in the town square of Lorain. There are probably others.



West Union, Ohio

With 269 physical reminders in 85 of Ohio's 88 counties, Ohioans will not forget the Civil War.

ATTACHMENT 6 - EXAMPLES WHY PROTECTIVE LEGISLATION IS NEEDED

ATCH. 6A - Cemetery in Wilmington, Ohio tries to sell two GAR veterans' memorial cannons

To the Sound of the Guns

Published on <http://markerhunter.wordpress.com/2012/12/18/wilmington-cannon-sale/>
Civil War Artillery, Battlefields and Historical Markers Blog

SUV member aiming to stop sale of Civil War cannons

Posted 18 December 2012 from the Columbus, Ohio (NBC4) website:

Civil War Activist Opposes OH Cemetery Cannon Sale

WILMINGTON, Ohio — A Civil War heritage activist is taking aim at a southwest Ohio cemetery's plan to sell its two cannons from that era. The Sugar Grove Cemetery in Wilmington wants to sell the cannons and replace them with reproductions. The cemetery's board says having the cannons increases insurance costs. The cemetery also could use the money, expecting to get \$50,000 or so for the cannons. The Wilmington News Journal reports the plan is opposed by a member of the Sons of Union Veterans of the Civil War. Area resident Bob Grim says the cemetery doesn't have the right to sell the cannons. He says they were donated or loaned to local governments for memorial displays. He has asked Clinton County officials to intervene, or says his group will sue.

The guns in question are 3-inch Ordnance Rifles. Registry numbers 47 and 77 if my references are correct. Early production that were more likely to have seen service in the pivotal campaigns of the war. The referenced article at the Wilmington News Journal offers more details:

According to Grim and a short article in the Dec. 14, 1899 Clinton Republican newspaper, the two cannons were "secured to Wilmington" by the courtesy of U.S. Sen. Joseph Foraker, who after serving as Ohio's governor, served as a senator representing the state from 1897 to 1909. The cannons were mounted in front of the second Clinton County Courthouse, which stood on the corner of Main and South streets until it was demolished in 1919 for the opening of the current courthouse.

The situation was not unique, said Grim, whose organization often deals with similar matters and has had success fighting to keep the cannons in their original locations. His organization is the legal heir to the no longer existing Grand Army of

the Republic (GAR), which paid to have the monument erected in the cemetery. By statute, the Sons of Union Veterans of the Civil War works to protect the GAR's interests.

"The federal government loaned Civil War cannons to local governments and the GAR for displaying purposes or gave them away outright," Grim said. "The federal government still has a list of the ones loaned out, but this cannon is not on the loan list. Once they were placed in the cemetery is where it gets tricky because once it is in the cemetery it is a private war memorial, and becomes responsibility the of county commissioners."

In 1890 the Morris McMillan Post GAR asked the cemetery board to set aside space for a memorial. That memorial was not dedicated until 1927. At that time the cannon were mounted on concrete bases, replacing wooden carriages. Over time, as with many similar memorials around the country, ownership of the memorial and cannons became a matter of question. The article goes on to say that county officials are looking into the matter to determine the legal status of the cannon.

In my opinion, these cannon are part of a memorial. If the cemetery board is unable to maintain the memorial, I'm sure there are veterans and descendant organizations to help out. But above all, it would be a shame for these cannon to end up in some private collection instead of serving at their designated post of honor.

ATTCH. 6B - Dayton Cemetery Sells Veterans' Memorial Cannon It Didn't Own

Old Greencastle Cemetery

Published on <http://www.findagrave.com/cgi-bin/fg.cgi?page=cr&CRid=2267033>

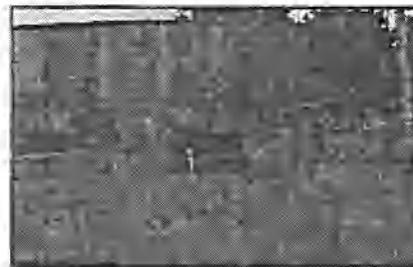
Old Greencastle Cemetery is thought to be Dayton's oldest, with interments dating back to 1839. (Its name comes from the "Greencastle circuit," the circuit of the United Brethren church to which the church located on the east side of the cemetery originally belonged.) The cemetery lies at the corner of South Broadway and Miami Chapel Road, near the former United Brethren-Miami Chapel Church, in the Edgemont neighborhood of Dayton. This cemetery is no longer active and is not to be confused with "New" Greencastle Cemetery on Nicholas Road. This second, currently active cemetery was established in 1942 as available burial space at the original cemetery site dwindled.

Old Greencastle has suffered greatly over the decades as a result of the decline of the surrounding neighborhood. Things worsened during the mid-1990's as the cemetery's perpetual care fund ran out; lack of money for upkeep of the cemetery has led to a general condition of disrepair. The unwillingness of the city of Dayton to intercede in its maintenance insures that conditions will only worsen at what is a sacred and historical site and which deserves to be protected.

Many older cemetery records were lost as a result of the Great Dayton Flood of 1913. The surviving records for Old Greencastle Cemetery are housed at the Special Collections and Archives section of the Dunbar Library at Wright State University in Fairborn, Ohio.



Replacement cannon
May 21, 2009



In 2010, the GAR veterans' memorial mortar formerly at Dayton, Ohio's Old Greencastle Cemetery was being stored outside by collector who bought it from cemetery.

The original cannon, Model 1861 and known as "The Dictator", was an original Civil War siege mortar, weighing in at

17,197 pounds. It was manufactured at Fort Pitt in Pittsburg, Pennsylvania, in 1862, having been one of the heaviest siege mortars ever made.

It stood as a silent memorial near the Civil War dead buried in Old Greencastle Cemetery. Because of years of deterioration, the trustees determined a course of action was needed to save the cannon from complete ruin. It could not be restored locally and was sold to the Museum of the Union/Confederacy, Civil War Artillery 1861-1865, Emmaus, Pennsylvania. The old cannon was saved; the money received from its sale helped defer costs of maintaining the grounds of the cemetery. The museum replaced "The Dictator" with a much smaller cannon.

AUTHOR'S NOTE: Dayton, Ohio's Old Greencastle Cemetery's present veterans' memorial "cannon" is a non-authentic reproduction provided by purchaser in exchange for a rare, original Civil War 13-inch seacoast mortar that from 1898 to 1998 was part of GAR Post 79 Union soldiers' section. More than 150 Union veterans are buried at Old Greencastle, which is open to visitors but essentially abandoned. The original mortar was, and remains, U.S. Navy property on loan to Grand Army of the Republic Hiram Strong Post 79 and, in turn, to the Sons of Union Veterans of the Civil War by Deed of Conveyance. As of 2010, "The Dictator" was in outside storage in Pennsylvania and exposed to weather during all-seasons. Reportedly, the "museum" where it is located is open to the public only by appointment.

ATTCH. 7- MISUSE OF MONUMENTS & MEMORIALS IN PRIVATE HANDS

ATTCH. 7A - Collectors Search for, Buy Veterans' Memorial Cannons for Personal Use

LOS ANGELES TIMES Published on articles.latimes.com/2005/aug/21/news/adna-cannon21

Also in USA TODAY Published on http://usatoday30.usatoday.com/news/nation/2005-08-14-cannonclamor_x.htm

Civil War Cannons Do Disappearing Act

The Nation

Relics from at least 9 small New York towns have been quietly purchased by collectors.

August 14, 2005/Ben Dobbin | Associated Press Writer

GROTON, N.Y. — Since 1994, Bruce Stiles has coaxed towns from Nebraska to New Hampshire to sell their Civil War cannons — iron and bronze sentinels that have graced cemeteries and parks for a century or more. His success in obtaining dozens of muzzleloaders for private collectors in Pennsylvania stirs unrest wherever he goes, but usually after the fact. Weeks or even months can go by before residents realize their veterans' memorial has been whisked away.

The sales patter went like clockwork in this central New York village last summer. In a form letter, Stiles offered \$10,000 for a 1,700-pound barrel that had sat undisturbed since 1901 on a concrete pedestal at Groton Rural Cemetery. Left outside, it would someday rust beyond recognition, Stiles asserted. Better to have it acid-washed, sandblasted, repainted and displayed at a museum near Pittsburgh that is open to the public free of charge.

Some cemetery trustees didn't know what they had — a Parrott naval cannon, one of only 78 known survivors from the 1861-65 war. Still, despite being strapped for cash and haunted by bankruptcy for half a century, the association didn't bite. Stiles next barraged secretary-treasurer Juanita Griffin with calls. "I just got tired of running to the phone and having it be him again," she said. Within weeks, he sweetened the offer to \$15,000 and threw in a replica cannon that he valued at \$5,000. All along, Stiles advised that negotiations be kept under wraps. As he has told other cemetery custodians and town boards across the country, he didn't want residents getting riled up. Now he voiced another reason: If people knew how valuable it was, the cannon would be at great risk of getting stolen.

"Once we realized that, then we were concerned about theft and not saying a lot to the public about its value," said association president Mary Flang. The 12-member board approved the new offer and, within days, the cannon was gone. Few villagers seemed to notice. Only this spring, when they heard that another rural New York town had sold its cannon to Stiles, and then paid a steep price to get it back, did this village of 2,500 people awaken to its loss.

As it turned out, the cannon didn't belong to the cemetery association. In the half-century after the Civil War, about 12,000 obsolete cannons were donated to towns and veterans' groups. Many were melted down in scrap-metal drives during the world wars; fewer than 5,700 survive. At least 560 of them, Union and Confederate collectibles valued from \$20,000 to \$200,000, are in private hands. Half a dozen collectors have each bought 20 or more.

Stiles, 52, a businessman from Emmaus, Pa., works on commission for Kenneth Watterson, a retired manufacturing executive whose 5-year-old museum next to his home in Venetia near Pittsburgh boasts 26 cannons, howitzers and mortars -- the nation's second-biggest private collection. Watterson's Civil War Artillery Museum opens by appointment only, drawing a few hundred visitors a year. He's thinking of lending his estimated \$1-million-plus collection to a museum in Virginia but won't say if the move was triggered by his divorce or by howls of protests he raised this spring in Upstate New York.

Cannons have quietly vanished from at least nine small towns throughout New York since 1998. But few of the sales created the sort of ruckus that ignited in Kendall near Lake Ontario in March, putting collectors under an uncomfortable spotlight.

Although many Civil War ordnance pieces were loaned out by the federal government, the ownership trail has been muddled in a few hundred cases by surplus sales of cannons to businesses that later resold them, said Wayne Stark, who maintains a "National Registry of Surviving Civil War Artillery" and has authenticated cannons for both municipalities and collectors.

"I like to see the stuff stay where it is -- if it's being maintained," Stark said.

But Stiles, in an angry defense of his activities when he responded to repeated Associated Press phone calls, said, "All we want to do is preserve the cannons. We're not doing anything wrong. The people that are neglecting them are doing the wrong thing, the people who are letting them rust, the people who are letting them get vandalized and stolen."

As for ownership uncertainties, he asserted: "It's who's taken care of the cannon for the past decades that's the owner."

For Ben Jones, a local Air Force reservist preparing for deployment in Iraq, it's not that simple. "They're not buying them from a junkyard or an antique shop; they're buying them from cemeteries. I collect militaria myself, but I don't go desecrating graves to get it," he said.

Jones joined hundreds of protesters in Kendall after the town board quietly sold its 816-pound, cast-iron cannon for \$15,000. Watterson sold it back for \$27,000, charging \$5,000 for a now unused replacement built in Georgia. The extra costs were covered by a New York state grant.

ATTCH. 7B - Government Cannons Once Part of Veterans' Memorials Used as Movie Props

Lehigh Valley Morning Call (Lancaster, Pa.)

Published on http://articles.mcall.com/2012-11-17/news/mc-pa-abraham-lincoln-cannon-20121117_1_civil-war-cannons-big-guns-art-director

For Pa. man, cannon in 'Lincoln' a personal effort

November 17, 2012 | By Larry Alexander, Of the Intelligencer Journal

LANCASTER (Pa.) — On April 4, 1865, just one day after Confederate soldiers abandoned their capital city, Richmond, Va., President Abraham Lincoln arrived at nearby City Point. As Lincoln debarked from the sidewheeler River Queen, he passed silent rows of bodies and battle debris. That event is a historic fact.

In the Steven Spielberg movie "Lincoln," which opened nationwide Friday, many of the cannons on display during the recreation of that scene are the property of former Lancaster Mayor Charlie Smithgall. Smithgall, who has perhaps the most extensive privately owned collection of antique cannons in the country, furnished 12 guns for use in the movie. These included his huge 30-pound Parrott gun and massive 4 1/2 -inch rifle. Mounted on heavy wooden carriages, each weighs about 6 tons.

Smithgall said he was contacted last fall by Dreamworks, Spielberg's production company, about supplying cannons for the movie. "The art director came here and picked out what he wanted," Smithgall said. "We went through the garage and I explained to him what the guns were. "He loved these," Smithgall said, patting the two big guns.

In addition to the two large pieces, the art director also selected a 24-pound howitzer, a 12-pound howitzer, two 12-pound Napoleons and a 10-pound Parrot. (The word "pound" refers to the weight of the projectile.) Five 3-inch ordnance guns, with "inch" referring to the diameter of the bore, also were chosen.

Filming took place between Oct. 17 and Dec. 19, 2011. About two weeks before Thanksgiving, Smithgall, assisted by Barry Reynolds, Jimmy Murray and Billy Bertz, loaded two leased flatbed tractor-trailers with five guns each, placing two more guns on Smithgall's small trailer. Smithgall said hauling 12 Civil War cannons on Interstate 95 caused "quite a stir." Truckers on CB radios were "going nuts," he said. Word moved ahead, reaching the ears of a friend in North Carolina, who called Smithgall. "He heard about all these guns being moved, and he knew it was me," Smithgall smiled.

Principal filming was done near State Farm, Va., about 30 miles west of Richmond. The property consists of thousands of acres of open ground, as well as the Powhatan Correctional Center. The land also was used as a backdrop for the 2008 HBO miniseries "John Adams." Smithgall's guns were used in three scenes. The first was Lincoln's arrival at City Point, Va., where the guns were lined up hub-to-hub. "They had an original photograph and they were trying to duplicate it," Smithgall said.

During a break in the filming, Smithgall said he and the art director sat down and ate lunch at the table where, in the movie, Lincoln (played by Daniel Day-Lewis) and Gen. Ulysses S. Grant (Jared Harris), would confer. "One of the honchos came in and started yelling at us, and we said, 'We aren't hurting anything,'" Smithgall said.

Another part of the movie set represented the Petersburg, Va., battlefield, which Lincoln toured on horseback. Some of Smithgall's guns were placed in Union earthworks. The third scene was in Richmond itself, where the original Confederate White House was given a temporary portico to make it resemble the White House in Washington, D.C. Again, Smithgall's guns were used as background. At no time during the six weeks the guns were on the set were they fired, and at no time did Smithgall move them himself. "It was a union set," Smithgall said. "If a gun had to be moved even 6 inches, I couldn't push it myself. The union guys had to move it."

Smithgall supplied some of his historical knowledge as well. For example, after they finished filming the scene at the White House, Smithgall pulled his Napoleons and howitzers from the film for the purpose of authenticity. "I told them they wanted to use only ordnance rifles," Smithgall said. "Grant, after the Battle of the Wilderness [May 5-7, 1864], sent back all the cannons except for the ordnance rifles." During his time on the set, Smithgall never saw Spielberg.

"I was used to the 'Gettysburg' movie, where [director Ronald F. Maxwell] took an active part," Smithgall said. "When Spielberg's people set a scene, that's the way he films it. He comes in, shoots it long, hard and fast, and then he leaves. He trusts his people." Smithgall was happy to lend his expertise to a prestigious filmmaker like Spielberg. "It was a unique opportunity for me to be able to supply the cannons and help, in a small way, Spielberg make his movie on Lincoln," Smithgall said. "I can't wait to see it."

ATTACHMENT 8 - SUVCW LEGAL HEIR TO GAR PROPERTY

DEED OF CONVEYANCE

Published at <http://www.suvcw.org/deed.htm>

THE INDENTURE made this 13th day of February, 1954 by and between the GRAND ARMY OF THE REPUBLIC, a Corporation organized by an act of the Congress of the United States approved June 3, 1924, by Albert Woolson, sole surviving member of said Grand Army of the Republic, and the COMMANDERY-IN-CHIEF, SONS OF UNION VETERANS OF THE CIVIL WAR, a Corporation organized and existing under and pursuant to the laws of the State of Illinois;

WHEREAS, because of the age and infirmity of the last surviving member of the Grand Army of the Republic, and being desirous of carrying out the objects and purposes for which said Grand Army of the Republic was organized and believing that the Sons of Union Veterans is the natural heir of the Grand Army of the Republic;

THEREFORE, pursuant to the provisions of Sections six and seven of said act incorporating the Grand Army of the Republic, I, ALBERT WOOLSON, as sole surviving member thereof do hereby grant, bargain, sell and convey to said Commandery-in-Chief, Sons of Union Veterans of the Civil War all property of any and every kind and nature owned by said Grand Army of the Republic, and wheresoever situate, and all the records and archives thereof; except such property and records as are specifically mentioned and described in a resolution adopted by the Grand Army of the Republic at its 83rd and final Encampment held at Indianapolis, Indiana August 28th to September 1st, 1949.

The meaning and intent of this conveyance is to convey to said Commandery-in-Chief, Sons of Union Veterans of the Civil War, all post and department records of the Grand Army of the Republic and it is my express wish and desire that said Grantee shall use its best endeavors to return said records to the Communities where grand Army posts were located, so far as possible, for the use and benefit of the Communities where such posts were located.

This conveyance shall become effective upon compliance with Section seven of the said act incorporating the Grand Army of the Republic.

IN WITNESS WHEREOF, I, the said Albert Woolson, as sole surviving member of the Grand Army of the Republic have hereunto set my hand and affixed my seal at the City of Duluth in the County of St. Louis and State of Minnesota the day and year first above written.

GRAND ARMY OF THE REPUBLIC By: /s/ Albert Woolson (seal)

WITNESS: [Illegible] J. W. Kobus
Dewey B. Meade

STATE OF MINNESOTA) } SS
COUNTY OF ST. LOUIS)

I, a Notary Public within and for the said County and State aforesaid do, hereby certify that Albert Woolson personally known to me to be the same person who is described in and who executed the foregoing instrument and personally known to me to be the last surviving member of the Grand Army of the Republic, do hereby certify that the said Albert Woolson acknowledged to me that he executed the same freely and voluntarily as the last surviving member of the Grand Army of the Republic for the uses and purposes in said instrument set forth.

Given under my hand and notarial seal this 13 day of February 1954.

/s/ Dewey B. Meade Notary Public My Commission Expires April 9, 1957

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

In re GRAND ARMY OF THE REPUBLIC, No. 3966-54 Petitioner

JUDGEMENT

Upon consideration of the motion filed herein by Sons of Union Veterans of the Civil War, a corporation created by Act of Congress, representing that it is the successor of Commandery-in-Chief, Sons of Union Veterans of the Civil War, the grantee in a certain deed from the Grand Army of the Republic dated February 13, 1954, and confirmed by this Court on December 22, 1954, and praying for confirmation of a certain confirmatory deed to it from the Grand Army of the Republic dated February 25, 1956, made for the purpose of correcting a clerical error in said deed of February 13, 1954, a copy of said confirmatory deed being filed in this Court and the original being submitted to the Court for insertion, and it appearing to the Court that the allegations of said motion are true and the purpose of said confirmatory deed is to carry out the true intent and purpose of the original deed of February 13, 1954, it is this fifteenth day of June, 1956, by the Court, ORDERED, Adjudged and decreed that the title and ownership of the property covered by said deeds of February 13, 1954 and February 25, 1956, be and hereby is vested in the Sons of Union Veterans of the Civil War, a corporation created by Act of Congress approved August 20, 1954.

/s/ Alexander Holtzoff, Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In re GRAND ARMY OF THE REPUBLIC, No. 3966-54 Petitioner

JUDGEMENT

Upon consideration of the motion filed herein by counsel for the petitioner for transfer of the remaining property of the Grand Army of the Republic to the Commandery-in-Chief, Sons of Union Veterans of the Civil War, the petition filed herein, the copy of the conveyance of property of the Grand Army of the Republic to the Commandery-in-Chief, Sons of Union Veterans of the Civil War also filed herein, and the duly authenticated original of such copy of the conveyance, it is this 22 day of December, 1954 by the Court,

ORDERED, ADJUDGED and DECREED That the title and ownership of the property provided for in the indenture of the 13th day of February, 1954, by and between the Grand Army of the Republic and the Commandery-in-Chief, Sons of Union Veterans of the Civil War, pursuant to the Act of June 3, 1924, 43 Stat. 358, 76th Cong. 1st Sess., Sec. 7, be and hereby is vested in the Commandery-in-Chief, Sons of Union Veterans of the Civil War. /s/ Alexander Holtzoff, Judge

ATTACHMENT 9 - SUVCW PROJECTS HONOR VETERANS

Atch. 9A - Gallipolis camp replaces "lost" GAR Civil War veterans' monument with new one

The Buckeye Bugle Vol. 8 Issue 3 - July 2013

Published on <http://www.ohiosuv.com/campNewsletters/Dept/Buckeye%20Bugle%20July%202013.pdf>

Gallipolis Camp dedicates monument, restores honor to veterans' graves



Cadot-Blessing Camp 126 dedicated a new Civil War veterans memorial June 15 at Pine Street Cemetery in Gallipolis. In doing so, they honored the memory of local soldiers, sailors, and Marines dishonored long ago by theft of the original marker. "It's been a long road getting here, but we finally made it," said Camp Commander Jim Oiler. The dedication ceremony, attended by Camp Brothers, ladies of the Allied Orders, and local residents occurred 145 years after a similar monument placed among the graves of Civil War veterans buried in Pine Street Cemetery was stolen.

Brother Henry Myers of Cadot-Blessing Camp explained a nearly year-and-a-half search unsuccessfully sought to discover the fate of the original monument following discovery of a June 3, 1868 article in *The Gallipolis Bulletin* reporting a GAR veterans marker being dedicated at the cemetery during the first national Memorial Day celebration, May 30, 1868.

The new memorial stands where it is presumed the original stood, among the graves of American soldiers who perished at the U.S. Army General Hospital at Gallipolis -- a large hospital established in 1862 near the site of Camp Carrington to treat sick and wounded soldiers including Confederates. Of the estimated 154 Civil War soldiers buried in Pine Street Cemetery -- including a handful of Confederates -- approximately 114 are listed as "Unknown US Soldier."

Ohio Department Commander Jonathan Davis spoke at the ceremony stating, "It is the duty of each Camp to preserve the memory of the Grand Army of the Republic and our ancestors who fought to save the Union." He also noted, "I am positive tears were shed by these patriots in heaven on the day the original monument was taken from this place of honor and I am sure again tears are being shed today -- except these are tears of joy." State Rep. Ryan Smith of the 93rd Ohio House District, also a speaker at the ceremony, remarked "The presence and preservation of this memorial is a pillar of the courage and patriotism of our earlier generations. While it is with heavy hearts that we acknowledge their sacrifice, it should also be a symbol of pride that our men stood up and fought for our country." To complete the ceremony, Camp 126 Brothers fired a musket salute to honor Civil War soldiers in Pine Street Cemetery, and Camp Bugler Dale Lamphier sounded TAPS.

Attch. 9B - Cincinnati camp raises funds and replaces federal memorial at National Battlefield Park

The Buckeye Bugle Vol. 8 Issue 3 - July 2013

Published on <http://www.ohiosuv.com/campNewsletters/Dep/Buckeye%20Bugle%20July%202013.pdf>

Camp honors namesake, restores monument at Chickamauga



[L] Monument 1900 and [R] June 2013

September 20 at 1:30 p.m. SUVCW Brothers, families, and friends will join with local dignitaries and residents to rededicate the newly restored General Lytle Monument at Chickamauga Battlefield Park near Fort Oglethorpe, Ga. Saturday, Sept. 21, the Chattanooga Symphony Orchestra performs a free, patriotic music concert near the Wilder Brigade Monument. Both events are part of the 150th anniversary of the Battle of Chickamauga. Cincinnati's General William H. Lytle Camp 10 Brothers initiated restoration efforts for the Lytle Monument in 2010.

following a visit to the Chickamauga Battlefield. More than \$65,000 was raised to restore the monument, mostly to purchase reproduction cannonballs at \$200 each. The original monument was erected in 1894 and featured a pyramid of cannonballs plus a plaque honoring Gen. Lytle. Six similar monuments commemorated Union Army leaders killed in the battle. As time passed, some of the original 323 cannonballs were used by the Park Service to repair other battlefield monuments and many were stolen by vandals. Camp 10 research also discovered many of the remaining cannonballs were contributed during the massive, well-purposed World War II scrap metal drive that resulted in the destruction of many Civil War cannons and other artifacts nationwide. U.S. General William Lytle was widely known as the "poet warrior" of the Civil War, and his work was beloved by soldiers of both armies. Cincinnati native Lytle fell mortally wounded while trying to maintain the Union line. On the battlefield that night, Confederates reverently stood guard over his body until it could be returned to the Union Army.

Attch. 9C - Frost camp restores, maintains, and meets in original 1896 GAR building

The Buckeye Bugle Vol. 7 Issue 2 - April 2012

Frost Hall is legacy of GAR and tribute to SUVCW preservation efforts



*Father's musket, rusty and brown, hangs inside his study door;
Just above it, worn and faded, is the old blue coat he wore,
when he marched with dashing Sherman, from Atlanta to the sea,
'neath the tatters of 'Old Glory' in the war to make men free."
..... Verse from song sheet found in Frost GAR Hall*

Frost Hall in the small town of Frost was built in 1896 by Grand Army of the Republic Post 341 veterans. And, shared by John S. Townsend Camp #108 of the Sons of Veterans. Today it is a living monument to the "Boys in Blue" who saved the nation 1861-65, their sons, their heirs, and to the work and vision of twenty-first century SUVCW brothers and Auxiliary ladies. The town of Frost was once a thriving center of activity. Now, it is a quiet southeastern Ohio hamlet. Built in the late 1890s, Frost Hall served the community as a

gathering place and source of pride and still does. Today, SUVCW Townsend Camp 108 meets in Frost Hall. Both the Camp and the Ladies Auxiliary take care of the building. The Department of Ohio annually contributes a stipend towards maintenance. For information to help SUVCW Brothers with preservation of Frost Hall, or to visit back to Grand Army of the Republic days through a PowerPoint show go to: www.ohio.edu/people/lowery/gar/GARHall_files/frame.htm

Attch. 9D - Dayton camp restores, maintains veterans' section at abandoned Old Greencastle Cemetery

The Buckeye Bugle Vol. 8 Issue 1 - February 2013

Sherman Camp cleans-up cemetery, restores GAR flagpole, donates flag



Nov. 20, 2012, as part of their ongoing Civil War Sesquicentennial commitment, Dayton's Sherman Camp 93 Brothers restored, painted, and lighted the flag staff at historic Old Greencastle Cemetery. A United States flag flies again from the pole originally placed there by Comrades of GAR Hiram Strong Post 79. Camp 93 Brothers also cleaned headstones among the 150 marked graves of veterans buried there and placed GAR makers and flags upon them. For more than 30 years, the abandoned cemetery was neglected and overgrown. Today, the grass is cut, the GAR section maintained, and the graves of Civil War veterans buried there registered in the SUVCW graves registry. Sherman Camp 93 "adopted" the cemetery's GAR section as a preservation and protection project in 2010. The new flag and night time lighting were donated by Camp Brothers. The flag pole and headstone restoration project was conducted by Camp Brothers.

Title 29. CRIMES – PROCEDURE

Chapter 2927. MISCELLANEOUS OFFENSES

§ 2927. 28. Unlawful Transactions In Veterans' Memorials

(A) No person, except as authorized in this division, shall knowingly sell, offer to sell, give away, purchase, alter or remove from its site, any memorial erected or placed on public or private property, whether it be inside or outside of a structure, honoring or commemorating a military veteran, veterans group, war, military conflict or military event, without first securing the approval of a two-thirds majority vote of and a certificate of permission from the county veterans service commission of the county in which the memorial is situated, or, if no county veterans service commission exists, then securing the unanimous approval of and a certificate of permission from the board of county commissioners of that county.

(B) As used in this section, person means any natural person, any corporation, or an officer or employee of any corporation, any partnership or an officer or employee of any partnership, or any business of any kind or an officer or employee of that business.

(C) As used in this section, memorial means monument, memorial, marker, plaque, surplus military equipment, or other item, including flag holders, erected or placed on public or private property, whether it be inside or outside of a structure, honoring or commemorating a military veteran, veterans group, war, military conflict or military event.

(D) Whoever violates division (A) of this section is guilty of unlawful transactions in veterans' memorials, a felony of the fourth degree.



**Bureau of Workers'
Compensation**

30 W. Spring St.
Columbus, OH 43215-2256

Governor John R. Kasich
Administrator/CEO Stephen Buehrer

ohiobwc.com
1-800-OHIOBWC

August 6, 2014

Mr. Timothy C. Long
Attorney At Law
455 South Ludlow Alley
Columbus, Ohio 43215

Dear Mr. Long,

I recently received a copy of your September 25, 2012 letter. I apologize you did not receive a response at the time, as this is the first I have seen your letter. I understand you were requesting consideration to adopt a special exception rule to the National Council on Compensation Insurance (NCCI) scope associated with manual classification 9220-Cemetery Operations and Drivers.

As you stated there were a series of audits completed in 2004 focusing on policies with cemetery manual classification codes. Since 2004, BWC has performed 2 audit projects on the cemetery industry that involved approximately 80 audits. Of the 80 audits, 5 resulted in policies being awarded premium credits of approximately \$6,000 and 15 being billed for approximately \$31,600 for additional premium. The majority of the 15 policies billed for additional premium involved payroll for sales staff reported to manual 8742-Salespersons. The reassignment of the sales staff payroll, either all or a portion, to manual classification 9220 resulted in the billing of additional payroll.

During appeals of these audits, BWC staff followed the language of manual scope 9220 per Ohio Revised code 4123.29 (A)(1) and Ohio Administrative Code 4123-17-08 which states Ohio BWC is to follow the scopes set by NCCI. As you know, NCCI does allow for state exceptions, however BWC has elected not to deviate from NCCI's classification protocols within a class code, therefore Ohio does not have any state exceptions.

BWC has conducted an analysis of the claims submitted by cemetery workers formerly reported under manual classification 8742. These injuries were synonymous with the injuries being filed in manual class 9220, including salesmen falling into gravesites that had been dug as well as injuries from the digging equipment. These are not injuries that you would typically find in an outside sales manual code and is an indication that the cemetery salesperson has exposure to the cemetery operations. In your letter, you indicated the Ohio cemetery industry can demonstrate that there have been practically no claims by cemetery salespersons in Ohio. I would be happy to discuss this further and review any information you have on the issue.

If you would like to set up a meeting, please contact Maria Rossi-Cook at 614-644-5223.

Sincerely,

Steve Buehrer
Administrator/CEO
Ohio Bureau of Workers' Compensation

Cc: OCA Legislative Committee

Appendix III

Exhibits

Exhibit A

Ohio Cemetery Task Force Final Matrix

**OHIO CEMETERY LAW TASK FORCE
PRIORITY FOCUS AREAS**

PRIORITY	Sub-Category	Sub-Category	Sub-Category	Sub-Category	How?
FUNDING	Operations	Maintenance	Sources – dedicated funds; grants; trusts; levy authority		Consider ways to provide incentives and funding to assist Townships & Municipalities in providing care of cemeteries. (Tax lien disposition, for example)
REGISTRATION	Cemeteries or burials (IN)?				
RECORD KEEPING	System for reporting/database				
TECHNOLOGY	State/central database				
DEFINITIONS	Abandoned	Natural Burial	Human remains	Historical significance/archaeological site; burial site	Explore relationships among modern science, DNA, and ethics to provide a basis for clarifying terms
PRESERVATION/ PROTECTION	Unmarked/abandoned (regardless of age)	Education/outreach			Establish a foundation for crafting over-arching policy in Ohio recognizing the importance of and respect for dignified treatment of the deceased and care for places with burials. Establish a foundation to craft law establishing a balanced process to consider preservation of clearly identified American Indian burial grounds.
MAINTENANCE	“Traditional” cemeteries	Nature preserves/green burial grounds	Memorials/markers	Remediation	
ENFORCEMENT	Increase certain criminal penalties (vandalism & desecration)	More authority for OCDRC (see below)			

**OHIO CEMETERY LAW TASK FORCE
PRIORITY FOCUS AREAS**

STATUTORY ALIGNMENT	BWC – rating for cemetery salesperson	Twps – parity with Munis	4767 modernization	Updates to endowment & pre-need trusts (UPIA)	
PROTECTED GROUPS	Native American repatriation	Veterans – local government assistance			Establish a foundation to craft law to prescribe protection of American Indian burials under specific and well defined circumstances; assist Township, Counties, private cemeteries, and the Ohio Genealogical Society of Ohio to place and maintain markers / medallions and provide specific care for grave sites of veterans. (Do we need to include religious/benevolent & municipalities?) .

Exhibit B

Revised Code Chapter 4767 Draft Language

Chapter 4767: CEMETERY REGISTRATION

4767.01 Cemetery registration definitions.

As used in sections 4767.01 to ~~4767.08~~ 4767.89 of the Revised Code:

(A) "Cemetery," "interment," "burial right," "entombment right," and "columbarium right," "human remains" and "natural burial site" have the same meanings as in section 1721.21 of the Revised Code.

(B) "Political subdivision" means one or more municipal corporations, townships, or other bodies corporate and political authorized to operate and maintain a cemetery under the law of this state.

(C) "Division of real estate" may be used interchangeably with, and for all purposes has the same meaning as, "division of real estate and professional licensing."

(D) "Superintendent" or "superintendent of the division of real estate" means the superintendent of the division of real estate and professional licensing of this state. Whenever the division or superintendent of real estate is referred to or designated in any statute, rule, contract, or other document, the reference or designation shall be deemed to refer to the division or superintendent of real estate and professional licensing, as the case may be.

4767.02 Registration required - duties of ~~division of real estate in department of commerce~~ superintendent - confidentiality.

(A) Except as otherwise provided in division ~~(C)~~ (B) of this section, no person, church, religious society, established fraternal organization, or political subdivision of the state shall own, operate, or maintain a cemetery unless the cemetery is registered pursuant to section 4767.03 of the Revised Code.

~~(C)~~ (B) The ~~division of real estate in the department of commerce~~ superintendent shall perform all of the following duties:

(1) Administer this chapter;

(2) Issue all orders necessary to implement this chapter;

(3) Administer the cemetery grant program;

~~(1) Adopt, amend, and rescind rules in accordance with Chapter 119. of the Revised Code to carry out sections 4767.02 to 4767.04 of the Revised Code governing the registration of cemeteries;~~

~~(2) Prescribe the form and content of all applications to be used for registration and renewal of registration pursuant to section 4767.03 of the Revised Code;~~

(35) Review applications for registration and issue registration certificates to cemeteries that meet the qualifications for registration pursuant to sections 4767.03 and 4767.04 of the Revised Code;

(46) Collect all fees related to the registration and renewal of registration certificates for cemeteries;

(57) Maintain a written record of each cemetery registered with the division, which shall include such documentation as required in division (A) of section 4767.04 of the Revised Code. The record shall be available for inspection by the public and copies shall be made available pursuant to division (B) of section 149.43 of the Revised Code.

(68) Revoke the registration of any cemetery owner or operator convicted of a violation of section 1721.21 or 1721.211 of the Revised Code immediately upon receipt of notice of the conviction pursuant to section 119.06 of the Revised Code;

(79) Hire all division personnel necessary to implement this chapter;

(810) ~~Prohibit the sale of the assets or stock of a cemetery by refusing~~ Refuse to issue a registration certificate to the purchaser ~~of management rights, assets, or stock of a cemetery until the dispute resolution commission has either received audited financial statements audited by a certified public accountant showing to the commission's satisfaction that all current funds required to be deposited and maintained pursuant to sections 1721.21 and 1721.211 of the Revised Code have been deposited and maintained or an agreed plan approved by the commission in accordance with section 4767.06(G) of the Revised Code;~~

~~(9) With the dispute resolution commission's advice and consent, subpoena cemetery personnel to attend hearings before the commission.;~~

(11) Establish and maintain an investigation and audit section to conduct investigations pursuant to division (A) of section 4767.08 of the Revised Code and to audit the financial records of a cemetery to ensure compliance with sections 1721.21 and 1721.211 of the Revised Code whenever it deems necessary and at least once every five years. The investigators or auditors have the right to review and audit the business records of registrants during normal business hours.

~~(E)~~ Sections 4767.02 to 4767.04 of the Revised Code do not apply to or affect a family cemetery or a cemetery in which there have been no interments during the previous twenty-five calendar years. As used in this division, "family cemetery" means a cemetery containing the human remains of persons, at least three-fourths of whom have a common ancestor or who are the spouse or adopted child of that common ancestor.

(D) All information that is obtained by investigators and auditors performing investigations or conducting inspections, audits, and other inquiries pursuant to division (C)(11) of this section, from registrants, complainants, or other persons, and all reports, documents, and other work products that arise from that information and that are prepared by the investigators, auditors or

other personnel of the department, shall be held in confidence by the superintendent, the investigators and auditors, and other personnel of the department.

4767.021 Subpoena power.

The Ohio cemetery dispute resolution commission or the superintendent of real estate may compel, by order or subpoena, the production of any book, paper, or document in relation to any matter over which the commission or superintendent has jurisdiction and which is the subject of inquiry and investigation by the commission or superintendent. The commission or superintendent may also compel, by order or subpoena, the attendance of witnesses to testify in a hearing held pursuant to section 4767.07 of the Revised Code.

For such purpose, the commission or superintendent shall have the same power as judges of courts of common pleas to administer oaths, compel the attendance of witnesses, and compel the production of any book, paper, or document. Service of the subpoena may be made by sheriffs or constables, or by certified mail, return receipt requested, and the subpoena shall be deemed served on the date delivery is made or the date the person refused to accept delivery. Witnesses shall receive, after their appearance before the commission or superintendent, the fees and mileage provided for under section 119.094 of the Revised Code. If two or more witnesses travel together in the same vehicle, the mileage fee shall be paid to only one of those witnesses, but the witnesses may agree to divide the fee among themselves in any manner.

In addition to the powers granted to the commission and superintendent under this section, in case any person fails to file any statement or report, obey any subpoena, give testimony, answer questions, or produce any books, records, or papers as required by the commission or superintendent under this chapter, the court of common pleas of any county in the state, upon application made to it by the commission or superintendent setting forth such failure, may make an order awarding process of subpoena or subpoena duces tecum for the person to appear and testify before the commission or superintendent, and may order any person to give testimony and answer questions, and to produce books, records, or papers, as required by the commission or superintendent. Upon the filing of such order in the office of the clerk of the court of common pleas, the clerk, under the seal of the court, shall issue process of subpoena for the person to appear before the commission or superintendent at a time and place named in the subpoena, and each day thereafter until the examination of such person is completed. The subpoena may contain a direction that the witness bring with the witness to the examination any books, records, or papers mentioned in the subpoena. The clerk shall also issue, under the seal of the court, such other orders, in reference to the examination, appearance, and production of books, records, or papers, as the court directs. If any person so summoned by subpoena fails to obey the subpoena, to give testimony, to answer questions as required, or to obey an order of the court, the court, on motion supported by proof, may order an attachment for contempt to be issued against the person charged with disobedience of any order or injunction issued by the court under this chapter. If the person is brought before the court by virtue of the attachment, and if upon a hearing the disobedience appears, the court may order the offender to be committed and kept in close custody.

4767.03 Applying for registration.

(A)

(1) The owner or the person responsible for the operation and maintenance of a cemetery shall apply to the division of real estate in the department of commerce to register the cemetery on forms prescribed by the division. With the application, the applicant shall submit the documentation required in division (A) of section 4767.04 of the Revised Code and a registration fee of twenty-five dollars for one cemetery, forty dollars for two cemeteries, and fifty dollars for three or more cemeteries, except that no fee shall be required of any political subdivision.

(2) The director of commerce, by rule adopted in accordance with Chapter 119. of the Revised Code, may reduce the amount of the registration fee required by this section in any year if the director determines that the total amount of funds the fee is generating at the amount specified by this section exceeds the amount of funds the division of real estate and the Ohio cemetery dispute resolution commission created by section 4767.05 of the Revised Code need to carry out their powers and duties under this chapter. If the director so reduces the amount of the registration fee, the director shall reduce it for all owners or other persons required to pay the fee under division (A)(1) of this section and shall require that the reduced fee be paid according to the number of cemeteries owned, operated, or maintained as required under that division. If the director has reduced the fee under division (A)(2) of this section, the director may later raise it up to the amounts specified in division (A)(1) of this section if, in any year, the director determines that the total amount of funds the fee is generating at the reduced amount is insufficient for the division of real estate and the Ohio cemetery dispute resolution commission to carry out their powers and duties under this chapter.

(B) Upon receipt of the completed application form, documentation, and, if required, registration fee, the division of real estate shall issue a certificate of registration to the applicant. The applicant shall display the certificate in a conspicuous place on the premises of the cemetery for which the registration was obtained, except that, if the applicant is the governing body of a political subdivision or person acting on behalf of that governing body, the certificate shall be kept on file and be available for public inspection at the office of the governing body.

(C) Except as otherwise provided in this division, each registration issued pursuant to this section shall expire annually on the thirtieth day of ~~June~~ September and ~~may~~ shall be renewed. The renewal fee shall be the same as the initial registration fees prescribed in division (A) of this section. The registration of a cemetery operated and maintained by a political subdivision shall not expire unless the political subdivision ceases to operate and maintain the cemetery. A political subdivision operating and maintaining a cemetery is not required to renew or update the registration of that cemetery unless there is a change in the information required under division (A) of section 4767.04 of the Revised Code or unless additional land is acquired to increase the size of the cemetery.

(D) The Division shall impose upon any cemetery that fails to file a complete renewal on or before the thirtieth day of September a penalty of five dollars for each and every day the cemetery remains delinquent in submitting the annual renewal. The penalty incurred shall be no

more than three hundred dollars and the Superintendent or Commission may abate all or part of the penalty for good cause shown. A failure to renew may result in an investigation pursuant to section 4767.08 of the Revised Code.

(~~D~~E) All registration and renewal fees collected pursuant to this section shall be paid into the state treasury to the credit of the division of real estate in the department of commerce to be used by the division to carry out its powers and duties under this chapter and by the Ohio cemetery dispute resolution commission created by section 4767.05 of the Revised Code.

4767.031 Registration of persons engaged to sell interment rights.

(A) The owner or the person responsible for the operation of each cemetery required to register under section 4767.03 of the Revised Code shall provide the division of real estate in the department of commerce, on a form prescribed by the division, at the same time the owner or other person applies for registration or renewal of registration as required by section 4767.03 of the Revised Code, a list of the names and residence addresses of all persons employed or otherwise engaged by the cemetery to sell interment rights. The provision of this information constitutes the registration of these persons to sell interment rights. In order for an independent contractor to sell interment rights for a cemetery, the cemetery shall sponsor and register the independent contractor with the division. More than one cemetery may sponsor and register the same independent contractor.

(B) The owner or the person responsible for the operation of each cemetery required to register under section 4767.03 of the Revised Code shall provide the division with a revised list of the names and residence addresses of all persons employed or otherwise engaged by the cemetery to sell interment rights within the calendar quarter immediately following the date of the termination of the cemetery's relationship with an existing salesperson or the commencement of a relationship with a new salesperson. As used in this division, "calendar quarter" means the three-month period that commences on the first day of each January, April, July, and October.

4767.04 Qualifications of registrants.

(A) To qualify a cemetery for a certificate of registration, the applicant shall submit to the division of real estate the following information:

- (1) The name of the cemetery;
- (2) The street address, city, village, or township, and county where the cemetery is located, and the mailing address if different from the street address;
- (3) The name and address of the person who owns the cemetery;
- (4) The name and address of the person responsible for the operation and maintenance of the cemetery;

(5) A copy of the ~~most recent annual report~~ financial statement for the previous fiscal year of the cemetery if required by the division of real estate pursuant to section 1721.211 of the Revised Code or if required by the Ohio cemetery dispute resolution commission. If the cemetery is owned by a cemetery company or association, a copy of the ~~annual report~~ financial statement for the previous fiscal year of all of the assets and investments of the endowment care trust of the company or association as prepared pursuant to section 1721.21 of the Revised Code shall be submitted to the division;

(6) A copy of the cemetery's current rules and regulations in either written or electronic format.

(7) A copy of the cemetery's trust agreement and, if appropriate, proof of bonding as required in sections 1721.21 or 1721.211 of the Revised Code. Such cemetery need only submit revised trust agreements or proof of bonding with the cemetery's next annual renewal.

(B) If any of the information required in division (A) of this section changes at any time, the owner or the person responsible for the operation and maintenance of the cemetery shall submit written notification of the change to the division within thirty days of the change occurring provided, however, that the owner or other person responsible for the operation and maintenance of the cemetery need only submit revised rules and regulations with the cemetery's next annual renewal.

(C) In addition to satisfying the requirements set forth in divisions (A) and (B) of this section, if a political subdivision intends to acquire additional land to increase the size of an existing cemetery that it is operating and maintaining or intends to open a new cemetery, its governing body shall notify the division at least thirty days before the acquisition or opening to renew the registration of the existing cemetery or to register the new cemetery.

4767.05 Ohio cemetery dispute resolution commission.

(A) There is hereby created the Ohio cemetery dispute resolution commission, which shall consist of nine members to be appointed by the governor with the advice and consent of the senate as follows:

(1) One member shall be the management authority of a municipal, township, or union cemetery and shall be selected from a list of four names submitted to the governor. Two of the four names shall be submitted by the Ohio township association and two names shall be submitted by the Ohio municipal league.

(2) Four members shall be individuals employed in a management position by a cemetery company or cemetery association and shall be selected from a list of names submitted to the governor by the Ohio Cemetery Association. ~~Two of the four members shall be selected from a list of four names submitted to the governor by the Ohio association of cemeteries and two shall be selected from a list of four names submitted by the Ohio association of cemetery superintendents and officials.~~

(3) Two members shall be employed in a management position by a cemetery that is owned or operated by a religious, fraternal, or benevolent society and shall be selected from a list of four names submitted by the ~~Ohio association of cemetery superintendents and officials~~ Ohio Cemetery Association.

(4) Two members, at least one of whom shall be at least sixty-five years of age, shall be representatives of the public with no financial interest in the death care industry.

Each member of the commission, except for the two members who represent the public, shall, at the time of appointment, have had a minimum of five consecutive years of experience in the active administration and management of a cemetery in this state.

(B) Within ninety days after the effective date of this section, the governor shall make initial appointments to the commission. Of the initial appointments, two shall be for terms ending one year after the effective date of this section, two shall be for terms ending two years after that date, two shall be for terms ending three years after that date, and three shall be for terms ending four years after that date. Thereafter, terms of office shall be for four years, with each term ending on the same day of the same month as did the term that it succeeds. Each member shall hold office from the date of appointment until the end of the term for which the member was appointed. Vacancies shall be filled in the manner provided for original appointments, with each appointee, other than a representative of the public, being appointed from a list of two names submitted to the governor by the association or organization that was required to nominate candidates for initial appointment to the position that has become vacant. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed shall hold office for the remainder of that term. A member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office or until a period of ~~sixty~~ ninety days has elapsed, whichever occurs first. No person shall serve as a member of the commission for more than two consecutive terms, excluding any term served to fill an initial appointment to a term of less than four years or an unexpired term caused by a vacancy.

(C) The commission annually shall elect from among its members a chairperson, vice-chairperson, and secretary, each of whom shall serve a term of one year in that office. The commission shall meet at least four times a year. Additional meetings may be called by the chairperson, or by the vice-chairperson when the chairperson is disabled, or by a majority of the members of the commission. A majority of the members constitutes a quorum to transact and vote on business of the commission.

The chairperson or vice-chairperson may:

- (1) Administer oaths;
- (2) Issue subpoenas;
- (3) Summon witnesses;
- (4) Compel the production of books, papers, records, and other forms of evidence;
- (5) Fix the time and place for hearing any matter related to compliance with sections 1721.19, 1721.20, 1721.21, 1721.211, 4735.02, ~~and~~ 4767.02, 4767.03 and 4767.09 of the Revised Code.

The chairperson shall designate three members of the commission to serve on the crematory review board in accordance with section 4717.03 of the Revised Code for such time as the chairperson finds appropriate. Members designated to serve on the crematory review board shall perform all functions

necessary to carry out the duties of the board as described in section 4717.03 of the Revised Code. Members who serve on the crematory review board shall receive no compensation for such service.

(D) Before entering upon the duties of office, each member of the commission shall take the oath pursuant to section 3.22 of the Revised Code. The governor may remove any member for misconduct, neglect of duty, incapacity, or malfeasance in accordance with section 3.04 of the Revised Code.

(E) Members of the commission shall receive no compensation but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as members of the commission.

(F) The division of real estate in the department of commerce shall provide the commission with meeting space, staff services, and other technical assistance required by the commission in carrying out its duties pursuant to sections 4767.05 to 4767.08 of the Revised Code.

4767.06 Duties of commission.

The Ohio cemetery dispute resolution commission shall perform all of the following duties:

(A) Adopt, amend, and rescind such rules in accordance with Chapter 119. of the Revised Code as are necessary in carrying out sections ~~4767.05 to 4767.08~~ 4767.02 to 4767.13 of the Revised Code, including rules relative to the following:

- (1) Transacting the commission's business and managing its affairs;
- (2) Establishing procedures for receiving, reviewing, and responding to complaints filed pursuant to section 4767.07 of the Revised Code;
- (3) Conducting investigations in response to complaints filed pursuant to division (A) of section 4767.07 of the Revised Code;
- (4) Resolving complaints by using informal techniques of mediation, conciliation, and persuasion, including requiring the parties involved in a complaint to be given prompt notice of any offers to resolve disputes and responses thereto;
- (5) Advising all parties making a complaint, or who are the subject of a complaint, of any recommendations or findings of fact made by the commission with respect to the complaint;
- (6) Requesting the party who has filed a complaint or is the subject of a complaint, and is affected by recommendations of the commission made with respect to the complaint, to notify the commission within a time specified by the commission of any action the party has taken in response to the commission's recommendations;
- (7) Conducting nonpublic hearings and maintaining commission proceedings and records as confidential, notwithstanding sections 121.22 and 149.43 of the Revised Code when the commission determines that the nature of the complaints merits that action;

(8) Determining the method to be used in serving notices as required by section 4767.07 of the Revised Code.

(9) Conducting audits of the financial records of a cemetery to ensure compliance with sections 1721.21 and 1721.211 of the Revised Code;

(10) Establishing procedures for registrations and renewals;

(B) Publicize information concerning the existence and duties of the commission and the procedure for filing complaints pursuant to section 4767.07 of the Revised Code;

(C) Conduct hearings on complaints pursuant to section 4767.07 of the Revised Code;

(D) Submit at least annually by the thirty-first day of March a report on the commission's activities of the immediately preceding calendar year to the governor and the majority and minority leaders of the senate and house of representatives. The report shall indicate the total number of complaints received, initiated, and investigated under sections 4767.07 and 4767.08 of the Revised Code; the total number of complaints for which hearings were held; and the total number of referrals made to prosecuting attorneys, the attorney general, and the real estate commission pursuant to section 4767.08 of the Revised Code.

(E) Review, at least once each year, all actions taken by the prosecuting attorneys, the attorney general, and the real estate commission in response to referrals made to them by the cemetery dispute resolution commission or by the superintendent of the division of real estate in the department of commerce. The commission shall include in the report required in division (D) of this section information regarding the nature of the inappropriate conduct alleged in each referral and the status or disposition made of each referral occurring during the preceding two years.

(F) Perform all functions as are necessary in administering and enforcing sections 4767.05 to 4767.08 ~~4767.13~~ of the Revised Code, including the rendering of all advice necessary under divisions ~~(B)(6) to (12)~~ (C)(8) to (11) of section 4767.02 of the Revised Code;

(G) Review all proposed transfers that would transfer substantially all of the management rights, assets or stock of a cemetery; require an audit of the cemetery's funds on deposit under sections 1721.21 and 1721.211 of the Revised Code; and formulate an agreed plan pursuant to which the buyer and the seller of the cemetery will cause those funds to be properly funded;

(H) Adopt and publish suggested maintenance guidelines for all cemeteries registered in the state of Ohio under Chapter 4767. of the Revised Code.

4767.07 Complaints.

(A) Any person may file a complaint regarding the activity, practice, policy, or procedure of, or regarding an alleged violation of section 1721.19, 1721.20, 1721.21, 1721.211, 4735.02, 4767.09 or 4767.02 of the Revised Code by, any person operating or maintaining a cemetery registered pursuant to section 4767.03 of the Revised Code or that should be registered pursuant to section 4767.02 of the Revised Code that adversely affects or may adversely affect the interest of an owner or family member of

the owner of a cemetery lot or burial, entombment, or columbarium right. All complaints shall be in writing and submitted to the division of real estate in the department of commerce on forms provided by the division.

(B) With respect to complaints filed pursuant to division (A) of this section, the division of real estate shall do all of the following:

(1) Acknowledge receipt of the complaint by sending written notice to the person who filed the complaint not more than twenty days after receipt of the complaint;

(2) Send written notice of the complaint within seven days after receipt of the complaint to the person responsible for the operation and maintenance of the cemetery that is the subject of the complaint;

(3) Before taking further action, allow the owner or the person responsible for the operation and maintenance of the cemetery that is the subject of a complaint thirty days after the date the division sends notice of the complaint to respond to the division with respect to the complaint.

(C) The cemetery dispute resolution commission shall hear each complaint filed pursuant to division (A) of this section within one hundred eighty days after its filing, unless it has been resolved by the parties to the complaint.

4767.08 Conduct of investigations.

(A) The superintendent or the Ohio cemetery dispute resolution commission, on its own motion or as a result of a complaint received pursuant to section 4767.07 of the Revised Code and with good cause shown, shall investigate or cause to be investigated alleged violations of sections 1721.19, 1721.20, 1721.21, 1721.211, 4735.02, 4767.02, 4767.09 and 4767.03 of the Revised Code. If the commission or the superintendent of the division of real estate in the department of commerce believes that a violation has occurred, the commission or superintendent shall do all of the following:

(1) Review the financial records of the cemetery to ensure compliance with sections 1721.21 and 1721.211 of the Revised Code;

(2) Request the prosecuting attorney of the county in which the alleged violation occurred to initiate such proceedings as are appropriate.

(B) If, as a result of an investigation, the commission or the superintendent believes that a person has violated Chapter 1345. of the Revised Code, the commission or superintendent shall report the findings to the attorney general.

(C) The commission, at any time, may dismiss a complaint if it determines there is not good cause shown for the complaint. If the commission dismisses a complaint, it shall notify the person who filed the complaint within twenty days of reaching its decision and identify the reason why the complaint was dismissed.

(D) When necessary for the division of real estate to perform the duties required by sections 4767.07 and 4767.08 of the Revised Code, the superintendent of the division, after consultation with at least a majority of the members of or the cemetery dispute resolution commission, may issue subpoenas and compel the production of books, papers, records, and other forms of evidence. If, as a result of an investigation or after a hearing held pursuant to 4767.07, the commission or the superintendent finds a violation of section 4767.09 of the Revised Code, an advisory letter shall be issued. If a cemetery is advised of a second violation within nine consecutive months, the cemetery shall be fined \$100. Each additional violation found within the nine consecutive months shall result in a fine of \$100. For purposes of this section, multiple complaints concerning maintenance within the same ten day period shall constitute a single violation. All fines collected pursuant to this section shall be credited to the cemetery grant program, created in the state treasury under section 4767.13 of the Revised Code.

4767.09 Maintenance and record keeping

(A) The owner or person responsible for the operation of the registered cemetery shall provide reasonable maintenance of the cemetery property and of all lots, graves, mausoleums, scattering grounds and columbariums in the cemetery based on the type and size of the cemetery, topographic limitations, and contractual commitments with consumers.

(B) In determining whether the owner or person responsible for the operation of the registered cemetery provides reasonable maintenance of the cemetery property, the Division or commission may consider:

- (1) the size of the cemetery;
- (2) the type of cemetery;
- (3) the extent and use of the financial resources available;
- (4) the contractual obligations for care and maintenance of the owner or person responsible for the operation of the registered cemetery;
- (5) the standard of maintenance of one or more similarly situated cemeteries; in determining whether a cemetery is similarly situated, the division shall consider the cemetery's size, type, location, topography, and financial resources;
- (6) the minimum maintenance guidelines;
- (7) other relevant sections of the Revised Code related to cemetery maintenance;
- (8) any advisory letters or fines previously issued pursuant to section 4767.08(D) of the Revised Code.

(C) Reasonable maintenance by the owner or person responsible for the operation of the registered cemetery shall not preclude the exercise of lawful rights by the owner of an interment, inurnment, or entombment right, or by the decedent's immediate family or other heirs, in accordance with the rules and regulations of the cemetery or other agreement of the cemetery authority.

(D) Cemeteries dedicated as a nature preserve or cemeteries, including sections within a cemetery, that are specifically designed and established as natural burial sites and are intended to be maintained in a natural condition at the visible surface grade of the facility are not subject to

the maintenance requirements of this section. Reasonable maintenance and repairs by the owner or person responsible for the operation of the registered cemetery shall be done in accordance with the rules and regulations of the cemetery, an independent conservation plan, or the cemetery master plan.

(E) Electronic or paper cemetery records pertaining to interment, entombment or inurnment right owners and interment, entombment or inurnment records indicating the deceased name, place of death, date and location of the interment, entombment or inurnment shall be maintained in the cemetery's office. Records may be maintained in an electronic format so long as the electronic copies are true copies of all the original documents.

(F) Whether registered or unregistered, no cemetery will be permitted to become a nuisance as defined by applicable law. Division staff is authorized to make nuisance referrals to local building authorities with jurisdiction over the cemetery.

(G) For purposes of this section, a cemetery in a condition that would rise to the level of a nuisance is not considered reasonable maintenance.

4767.10 Statement

Every cemetery shall include a statement in the cemetery's rules and regulations that contains the Division's phone number, address, and information on how to file a complaint with the Ohio Cemetery Dispute Resolution Commission.

4767.12 Cemetery ceasing to operate, abandoned cemetery, division's duties

When the division has information that the owner or person responsible for the operation and maintenance of a registered cemetery has ceased operation and is no longer reasonably maintaining the cemetery, the division may investigate the cemetery to determine the cemetery's current status and to determine whether the cemetery has been abandoned. If the division finds substantial evidence that the cemetery has ceased operation, is abandoned, and a municipality or township has not taken control of such cemetery, the division may apply to the appropriate court of common pleas probate division to have the cemetery declared to be abandoned and for appointment of a temporary receiver or trustee. The order appointing the temporary receiver or trustee shall order the trustee or trustees of the endowment care trust of the cemetery to make distributions in accordance with this section. Upon the termination and winding-up of the temporary receivership or trusteeship the receiver or trustee shall transfer the cemetery and its assets and records to the new owner or operator if one is named. If there is no new owner or operator at the time of winding-up then the court shall distribute such assets as may remain in its discretion and shall cause the records of the former cemetery to be delivered to the Ohio History Connection for archival or other purposes as the Society may deem appropriate pursuant to its authority as set forth in Chapter 149 of the Revised Code.

The receiver shall be compensated by the owner or person responsible for the operation of the cemetery as indicated in Division records. If the owner or person responsible for the operation of the cemetery has no assets available to pay the receiver, the receiver shall only be paid from

the income of interest and dividends in the endowment care trust being held pursuant to section 1721.21 of the Revised Code. The receiver may not invade the principal or capital gains of the trust.

When the owner or person responsible for the operation or maintenance of a cemetery has, either by choice or circumstance, ceased operation and has allowed the cemetery to be declared a nuisance as defined by applicable law, then that cemetery has been “abandoned” for the purpose of this chapter.

4767.13 Grant program

(A) There is hereby created in the state treasury a cemetery grant fund. The general assembly shall initially appropriate to the cemetery grant fund “X” dollars (amount to be determined upon fiscal analysis) from the Cemetery Program operating fund balance. Thereafter, one dollar of every two dollars and fifty cents of each fee collected for a burial permit by the division shall be credited to the cemetery grant fund, The Division shall use it in advancing grants to registered cemeteries, except for for-profit cemeteries, to defray the costs of the maintenance of the cemetery or the training of cemetery personnel in the maintenance and operation of cemeteries. Such grants shall be made according to rules established by the commission under the procedures of Chapter 119. Of the Revised Code. No more than eighty percent shall be paid out of that fiscal year’s appropriation made for the purpose of the cemetery grant fund.

(B) The director of commerce, by rule adopted in accordance with Chapter 119. of the Revised Code, may increase the amount of total grants paid out in any one fiscal year if the director determines that the total amount of funds generated exceeds the amount of funds the division needs to carry out its powers and duties under this section. If the director has increased the total grants paid out in a fiscal year under division (A) of this section, the director may later lower it down to the amount specified in division (A) of this section if, in any year, the director determines that the total amount of total grants paid out at the increased amount depletes the amount of funds the division needs to carry out its powers and duties under this chapter.

(C) For the purposes of this section “maintenance” means the care of a cemetery and of the lots, graves, crypts, niches, mausoleums, memorials, and markers therein, outside of the reasonable maintenance standard set forth in section 4767.09 of the Revised Code, to include but not limited to: (a) the cutting, trimming and removal of trees; (b) repair of drains, water lines, roads, fences, and buildings; and (c) payment of expenses necessary for maintaining necessary records of lot ownership, transfers, and burials.

4767.99 Penalty.

Whoever violates division (A) of section 4767.02 of the Revised Code is guilty of a misdemeanor of the ~~third~~ first degree.

Exhibit C
Revised Code
Sections 1721.21 & 1721.211
Draft Language

1721.21 Endowment care trust.

(A) As used in this section:

(1) "Person" means any corporation, company, partnership, individual, or other entity owning or operating a cemetery for the disposition of human remains.

(2) "Cemetery" means any one or a combination of more than one of the following:

(a) A burial ground for earth interments;

(b) A mausoleum for crypt entombments;

(c) A columbarium for the deposit of cremated remains;

(d) A scattering ground for the spreading of cremated remains.

(3) "Interment" means the disposition of human remains by earth burial, entombment, or inurnment.

(4) "Burial right" means the right of earth interment.

(5) "Entombment right" means the right of entombment in a mausoleum.

(6) "Columbarium right" means the right of inurnment in a columbarium for cremated remains.

(7) "Human Remains" means any part of the body of a deceased human being in any stage of decomposition or state of preservation or the remaining bone fragments from the body of a deceased human being that has been reduced by cremation or alternative disposition."

(8) "Natural Burial Site" is one in which human remains, including cremated remains, are interred in bio-degradable containers without the use of any impervious manufactured materials container or vault (partial, inverted or otherwise), vault lids, outer burial containers, impervious manufactured boxes, slabs, or partitioned liners, and without the use of toxic embalming chemicals except where the decedent has been embalmed as may be required by applicable law or against their specific written instructions or in which embalming was required for transport."

(B) No person shall operate or continue to operate any cemetery in this State unless an endowment care trust is established and maintained as required by this section.

(C) Any person desiring to operate any cemetery that is organized or developed after July 1,

1970, before offering to sell or selling any burial lot, burial right, entombment right, or columbarium right in that cemetery, shall first establish an endowment care trust, segregated from other assets, and place in that fund a minimum of fifty thousand dollars in cash or in bonds of the United States, this state, or any county or municipal corporation of this state.

Whenever any person described in this division has placed another fifty thousand dollars in the endowment care trust out of gross sales proceeds, in addition to the deposit required by this division, that person, after submitting proof of this fact to the trustees of the endowment care trust, may be paid a distribution in the sum of fifty thousand dollars from the endowment care trust.

(D) Any person desiring to operate or to continue to operate any cemetery after July 1, 1970, shall place into the endowment care trust as required by this section not less than ten per cent of the gross sales proceeds received from the sale of any burial lot, burial right, entombment right, or columbarium right. This percentage shall be placed in the endowment care trust no later than thirty days following the month in which the entire gross sales are received.

(E) The trustees of the endowment care trust shall consist of at least three individuals who have been residents of the county in which the cemetery is located for at least one year, or a trust company licensed under Chapter 1111. of the Revised Code or a national bank or federal savings association that has securities pledged in accordance with section 1111.04 of the Revised Code. If the trustees are not a financial institution or trust company, the trustees shall be bonded by a ~~corporate surety~~ or fidelity bond in an aggregate amount of not less than one hundred per cent of the funds held by the trustees. The trustees or their agent shall, on a continuous basis, keep exact records as to the amount of funds under any joint account or trust instrument being held for the individual beneficiaries showing the amount paid, the amount deposited and invested, and accruals and income.

The funds of the endowment care trust shall be held and invested in the manner in which trust funds are permitted to be held and invested pursuant to sections 2109.37 and 2109.371 of the Revised Code or the Ohio Uniform Prudent Investor Act, if so provided in the endowment care trust required pursuant to this section.

(F) Any person offering to sell or selling any burial lot, burial right, entombment right, or columbarium right shall give to the purchaser of the lot or right, at the time of sale, a written agreement that identifies and unconditionally guarantees to the purchaser the specific location of the lot or the specific location to which the right applies.

(G) No person shall open or close any grave, crypt, or niche for the interment of human remains in a cemetery without the permission of the cemetery association or other entity having control and management of the cemetery.

(H) Except as provided in division (G) of this section, this section does not apply to a family

cemetery as defined in Section 4767.02 of the Revised Code, to any cemetery that is owned and operated entirely and exclusively by churches, religious societies, established fraternal organizations, municipal corporations, or other political subdivisions of the state, or to a national cemetery.

(I) The dividend and interest income from the endowment care trust shall be used only for the cost and expenses incurred to establish, manage, and administer the trust and for the maintenance, supervision, improvement, and preservation of the grounds, lots, buildings, equipment, statuary, and other real and personal property of the cemetery.

(J)(1) Annual reports of all the assets and investments of the endowment care trust shall be prepared and maintained, and shall be available for inspection at reasonable times by any owner of interment rights in the cemetery.

(2) Every cemetery required to establish and maintain an endowment care trust shall ensure that file an affidavit annually with the division of real estate of the department of commerce, in a form prescribed by the division, certifying under oath each of the following:

(a) ~~That~~ the cemetery has deposited, at the time specified in division (D) of this section, the amounts required by that division in the cemetery's endowment care trust;

(b) ~~That~~ only dividend and interest income have been paid from the endowment care trust, and the cemetery used the amounts withdrawn only for the purposes specified in division (1) of this section;

(c) That all principal and capital gains have remained in the endowment care trust;

(d) ~~That~~ the endowment care trust has not been used to collateralize or guarantee loans and has not otherwise been subjected to any consensual lien;

(e) ~~That~~ the endowment care trust is invested in compliance with the investing standards set forth in sections 2109.37 and 2109.371 of the Revised Code or the Ohio Uniform Prudent Investor Act, if so provided in the endowment care trust required pursuant to this section..

(3) Every cemetery required to establish and maintain an endowment care trust shall file an affidavit annually with the division of real estate, in a form prescribed by the division, certifying under oath, that the cemetery carried out (J)(2) of this section.

1721.211 Preneed cemetery merchandise and services contracts.

(A) As used in this section, "preneed cemetery merchandise and services contract" means a written agreement, contract, or series of contracts to sell or otherwise provide an outer burial

container, monument, marker, urn, other type of merchandise customarily sold by cemeteries, or opening and closing services to be used or provided in connection with the final disposition of a dead human body, where payment for the container, monument, marker, urn, other type of merchandise customarily sold by cemeteries, or opening and closing services is made either outright or on an installment basis, prior to the death of the person so purchasing or for whom so purchased. "Preneed cemetery merchandise and services contract" does not include any preneed funeral contract or any agreement, contract, or series of contracts pertaining to the sale of any burial lot, burial or interment right, entombment right, or columbarium right with respect to which an endowment care trust is established or is exempt from establishment pursuant to section 1721.21 of the Revised Code.

(B) Subject to the limitations and restrictions contained in Chapters 1101. to 1127. of the Revised Code, a trust company licensed under Chapter 1111. of the Revised Code or a national bank or federal savings association that pledges securities in accordance with section 1111.04 of the Revised Code or the individuals described in division (C)(2) of this section have the power as trustee to receive and to hold and invest in accordance with sections 2109.37 and 2109.371 of the Revised Code or the Ohio Uniform Prudent Investor Act, as specified in the trust referred to in division (c)(2) of this section, moneys under a preneed cemetery merchandise and services contract.

(C) (1) The greater of one hundred ten per cent of the seller's actual cost or thirty per cent of the seller's retail price of the merchandise and seventy per cent of the seller's retail price of the services to be provided under a preneed cemetery merchandise and services contract shall remain intact as a fund in a trust commonly known as a preneed cemetery merchandise and services trust until the death of the person for whose benefit the contract is made or the merchandise is delivered as set forth in division (K) of this section. However, any moneys held pursuant to this section shall be released upon demand of the person for whose benefit the contract was made or upon the demand of the seller for its share of the moneys held and earned interest if the contract has been canceled as set forth in division (G) of this section.

(2) The trustee of the fund described in division (C)(1) of this section shall be a trust company licensed under Chapter 1111. of the Revised Code or a national bank or federal savings association that pledges securities in accordance with section 1111.04 of the Revised Code or at least three individuals who have been residents of the county in which the seller is located for at least one year, each of whom shall be bonded by ~~a corporate surety~~ fiduciary bond in an amount that is at least equal to the amount deposited in the fund of which those persons serve as trustee. Amounts in the fund shall be held and invested in the manner in which trust funds are permitted to be held and invested pursuant to sections 2109.37 and 2109.371 of the Revised Code.

(3) Every preneed cemetery and merchandise contract entered into on or after the effective date of this amendment shall include a provision in substantially the following form:

NOTICE: Under Ohio law, the person holding the right of disposition of the remains of the beneficiary of this contract pursuant to section 2108.70 or 2108.81 of the Revised Code will have

the right to purchase cemetery merchandise and services inconsistent with the merchandise and services set forth in this contract. However, the beneficiary is encouraged to state his or her preferences as to the manner of final disposition in a declaration of the right of disposition pursuant to section 2108.72 of the Revised Code, including that the arrangements set forth in this contract shall be followed.

(D) Within thirty days after the last business day of the month in which the seller of cemetery merchandise or services receives final contractual payment under a preneed cemetery merchandise and services contract, the seller shall deliver the greater of one hundred ten per cent of the seller's actual cost or thirty per cent of the seller's retail price of the merchandise and seventy per cent of the seller's current retail price of the services as of the date of the contract to a trustee or to trustees as described in division (C)(2) of this section, and the moneys and accruals or income on the moneys shall be held in a fund and designated for the person for whose benefit the fund was established as a preneed cemetery merchandise and services contract fund.

(E) The moneys received from more than one preneed cemetery merchandise and services contract may, at the option of the persons for whose benefit the contracts are made, be placed in a common or pooled trust fund in this state under a single trust instrument. If three individuals are designated as the trustees as provided in division (C)(2) of this section, they shall be bonded by a corporate surety or fidelity bond in an aggregate amount of not less than one hundred per cent of the funds held by them as trustees. The trustees or their agent shall, on a continuous basis, keep exact records as to the amount of funds under a single trust instrument being held for the individual beneficiaries showing the amount paid, the amount deposited and invested, and accruals and income.

(F) (1) ~~Except as provided in division (F)(2) of this section, the seller of merchandise or services under a preneed cemetery merchandise and services contract shall ensure that annually submit to the division of real estate of the department of commerce an affidavit in a form prescribed by the division, sworn under oath, specifying each of the following:~~

- ~~(a) That, within the time period specified in division (D) of this section, the amounts required by that division were deposited in an appropriate fund;~~
- ~~(b) That the fund has not been used to collateralize or guarantee loans and has not otherwise been subjected to any consensual lien;~~
- ~~(c) That the fund is invested in compliance with the investing standards set forth in sections 2109.37 and 2109.371 of the Revised Code or the Ohio Prudent Investors Act, as specified in the trust referred to in division (c)(2) of this section;~~
- ~~(d) That no moneys have been removed from the fund, except as provided for in this section.~~

(2) Every cemetery required to establish and maintain a preneed cemetery merchandise and services trust shall file an affidavit annually with the division of real estate, in a form prescribed by the division, certifying under oath, that the cemetery carried out (F)(2) of this section.

(2) A licensed funeral director who sells preneed funeral contracts and who also sells merchandise or services under a preneed cemetery merchandise and services contract shall be deemed to have met the requirement in division (F) (1) of this section by submitting the annual preneed cemetery merchandise and services contract affidavit to the board of embalmers and funeral directors along with or as a part of the annual preneed funeral contract report required under divisions (I) and (J) of section 4717.31 of the Revised Code.

(G) This division is subject to division (I) of this section.

Any person upon initially entering into a preneed cemetery merchandise and services contract may, within seven days, cancel the contract and request and receive from the seller one hundred per cent of all payments made under the contract. After the expiration of the above period, any person who has entered into a preneed cemetery merchandise and services contract may, on not less than fifteen days' notice, cancel the contract and request and receive from the seller sixty per cent of the payments made under the contract which have been paid up to the time of cancellation; except that, if a preneed cemetery merchandise and services contract stipulates a firm or fixed or guaranteed price for the merchandise or services for future use at a time determined by the death of the person on behalf of whom payments are made, the person who has entered into the contract may, if the merchandise has not been delivered or the services have not been performed as set forth in division (K) or (L) of this section, on not less than fifteen days' notice, cancel the contract and receive from the seller sixty per cent of the principal paid pursuant to the contract and not less than eighty per cent of any interest paid, up to the time of cancellation, and not less than eighty per cent of any accrual or income earned while the moneys have been held pursuant to divisions (C) and (D) of this section, up to the time of cancellation. Upon cancellation, after the moneys have been distributed to the beneficiary pursuant to this division, all remaining moneys being held pursuant to divisions (C) and (D) of this section shall be paid to the seller. If more than one person enters into the contract, all of those persons must request cancellation for it to be effective under this division. In such a case, the seller shall refund to each person only those moneys that each person has paid under the contract.

(H) Upon receipt of a certified copy of the certificate of death or evidence of delivery of the merchandise or performance of the services pursuant to division (K) or (L) of this section, the trustee described in division (C)(2) of this section or its agent, shall forthwith pay the fund and accumulated interest, if any, to the person entitled to them under the preneed cemetery merchandise and services contract. The payment of the fund and accumulated interest pursuant to this section, either to a seller or person making the payments, shall relieve the trustee of any further liability on the fund or accumulated interest.

(I) Notwithstanding any other provision of this section, any preneed cemetery merchandise and services contract may specify that it is irrevocable. All irrevocable preneed cemetery merchandise and services contracts shall include a clear and conspicuous disclosure of irrevocability in the contract and any person entering into an irrevocable preneed cemetery

merchandise and services contract shall sign a separate acknowledgment of the person's waiver of the right to revoke. If a contract satisfies the requirements of this division, division (G) of this section does not apply to that contract.

(J) Any preneed cemetery merchandise and services contract that involves the payment of money shall be in writing and in compliance with the laws and rules of this state.

(K) For purposes of this section, the seller is considered to have delivered merchandise pursuant to a preneed cemetery merchandise and services contract when either of the following occur:

(1) The seller makes actual delivery of the merchandise to the beneficiary, or the seller pays for the merchandise and identifies it as being stored for the benefit of the beneficiary at a manufacturer's warehouse.

(2) The seller receives delivery of the merchandise on behalf of the beneficiary, and all of the following occur:

(a) The merchandise is permanently affixed to or stored upon the real property of a cemetery located in this state.

(b) The seller notifies the beneficiary of receipt of the merchandise and identifies the specific location of the merchandise.

(c) The seller at the time of the beneficiary's final payment provides the beneficiary with evidence of ownership in the beneficiary's name showing the merchandise to be free and clear of any liens or other encumbrances.

(L) For purposes of this section, a seller is considered to have performed services pursuant to a preneed cemetery merchandise and services contract when the beneficiary's next of kin signs a written statement that the services have been performed or, if no next of kin of the beneficiary can be located through reasonable diligence, when the owner or other person responsible for the operation of the cemetery signs a statement of that nature.

(M) Notwithstanding any other provision of this chapter, any trust may be charged a trustee's fee, which is to be deducted from the earned income or accruals on that trust. The fee shall not exceed the amount that is regularly or usually charged for similar services rendered by the trustee described in division (C)(2) of this section when serving as a trustee.

(N) The general assembly intends that this section be construed as a limitation upon the manner in which a person is permitted to accept moneys in prepayment for merchandise and services to be delivered or provided in the future, or merchandise and services to be used or provided in connection with the final disposition of human remains, to the end that at all times members of the public may have an opportunity to arrange and pay for merchandise and services for themselves and their families in advance of need while at the same time providing all possible

safeguards whereunder the prepaid moneys cannot be dissipated, whether intentionally or not, so as to be available for the payment for merchandise and services and the providing of merchandise and services used or provided in connection with the final disposition of dead human bodies.

(O) This section does not apply to the seller or provider of merchandise or services under a preneed cemetery merchandise and services contract if the contract pertains to a cemetery that is owned and operated entirely and exclusively by an established and legally cognizable church or denomination that is exempt from federal income taxation under section 501(c)(3) of the "Internal Revenue Code of 1954," 26 U.S.C.A. 501, an established fraternal organization, or a municipal corporation or other political subdivision of the State, to a cemetery that is a national cemetery, or to a cemetery that is a family cemetery as defined in Section 4767.02 of the Revised Code; provided that, on a voluntary basis, rules and other measures to safeguard and secure all moneys received under a preneed cemetery merchandise and services contract.

(P) This section does not prohibit persons other than cemetery corporations or associations from selling outer burial containers, monuments, markers, urns, or other types of merchandise customarily sold by cemeteries pursuant to a preneed cemetery merchandise and services contract; however all sellers of merchandise pursuant to a preneed cemetery merchandise and services contract shall comply with this section unless the seller is specifically exempt from this section.

(Q) Any contract for preneed services or merchandise entered into with a cemetery not registered under section 4767.03 of the Revised Code is voidable.

Exhibit D

Private Property Compendium of Codes

Alabama	<p>Sec. 35-1-4 Right of access to cemetery on privately owned or leased property.</p> <p>(a) Owners and lessees of private land on which a cemetery, graves, or burial sites are located shall have a duty to allow ingress and egress to the cemetery, graves, or burial sites by (1) family members, friends, or descendants of deceased persons buried there; (2) any cemetery plot owner; and (3) any person engaged in genealogical, historical, or cultural research, who has given reasonable notice to the owner of record or to the lessees, or both.</p> <p>(b)(1) The right of ingress and egress granted by this section shall be reasonable and limited to the purposes of visiting graves or burial sites, maintaining the gravesite or burial site or cemetery, or conducting genealogical, historical, or cultural research, or, in the case of a plot owner, burying a deceased person in the plot.</p> <p>(2) The owner or lessee of the land has the right to designate the frequency, hours, and duration of the access and the access route, if no traditional access route is obviously visible from a view of the property, provided that the designation is reasonable for the purposes set out above.</p> <p>(c)(1) Any person entering onto private land pursuant to this section shall be responsible for conducting himself or herself in a manner that does not damage the private land, cemetery, gravesite, or burial site, and shall be liable to the owner or lessee of the property for any damage caused as the result of his or her access.</p> <p>(2) The landowner and lessee, in the absence of gross negligence or willful misconduct, shall be immune from liability in any civil suit, action, or cause of action arising out of the access granted pursuant to this section.</p>
Missouri	<p>214.132. Visiting abandoned family or private burying ground surrounded by private property, right of access, when, enforcement by sheriff—court's power to disinter.</p> <p>1. Any person who wishes to visit an abandoned family cemetery or private burying ground which is completely surrounded by privately owned land, for which no public ingress or egress is available, shall have the right to reasonable ingress or egress for the purpose of visiting such cemetery. This right of access to such cemeteries extends only to visitation during reasonable hours and only for purposes usually associated with cemetery visits.</p> <p>2. The sheriff or chief law enforcement officer of the county in which the abandoned family cemetery or private burying ground is located shall enforce the provisions of subsection 1 of this section.</p> <p>3. Nothing in section 214.131 and this section shall be construed to limit or modify the power or authority of a court in any action of law or equity to order the disinterment and removal of the remains from a cemetery and interment in a suitable location.</p>
North Carolina	<p>§ 65-101. Entering public or private property to maintain or visit with consent.</p> <p>Any of the following persons, with the consent of the public or private landowner, may enter the property of another to discover, restore, maintain, or visit a grave or abandoned public cemetery:</p> <p>(1) A descendant of the person whose remains are reasonably believed to be interred in the grave or abandoned public cemetery.</p> <p>(2) A descendant's designee.</p> <p>(3) Any other person who has a special personal interest in the grave or abandoned public cemetery.</p> <p>§ 65-102. Entering public or private property to maintain or visit without consent.</p> <p>(a) If the consent of the landowner cannot be obtained, any person listed in G.S. 65-101(1), (2), or (3) may commence a</p>

	<p>special proceeding by petitioning the clerk of superior court of the county in which the petitioner has reasonable grounds to believe the grave or abandoned public cemetery is located for an order allowing the petitioner to enter the property to discover, restore, maintain, or visit the grave or abandoned public cemetery. The petition shall be verified. The special proceeding shall be in accordance with the provisions of Articles 27A and 33 of Chapter 1 of the General Statutes. The clerk shall issue an order allowing the petitioner to enter the property if the clerk finds all of the following:</p> <p>(1) There are reasonable grounds to believe that the grave or abandoned public cemetery is located on the property or it is reasonably necessary to enter or cross the landowner's property to reach the grave or abandoned public cemetery.</p> <p>(2) The petitioner, or the petitioner's designee, is a descendant of the deceased, or the petitioner has a legitimate historical, genealogical, or governmental interest in the grave or abandoned public cemetery.</p> <p>(3) The entry on the property would not unreasonably interfere with the enjoyment of the property by the landowner.</p> <p>(b) The clerk's order may state one or more of the following:</p> <p>(1) Specify the dates and the daylight hours that the petitioner may enter and remain on the property.</p> <p>(2) Grant the petitioner the right to enter the landowner's property periodically, as specified in the order, after the time needed for initial restoration of the grave or abandoned public cemetery.</p> <p>(3) Specify a reasonable route from which the petitioner may not deviate in all entries and exits from the property.</p>
Oklahoma	<p>§8-187. Abandoned cemetery on privately owned land - Visitation rights. Any relative of the deceased who wishes to visit an abandoned cemetery which is completely surrounded by privately owned land, for which no public ingress or egress is available, shall have the right to reasonable ingress or egress for the purpose of visiting such cemetery. This right of access to such cemeteries extends only to visitation during reasonable hours and only for purposes usually associated with cemetery visits. For the purposes of this section, "abandoned cemetery" means any place where human skeletal remains are buried and which no body has been interred for at least twenty-five (25) years and where such site is readily identifiable as a cemetery by an inspection of the property. Any relative of the deceased who wishes to visit an abandoned cemetery shall make a good faith effort to notify the owners and tenants, if any, of said property prior to visiting the cemetery. This section shall not be interpreted to allow the creation of an easement or claim of easement nor a right of ownership or claim of right of ownership to an abandoned cemetery.</p>
Oregon	<p>376.197 Way of necessity to historic cemeteries. (1) Notwithstanding any other provision of ORS 376.150 to 376.200, a way of necessity for nonmotorized conveyance is established to any parcel that meets the criteria described in ORS 308A.125.</p> <p>(2)(a) Notwithstanding any other provision of ORS 376.150 to 376.200, a way of necessity is established to a historic cemetery listed in accordance with the provisions of ORS 97.782.</p> <p>(b) The way of necessity established under paragraph (a) of this subsection shall:</p> <p>(A) Be designated by the owner of the land over which the way of necessity passes; and</p> <p>(B) Be accessible, at reasonable times to be designated by the property owner for visitation, maintenance or research purposes, to the owner of the historic cemetery, to descendants of those persons buried in the historic cemetery and to persons interested in historical research. The reasonableness of the times designated by the property owner shall be based</p>

	<p>on the need of the property owner to make use of the property and the need of the historic cemetery visitors for family visitation, maintenance or research access to the historic cemetery.</p>
<p>South Carolina</p>	<p>SECTION 27-43-310. Cemeteries on private property; persons entitled to access; purposes; notice; institution of proceedings in magistrate's court; immunity from civil liability.</p> <p>(A) An owner of private property on which a cemetery, burial ground, or grave is located must allow ingress and egress to the cemetery, burial ground, or grave as provided in this section by any of the following persons:</p> <ol style="list-style-type: none"> (1) family members and descendants of deceased persons buried on the private property or an agent who has the written permission of family members or descendants; (2) a cemetery plot owner; (3) persons lawfully participating in a burial; or (4) a person engaging in genealogy research who has received the written permission of: <ol style="list-style-type: none"> (a) family members or descendants of deceased persons buried on the private property; or (b) the owner of record, an agent of the owner of record, or an occupant of the private property acting on behalf and with permission of the owner of record. <p>(B) The ingress and egress granted to persons specified in subsection (A) must be exercised as provided in this section and is limited to the purposes of:</p> <ol style="list-style-type: none"> (1) visiting graves; (2) maintaining the gravesite or cemetery; (3) lawfully burying a deceased person in a cemetery or burial plot by those granted rights of burial to that plot; or (4) conducting genealogy research. <p>(C)(1) In order to exercise the ingress and egress provided in subsection (A), a person authorized by subsection (A) must give written notice to the owner of record, an agent of the owner of record, or an occupant of the private property acting on behalf of and with permission of the owner of record that:</p> <ol style="list-style-type: none"> (a) he or the person for whom he requests ingress and egress meets the statutory requirements provided in subsection (A); and (b) he requests a written proposal designating reasonable conditions for the exercise of ingress and egress as provided in subsection (B). <p>(2) Within thirty days after receipt of the written notice to exercise the ingress and egress, the owner of record, an agent of the owner of record, or an occupant of the private property acting on behalf and with permission of the owner of record must respond with a written proposal designating reasonable conditions for ingress and egress, including, but not limited to, routes to be used for access, duration of access, and time restrictions for access.</p> <p>(3) The exercise of ingress and egress on the property by persons authorized in subsection (A) for the purposes specified in subsection (B) must be exercised as reasonably restricted in time and manner by the owner of record, an agent of the owner of record, or an occupant of the private property acting on behalf and with permission of the owner of record. The</p>

exercise of ingress and egress must not substantially and unreasonably interfere with the use, enjoyment, or economic value of the property by the owner or an occupant of the private property.

(4) If, thirty days after receipt of the written notice to exercise ingress and egress on the private property, written notice of reasonable conditions for the exercise of the ingress and egress as provided in subsection (B) have not been proposed or accepted, a person authorized by subsection (A) or the owner of record, an agent of the owner of record, or an occupant of the private property acting on behalf and with permission of the owner may institute a proceeding in the magistrates court of the county in which the cemetery, burial ground, or grave is located. In granting relief to either party, the magistrate may set the frequency, hours, duration, or other conditions of the ingress and egress.

(5) A magistrate may deny the exercise of ingress and egress as provided in this section if:

(a) the person seeking to exercise the ingress and egress is not authorized by subsection (A); or

(b) the magistrate is presented with credible evidence that the person authorized by subsection (A) is involved in an imminent or actual violation of state or local law while upon, or entering, or exiting the private property; or

(c) the magistrate makes a finding, based upon a showing of credible evidence, that there is no condition of entry, no matter how limited in time, manner, or otherwise restricted, that would allow the person authorized by subsection (A) to enter the private property for the purposes authorized by subsection (B) without substantially and unreasonably interfering with the use, enjoyment, or economic value of the property by the owner or an occupant of the private property.

(6) The provisions of this subsection do not authorize a magistrate to make determinations concerning the title of the property or establish an easement across the property.

(D) In the absence of intentional or willful misconduct, or intentional, wilful, or malicious failure to guard or warn against a dangerous condition, use, structure, or activity, the owner of record, an agent of the owner of record, or an occupant of the private property acting on behalf and with permission of the owner of record is immune from liability in any civil suit, claim, action, or cause of action arising out of the access granted pursuant to this section.

(E)(1) A person exercising ingress or egress to a cemetery, burial ground, or grave under the provisions of this section is responsible for conducting himself in a manner that does not damage the private property or the cemetery, burial ground, or grave, and is liable to the owner of record for any damage caused as a result of the ingress or egress.

(2) The ingress or egress to a cemetery, burial ground, or grave on private property conferred by this section does not include the authority to operate motor vehicles on the private property unless a road or adequate right-of-way exists that permits access by motor vehicles and the person authorized to exercise ingress and egress by subsection (A) has been given written permission to use motor vehicles on the road or right-of-way.

(F)(1) The provisions of this section do not apply to any deed or other written instrument executed prior to the effective date of this section which creates or reserves a cemetery, burial ground, or grave on private property, and which specifically sets forth terms of ingress and egress.

Virginia	<p>(2) The provisions of this section in no way abrogate, affect, or encumber the title to the landowner's private property and are exercisable only for a particular private property that is subject to the provisions of this section.</p> <p>§ 57-27.1. Access to cemeteries located on private property; cause of action for injunctive relief; applicability.</p> <p>A. Owners of private property on which a cemetery or graves are located shall have a duty to allow ingress and egress to the cemetery or graves by (i) family members and descendants of deceased persons buried there; (ii) any cemetery plot owner; and (iii) any person engaging in genealogy research, who has given reasonable notice to the owner of record or to the occupant of the property or both. No landowner shall erect a wall, fence or other structure or device that prevents ingress and egress to the cemetery or grave, unless the wall, fence or other structure or device has a gate or other means by which ingress and egress can be accomplished by persons specified in this subsection. The landowner may designate the frequency of access, hours and duration of the access and the access route if no traditional access route is obviously visible by a view of the property. The landowner, in the absence of gross negligence or willful misconduct, shall be immune from liability in any civil suit, claim, action, or cause of action arising out of the access granted pursuant to this section.</p> <p>B. The right of ingress and egress granted to persons specified in subsection A shall be reasonable and limited to the purposes of visiting graves, maintaining the gravesite or cemetery, or conducting genealogy research. The right of ingress and egress shall not be construed to provide a right to operate motor vehicles on the property for the purpose of accessing a cemetery or gravesite unless there is a road or adequate right-of-way that permits access by a motor vehicle and the owner has given written permission to use the road or right-of-way of necessity.</p> <p>C. Any person entering onto private property to access a gravesite or cemetery shall be responsible for conducting himself in a manner that does not damage the private lands, the cemetery or gravesites and shall be liable to the owner of the property for any damage caused as a result of his access.</p> <p>D. Any person denied reasonable access under the provisions of this section may bring an action in the circuit court where the property is located to enjoin the owner of the property from denying the person reasonable ingress and egress to the cemetery or gravesite. In granting such relief, the court may (i) set the frequency of access, hours and duration of the access and (ii) award reasonable attorney fees and costs to the person denied such access.</p> <p>E. The provisions of this section shall not apply to any deed or other written instrument that creates or reserves a cemetery or gravesite on private property.</p>
West Virginia	<p>§37-13A-1. Access of certain persons to cemeteries and graves located on private land.</p> <p>(a) Any authorized person who wishes to visit a cemetery or grave site located on privately owned land and for which no public ingress or egress is available, shall have the right to reasonable ingress or egress for the purposes described in subsection (c) of this section after providing the owner of the privately owned land with reasonable notice as defined in subsection (b) of this section.</p> <p>(b) An authorized person intending to visit the cemetery or grave site for the purpose of installing a monument or grave marker pursuant to subdivision (2), subsection (c) of this section, shall give reasonable notice to the property owner which is to include a description of the monument or grave marker to be installed. As used in this article, "reasonable notice" means written notice of the date and time the authorized person intends to visit the cemetery or grave</p>

site delivered to the property owner at least ten days prior to the date of the intended visit.

(c) The right of access to cemeteries or grave sites provided in subsection (a) of this section shall be during reasonable hours and only for the purposes of:

(1) Visiting graves;

(2) Maintaining the grave site or cemetery, including the installation of a monument or a grave marker: *Provided*,

That a property owner may deny access to the cemetery or grave site because the owner objects to the installation of the type or style of the monument or grave marker that has been described in the notice given pursuant to subsection (b) of this section;

(3) Burying a deceased person in a cemetery plot by those granted rights of burial to that plot; and

(4) Conducting genealogy research.

(d)(1) The access route to the cemetery or grave site may be designated by the landowner if no traditional access route is obviously visible by a view of the property. If no traditional access route is obviously visible by a view of the property, the landowner is not required to incur any expense in improving a designated access route.

(2) Unless the property owner has caused a traditional access route to the cemetery or grave site to be unusable or unavailable, the property owner is not required to make any improvements to their property to satisfy the requirement of providing reasonable ingress and egress to a cemetery or burial site pursuant to this section.

(e) A property owner who is required to permit authorized persons reasonable ingress and egress for the purpose of visiting a cemetery or grave site and who acts in good faith and in a reasonable manner pursuant to this section is not liable for any personal injury or property damage that occurs in connection with the access to the cemetery or grave site.

(f) Nothing in this section shall be construed to limit or modify the power or authority of a court in any action of law or equity to order the disinterment and removal of the remains from a cemetery and interment in a suitable location.

§37-13A-2. Definitions.

In this article:

(1) "Authorized person" means:

(A) A family member, close friend or descendant of a deceased person;

(B) A cemetery plot owner;

(C) A person who has the written permission of a family member or descendant of a deceased person to enter the property solely for the purpose of installing monuments or grave markers or preparing the cemetery plot for burying a deceased person by those granted rights of burial to that plot; or

(D) A person engaged in genealogy research.

(2) "Governmental subdivision" means any county commission or municipality.

(3) "Reasonable ingress and egress" or "reasonable access" means access to the cemetery or grave site within ten days of the receipt of written notice of the intent to visit the cemetery or grave site. If the property owner cannot provide reasonable access to the cemetery or grave site on the desired date, the property owner shall provide reasonable alternative dates when the property owner can provide access within five days of the receipt of the initial notice.

§37-13A-3. Conduct of persons accessing cemeteries or grave sites; persons liable for damage.

All persons exercising access to a grave site or cemetery under the provisions of this article are responsible for conducting themselves in a manner that does not damage the private lands, the cemetery or grave sites and are liable to the owner of the private lands for any damage caused as a result of their access.

§37-13A-4. Limiting the use of motor vehicles on private lands.

The access to a cemetery or grave site on private lands conferred by this article does not include the right to operate motor vehicles on the private lands, unless there is a road or adequate right-of-way that permits access by motor vehicle and the owner has given written permission to use the road or right-of-way or way of necessity.

§37-13A-5. Cause of action for injunctive relief.

(a) An authorized person denied reasonable access under the provisions of this article, including the denial of permission to use vehicular access or the denial of permission to access the cemetery or grave site to install a monument or grave marker, may institute a proceeding in the circuit court of the county in which the cemetery or grave site is located to enjoin the owner of the private lands on which the cemetery or grave site is located, or his or her agent, from denying the authorized person reasonable ingress and egress to the cemetery or grave site for the purposes set forth in this article. In granting relief, the court may set the frequency of access, hours and duration of the access.

(b) The court or the judge thereof may issue a preliminary injunction in any case pending a decision on the merits of any application filed without requiring the filing of a bond or other equivalent security.

§37-13A-6. Application of article.

The provisions of this article shall not apply to any deed or other written instrument executed prior to the effective date of this article which creates or reserves a cemetery or grave site on private property and which specifically sets forth terms of access.

§37-13A-7. Existence of cemetery or grave site, notification.

If a governmental subdivision is notified of the existence of a cemetery, or a marked grave site that is not located in a dedicated cemetery, within its jurisdiction, the governmental subdivision shall, as soon as is practicable, notify the owner of the land upon which the cemetery or burial site is located of the cemetery's or grave site's existence and location. The Governmental subdivision shall, upon notification of grave site location, document the location. Data collected shall be deposited with the Division of Culture and History. The notification shall include an explanation of the provisions of this article.

