

**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 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 Dominquez 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. Dominquez 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