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569

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: February 14, 1984

REQUEST

Bill/Resolution No.: HB 569
 Title: An Act relating to Cemetary Associations.
 Sponsor: Representative Phillips
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce and Economic Dev.
 Program Category Affected: Consumer Protection
 BRU, Program or Subprogram(s) Affected: Banking, Securities and Corporations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
CAPITAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
REVENUE	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Willis F. Kirkpatrick, Director
 Division: Banking, Securities and Corporations

Phone: 465-2521

Date: 2/14/84

Approved by Commissioner: Richard A. Lvon
 Agent: Commerce and Economic Development

Date: 2/21/84

Distribution (by Agency preparing fiscal note):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

12/1/83

Alaska State Legislature



Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

February 6, 1984

TO Rep. John Cowdery
Labor and Commerce Committee Chairman

FROM Rep. Joe Hayes *JH*
Speaker

RE: HB 569/ cemetery associations

Representative Phillips has introduced HB 569 relating to cemetery associations and I have referred it to the Labor and Commerce Committee.

I had intended to introduce similar legislation, and I am supportive of this bill. I would appreciate it if you would schedule HB 569 for a committee hearing as soon as convenient so that we might be able to bring it to the floor for a vote in the near future.

Thanks.

INTRODUCTION OF BILLS (House)

HB 538, (cont'd)

lating to agriculture, industry, horticulture, native plants or livestock, 3) indicating past, present, or future potential of a renewable resource that is related to the community, region or state, 4) showing household arts, and 5) including general interest subjects such as hobbies, arts, crafts, photography and school education.

Rewrites definition of "agricultural and industrial fair" to mean: ". . . a community, regional or state fair that includes in its activities exhibits of agriculture, industry, horticulture, native plants, livestock, and related domestic arts produced in the community, region, or state;" (currently an "agricultural and industrial fair" means a fair, the major focus of which is displays, exhibitions, demonstrations, contests or promotions of agricultural or industrial concern to the region in which the fair is located, or any fair which, before July 1, 1980, has received a grant under this chapter;"). Identical to SB 378, page 119.

Does not provide for an effective date (becomes law 90 days after Governor signs bill).

Introduced January 24 and referred to Resources, Finance.

Motorcycle
Helmets
(mandatory)

HOUSE BILL NO. 539, by Reps. Cato and M. M. Miller. Would require a person driving, operating, or riding as a passenger on a motorcycle, motor-driven cycle, or snowmobile to wear an approved motorcycle helmet. Does not provide for an effective date (becomes law 90 days after Governor signs bill).

Introduced January 25 and referred to State Affairs.

Contractor's
Payment Bond
(claims
against)

HOUSE BILL NO. 540, by Rep. Bettisworth. Relates to the rights of persons who furnish labor or materials. Under this bill a person having direct contractual relationships with a subcontractor but no contractual relationship express or implied with the contractor furnishing the payment bond has a right of action on the payment bond upon giving written notice to the contractor within 10 days from the first date on which the person performed labor or furnished material for which the claim is made (under current law the person has a right to action within 90 days from the last date on which the person performed labor or furnished material). Requires the notice to state the name of the person to whom the material was furnished or for whom the labor was performed, ". . . identify the public building project or public work project for which the material was furnished or for which the labor was performed, describe the material furnished and to be furnished or the work performed and to be performed, and state the date on which the material was first furnished or the work was first performed. . . ." (currently the notice must state "with substantial accuracy the amount claimed and the name of the person to whom the material was furnished or for whom the labor was performed--underlined language added to current law by this bill). Does not provide for an effective date (becomes law 90 days following Governor's signature).

Alaska State Legislature

IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4949



BOX 142
EAGLE RIVER, ALASKA
99577

RECEIVED FEB 9 1984

Representative Randy Phillips

HOUSE DISTRICT 15

MEMORANDUM

TO: The Honorable John Cowdery
Chairman, House Labor & Commerce Committee

FROM: Representative Randy Phillips *R.E.P.*

DATE: February 8, 1984

RE: House Bill 569
Re: Cemetery Associations

Ken Johnson of your office recently asked for background information regarding the captioned bill, which is set for hearing next Tuesday, February 14, 1984.

I am attaching a copy of a letter I received from the Chairman of the Special Committee of Angelus Memorial Park Association in Anchorage. As you can see from his letter, the Association wishes to build a building to house much-needed administration and service-related activities. Under present law, the Association could only accomplish the building of such a structure by selling off a portion of the land it owns; in other words, present statutes prohibit the Association from financing such structures. Additionally, under present statutes, a cemetery association cannot incorporate as a non-profit association. House Bill 569 would permit this.

I have asked Legal Services to prepare a sectional analysis of the bill and I hope to have it to your office before the hearing; however, I have been advised that due to the personal bill deadline, such sectional analysis may have to wait. I have notified Mr. Buswell of the meeting and he has indicated that the Association will either send someone to Juneau to testify or will submit written testimony.

If you have any questions, please contact me.

Enclosure

Angelus Memorial Park

ALASKA'S FIRST MEMORIAL PARK CEMETERY

PHONE 344-1311
OFFICE HOURS:
10 A.M. TO 3 P.M.

January 19, 1984

CEMETERY
AND
OFFICE
ON KLATT ROADMr. Randy Phillips
State Legislator
Juneau, Alaska

Dear Mr. Phillips:

The Board of Trustees of Angelus Memorial Park Association approved a motion to present to the Legislature, amendments to the Alaska Cemetery Statutes, pertaining to non-profit cemetery associations. A committee was appointed consisting of Mr. Alvah C. Buswell, Jr. and Mr. Robert F. Shary, who are board members and Mr. Sidney Abbott, park manager, were to work on the proposed amendments of the present statutes.

The present Alaska non-profit cemetery statutes were patterned after the Oregon Statutes many years ago before Statehood and are badly out dated. The State of Oregon has since amended their Statutes, twice, and now Alaska needs to do the same, so that a non-profit cemetery can better serve the community. To our knowledge Angelus is the only non-profit cemetery in the state.

Enclosed are copies of Oregon Statutes that have been amended and a copy of our proposed revisions to the Alaska State Cemetery Statutes.

The association really needs these changes in order to grow, as it is now, we can not serve the community as a modern cemetery, because of the way the laws are written. The public wants all the services a cemetery is suppose to supply, such as, a columbarium for inurnment of cremated remains, mausoleum, niche and storage vault. Also we can not even build a much needed administartion building. We now have to rent a very inadequate building for an office. The association has never had a maintenance building. The present laws prevent our growth.

The reason we included association and or corperation is that Angelus intends to incorporate in order to help lessen the personal individual liability of the board members. Angelus board members are non paid.

Sincerely,
Special Committee
Mr. Alvah C. Buswell, Jr.
Chairman

ANGELUS MEMORIAL PARK ASSOCIATION

Enclosures

This material has also been sent to Representative Joe Hayes

ALASKA STATUTES

CHAPTER 30. Cemetery Associations

Sec. 10.30.070. Creation of irreducible fund. The association may by its bylaws provide that a stated percentage of the money realized from the sale of lots and donations (AND OTHER SOURCES OF REVENUE) constitutes an irreducible fund, which may be invested in the manner or loaned upon the securities the association or the trustees consider proper. The interest or income from the irreducible fund provided for in any bylaw or as much as may be necessary shall be devoted exclusively to the preservation and embellishment of the (CEMETERY) grounds, buildings and property of the association and or corporation and the lots and space in buildings or grounds sold to the members of the association and or corporation, or to the payment of the interest or principal of the debts authorized by the association for the purchase of land, equipment, erecting buildings and improvements. Where a bylaw has been enacted for the creation of an irreducible fund, (IT) the set amount or percentage stated in the bylaw, may not be amended except for the purpose of increasing the fund. (36-5-5 ACLA 1949)

I was told to use caps &
put in brackets those
words to be deleted and
to underline all new
wording.

Office

ALASKA STATUTES

CHAPTER 30. Cemetery Associations

Sec. 10.30.090. Debts of association and or corporation. A cemetery association and or corporation may (NOT) contract debts in anticipation of future receipts, (EXCEPT) for the (ORIGINAL) purchase of cemetery land and or for other cemetery purposes, the laying out and embellishment of the grounds and avenues of the cemetery, repairing their buildings, erection of new buildings, mausoleums, columbariums, and purchasing necessary equipment, for which debts the association may issue bonds or notes. The association may secure these debts by mortgage upon its lands, except lots which have been conveyed to the members of the Association, or by security interest in no more than 50% of the irreducib. fund. (36-5-5 ACLA 1949).

ALASKA STATUTES

CHAPTER 30. Cemetery Associations.

Sec. 10.30.125 Definition of "Cemetery Lot", one or more than one adjoining, lot, plot, space, grave, niche, mausoleum crypt, vault, and columbarium, for the interment of human remains.

ry or creation from execution. A new and existing or owning and existing dead bodies, incinerate remains by gift or otherwise the sole purpose crematory and remains. Such execution and appropriation for portions of such thereon may exclusively for with a view to h corporation. purposes shall and already corporation is all thereof may be more than 20 held for the he burial of sed 30 acres. such purposes lly used, the d by asking at any one

tions on corporation purposes of cemetery or and caring ts bylaws, the money rial space, s or other an irreduc- e creation- ended to

direct than reducible? departed 172, shall units establis bank of he trust directors le funds

the bank or trust company shall be governed by the provisions of ORS 128.057 and shall not be required to invest the money according to the list approved by the State Treasurer. An officer of the corporation shall file with the Secretary of State on or before April 15 of each year a verified statement in duplicate containing the same information pertaining to the irreducible fund as provided in ORS 27.810 (2) regarding endowment care funds. The Secretary of State may require the corporation to file, as often as he considers it to be necessary, a detailed report of the conditions and assets of the irreducible fund.

(3) The interest or income arising from the irreducible fund provided for in this section or by any bylaws, or so much thereof as is necessary, shall be devoted exclusively to the preservation and embellishment of the grounds, buildings and property of the corporation and the lots and space in buildings or grounds sold to the members of the corporation, or to the payment of the interest or principal of the debts authorized by subsection (5) of this section for the purchase of land, erecting buildings, and improvements. Any surplus thereof not needed or used for such purposes shall be invested as provided in this section and shall become part of the irreducible fund.

(4) After paying for the land and the erection of the original buildings and improvements thereon, all the future receipts and income of the corporation subject to the provisions in this section relating to the creation of an irreducible fund, whether from the sale of lots and burial space, cremation of bodies, donations, gifts and other sources, shall be applied exclusively to laying out, preserving, protecting, embellishing and beautifying the cemetery or the crematory and grounds thereof, and the avenues leading thereto, and to the erection of such buildings and improvements as may be necessary or convenient for cemetery or crematory purposes, and to pay the necessary expenses of the corporation.

(5) No debts shall be contracted by such corporation in anticipation of any future receipts, except for originally purchasing the lands authorized to be purchased by it, laying out and embellishing the grounds and avenues, erecting buildings and vaults on such land, and improving them for the purpose of the corporation. The corporation may issue bonds or notes for debts so contracted and may secure them by way of mortgage upon any of its lands, buildings, property and improvements excepting lots or space conveyed to the

members. (1969 c.580 §96; 1971 c.225 §11)

61.765 Selling land unsuited for burials. If in the board of directors' opinion, any portion of the lands of a nonprofit corporation organized and existing solely for the purposes of either owning or operating a cemetery or the cremation of dead bodies and the burial and care of incinerate remains is unsuitable for burial purposes or other purposes of the corporation, the board of directors may sell such portion and apply the proceeds to the general purposes of such corporation in the same proportion and manner as provided by ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950. (1959 c.580 §97)

61.770 Burial lots or space; use, exemption from taxation, execution and liens; lien for purchase price of gravestone. Burial lots or space for burial of incinerate remains in buildings or grounds sold by a nonprofit corporation organized and existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains shall be for the sole purpose of interment or deposit and safekeeping of incinerate remains. Such lots or space shall be exempt from taxation, execution, attachment or other lien or process, if used as intended by the purchaser thereof from such corporation, or his assigns or representatives, exclusively for burial purposes, and in no wise with a view to profit. The vendor of any gravestone, however, shall not be prevented from having and enforcing a lien thereon for all or part of its purchase price. If a suit is brought to enforce such a lien, the decree therein is enforceable thereafter; and, for the purpose of enabling the lien to be had and enforced, the gravestone shall be deemed personal property and may be severed and removed, under execution and order of sale, from the lot where it is situated and may be sold in the same manner as any other personal property. (1969 c.580 §98)

61.775 Recording plan; power to improve and regulate grounds. A nonprofit corporation organized and existing solely for the purposes of owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains shall cause a plan of its land and grounds and of the lots laid out by it and of the niches or burial space in the buildings erected thereon to be made and recorded in the county in which such grounds and land are located, such lots or

Oregon

**SPECIAL PROVISIONS
RELATING TO ORS 97.010 TO
97.040, 97.110 TO 97.450, 97.510
TO 97.730, 97.810 TO 97.920 and
97.990**

97.010 Definitions for ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990. As used in ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990:

(1) "Human remains" or "remains" means the body of a deceased person in any stage of decomposition or after cremation.

(2) "Cemetery" means any place dedicated to and used, or intended to be used, for the permanent interment of human remains.

(3) "Burial park" means a tract of land for the burial of human remains in the ground used, or intended to be used, and dedicated for cemetery purposes.

(4) "Mausoleum" means a structure for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated for cemetery purposes.

(5) "Crematory" means a structure containing a retort for the reduction of bodies of deceased persons to cremated remains.

(6) "Columbarium" means a structure or room containing niches for permanent inurnment of cremated remains in a place used, or intended to be used, and dedicated for cemetery purposes.

(7) "Interment" means the disposition of human remains by cremation, inurnment, entombment or burial.

(8) "Cremation" means the reduction of a body of a deceased person to cremated remains in a crematory.

(9) "Inurnment" means placing cremated remains in an urn and depositing it in a niche.

(10) "Entombment" means the placement of human remains in a crypt or vault.

(11) "Burial" means the placement of human remains in a grave.

(12) "Grave" means a space of ground in a burial park used, or intended to be used, for burial of the remains of one person.

(13) "Crypt" or "vault" means a space in a mausoleum of sufficient size used, or intended to be used, to entomb uncremated human remains.

(14) "Niche" is a recess in a columbarium used, or intended to be used, for the interment

of the cremated remains of one or more persons.

(15) "Cemetery authority" includes cemetery corporation, association, corporation sole or other person or persons owning or controlling cemetery lands or property.

(16) "Cemetery association" means any corporation or association authorized by its articles to conduct any or all the businesses of a cemetery, but does not include a corporation sole or a charitable, eleemosynary association or corporation.

(17) "Cemetery business," "cemetery businesses" and "cemetery purposes" are used interchangeably and mean any business and purpose requisite or incident to, or necessary for establishing, maintaining, operating, improving or conducting a cemetery, interring human remains, and the care, preservation and embellishment of cemetery property.

(18) "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association.

(19) "Lot," "plot" or "burial space" means space in a cemetery owned by one or more individuals, an association or fraternal or other organization and used, or intended to be used, for the permanent interment therein of the remains of one or more deceased persons. Such terms include and apply with like effect to one, or more than one, adjoining grave, crypt, vault or niche.

(20) The term "plot owner" or "owner" means any person in whose name a burial plot stands as owner of the right of sepulture therein in the office of the cemetery authority, or who holds from such cemetery authority a conveyance of the right of sepulture or a certificate of ownership of the right of sepulture in a particular lot, plot or space.

(21) "Endowment care" means the general care and maintenance of developed portions of a cemetery and memorials erected thereon financed from the income of a trust fund established and maintained pursuant to the provisions of ORS 97.810 to 97.860. Endowment care cemeteries owned by a city or a county may supplement their general care and maintenance trust funds from general revenues.

(22) "Special care" is any care in excess of endowed care in accordance with the specific directions of any donor of funds for such purposes. (Amended by 1955 c.545 §1; 1965 c.396 §1)

61.738 Procedure for revoking certificate of authority. ORS 57.735, relating to revocation of certificate of authority, is applicable to nonprofit corporations. (1963 c.492 §38 (enacted in lieu of 61.735))

61.740 (Renumbered 61.984)

61.741 Application to corporation authorized to transact business in this state on December 31, 1959. Foreign corporations which are duly authorized to transact business in this state on December 31, 1959, for a purpose or purposes for which a corporation might secure such authority under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950, and from December 31, 1959, such corporations shall be subject to all the limitations, restrictions, liabilities and duties prescribed herein for foreign corporations procuring certificates of authority to transact business in this state under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950. (1959 c.580 §90)

61.745 Transacting business without certificate of authority. (1) No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state, until such corporation shall have obtained a certificate of authority. No action, suit or proceeding shall be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all its assets.

(2) The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state. (1959 c.580 §81)

CEMETERIES AND CREMATORIES

61.755 Lands of cemetery or crematory corporation; exemption from execution, taxation and condemnation. A nonprofit corporation organized and existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains, may purchase or take, by gift or devise, and own and hold lands for the sole purpose of either a cemetery or a crematory and burial place for incinerate remains. Such lands shall be exempt from execution and taxation, and from any appropriation for public purposes, and lots or portions of such land and space in any buildings thereon may be sold, if intended to be used exclusively for burial purposes, and in no wise with a view to the profit of the members of such corporation. The land so held for cemetery purposes shall not exceed 600 acres, but if the land already held for such purpose by the corporation is all practically used, the amount thereof may be increased by adding thereto not more than 20 acres at any one time. The land so held for the purposes of a crematory and the burial of incinerate remains shall not exceed 30 acres, but if the land already held for such purpose by the corporation is all practically used, the amount thereof may be increased by adding thereto not more than 10 acres at any one time. (1959 c.580 §95)

61.760 Revenues; restrictions on uses thereof. (1) A nonprofit corporation organized or existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains may, by its bylaws, provide that a stated percentage of the money received from the sale of lots and burial space, cremation of bodies, donations, gifts or other sources of revenue shall constitute an irreducible fund. Any bylaw enacted for the creation of the irreducible fund cannot be amended to reduce the fund.

(2) The board of directors may direct the investment of the money in the irreducible fund, but all investments of money deposited in the fund on or after January 1, 1972, shall be in securities in classes and amounts approved by the State Treasurer and published in a list pursuant to ORS 97.820. If a bank or trust company qualified to engage in the trust business is directed by the board of directors to invest the money in the irreducible fund,

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HEALTH AND SAFETY CODE

DIVISION 7. DEAD BODIES

PART 1. GENERAL PROVISIONS

CHAPTER 1. DEFINITIONS

7000. The definitions in this chapter apply to this division and to Divisions 8 and 9 of this code.

7001. "Human remains" or "remains" means the body of a deceased person, and includes the body in any stage of decomposition and cremated remains.

7002. "Cremated remains" means human remains after incineration and necessary processing under Section 7054.1 in a crematory.

7003. "Cemetery" means any one, or a combination of more than one, of the following, in a place used, or intended to be used, and dedicated, for cemetery purposes:

- (a) A burial park, for earth interments.
- (b) A mausoleum, for crypt or vault interments.
- (c) A crematory, or a crematory and columbarium, for cinerary interments.

7004. "Burial park" means a tract of land for the burial of human remains in the ground, used or intended to be used, and dedicated, for cemetery purposes.

7005. Except in Part 5 of Division 8 of this code, "mausoleum" means a structure or building for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated, for cemetery purposes.

7006. "Crematory" means a building or structure containing one or more furnaces for the reduction of bodies of deceased persons to cremated remains.

7007. Except in Part 5 of Division 8 of this code, "columbarium" means a structure, room, or other space in a building or structure containing niches for inurnment of cremated human remains in a place used, or intended to be used, and dedicated, for cemetery purposes.

7008. "Crematory and columbarium" means a building or structure containing both a crematory and columbarium.

7009. "Interment" means the disposition of human remains by inurnment, entombment, or burial in a cemetery or, in the case of cremated remains, by inurnment, entombment, burial, or burial at sea as provided in Section 7117.

7010. "Cremation" means the reduction of the body of a deceased person to cremated remains in a crematory and the placement of the cremated remains in a grave, vault or niche or burial at sea as provided in Section 7117 of this code.

7011. "Inurnment" means placing cremated remains in an urn and placing it in a niche.

7012. "Entombment" means the placement of human remains in a crypt or vault.

7013. "Burial" means the placement of human remains in a grave.

7014. "Grave" means a space of ground in a burial park, used, or intended to be used, for burial.

7015. "Crypt" or "vault" means a space in a mausoleum of sufficient size, used or intended to be used, to entomb uncremated human remains.

7016. "Niche" means a space in a columbarium used, or intended to be

used, for inurnment of cremated human remains.

7017. "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains.

7018. "Cemetery authority" includes cemetery association, corporation sole, or other person owning or controlling cemetery lands or property.

7019. "Cemetery corporation," "cemetery association," or "cemetery corporation or association" mean any corporation now or hereafter organized which is or may be authorized by its articles to conduct any one or more or all of the businesses of a cemetery, but do not mean or include a corporation sole.

7020. "Cemetery business," "cemetery businesses," and "cemetery purposes" are used interchangeably and mean any and all business and purposes requisite to, necessary for, or incident to, establishing, maintaining, operating, improving, or conducting a cemetery, interring human remains, and the care, preservation, and embellishment of cemetery property, including, but not limited to, any activity or business designed for the benefit, service, convenience, education, or spiritual uplift of property owners or persons visiting the cemetery.

7021. "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association.

7022. "Lot," "plot," or "interment plot" means space in a cemetery, used or intended to be used for the interment of human remains. Such terms include and apply to one or more than one adjoining graves, one or more than one adjoining crypts or vaults, or one or more than one adjoining niches.

7023. "Plot owner," "owner," or "lot proprietor" means any person in whose name an interment plot stands of record as owner, in the office of a cemetery authority.

7024. "Permit for Disposition of Human Remains" includes "burial permit" and is a permit, issued pursuant to law, for the interment, disinterment, removal, reinterment or transportation of human remains.

DIVISION 8. CEMETERIES

PART 1. GENERAL PROVISIONS

CHAPTER 1. CEMETERY DEFINED

8100. Six or more human bodies being buried at one place constitute the place a cemetery.

CHAPTER 2. VANDALISM

8101. (a) Every person is guilty of a misdemeanor and punishable by a fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not exceeding one year, or by both, who maliciously does any of the following:

- (1) Destroys, cuts, mutilates, effaces, or otherwise injures, tears down, or removes any tomb, monument, memorial, or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any inclosure for the protection of a cemetery or any property in a cemetery.
- (2) Obliterates any grave, vault, niche, or crypt.
- (3) Destroys, cuts, breaks or injures any building, statuary, ornamentation, tree, shrub, or plant within the limits of a cemetery.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

February 3, 1984

FEB 03 1984

The Honorable Joe Hayes
Speaker of the House
Alaska State House of
Representatives
Pouch V
Juneau, AK 99811

Re: House Bill 569
relating to nonprofit
cemetery corporations

Dear Representative Hayes:

You have asked the Consumer Protection section of the Attorney General's office to review House Bill _____ regarding nonprofit cemeteries, and to inform you whether the Department of Law has any difficulties with the overall concept behind the bill, specifically whether it would pose a threat of injury to the consuming public dealing with nonprofit cemeteries in the state.

My understanding of the intent behind the bill is to modernize and clarify the 1949 Nonprofit Cemetery Association statute presently in effect. The bill would allow nonprofit cemetery associations to be incorporated as nonprofit corporations under AS 10.20 and would generally give the nonprofit cemetery association or corporation more flexibility in how it invests the monies in its irreducible fund, how it spends its other revenues and how and for what purposes it may contract debts. The crucial part of this updating was to add a definition of "cemetery lot" to include not only grave spaces but also mausoleum crypts, or crematory niches, since those items are often the preferred choice of modern consumers.

The Consumer Protection section in the Attorney General's office is not opposed to this bill and does not think that it will cause any harm to the public. If anything, the bill will allow those nonprofit cemetery associations operating in the state to better serve their own membership. Since these associations are like cooperatives, owned and controlled by the members, there is little danger of overreaching or abuse of the corporation's cemetery assets. The changes in this statute will only further the worthy purposes of the cemetery associations as

they will be able to respond to the needs of their own association for the erection of new buildings, acquisition of new lands or equipment or development of new cemetery services such as mausoleums.

The last section of the bill also adds a broader definition of "cemetery lot" to the Alaska Unfair Trade Practices and Consumer Protection Act. This definition refers to AS 45.50.471(b)(24), which regulates the sales of funeral or burial goods or services before "need" (i.e. before death). Under 471(b)(24) as it presently exists, a corporation or association making advance sales of funeral goods or services is required to deposit the consumers' monies in a trust fund pending actual use by the consumer. There is presently an exemption from trust deposit for the amount paid for the actual cemetery lot and grave marker. By expanding the definition of cemetery lot, an advance purchase of a mausoleum crypt, or a crematorium deposit space of some sort, would also be exempt from this trust deposit requirement.

The Department of Law does not oppose this change, since it seems reasonable that this broader definition of cemetery lot be adopted to meet with modern day marketing of burial goods such as crematory crypts. The Consumer Protection section does not believe that broadening this definition will lead to any abuse of the advance-need funeral statute, despite what members of the public or Legislature might fear because of the recent debacle with the Valley Memorial Garden Cemetery near Palmer. (Unfortunately, most of the advance-need burial sales made by that cemetery were made before the effective date of AS 45.471(b)(24), and it was the lack of any trust requirement for any portion of the advance-need sales price which allowed the abusive dissipation of those funds by the for-profit cemetery corporation known as Valley Memorial Gardens, Inc.)

If legislators have a concern that the purchase monies from consumers who purchase cemetery lots or crematory crypts in advance need further protection, a further sentence could be added to 471(b)(24) to the effect that cemetery lots (as more broadly defined by this bill) are exempt if they are in fact, upon payment of the purchase price, "transferred" from the seller to the consumer. Although transfer is not usually made in the sense of legal property "title" transfer, designation of the space as a consumer's by the placement of a grave stone marker already marked with the consumer's name and designation of the plot or crypt as the consumer's on the official map of the cemetery should be sufficient protection.

Honorable Joe Hayes
Speaker of the House

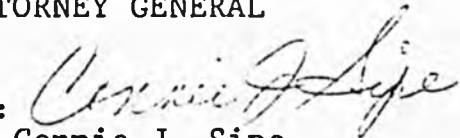
February 3, 1984
Page 3

Overall, the Attorney General's office does not see significant problems with the enactment of House Bill _____.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:



Connie J. Sipe
Assistant Attorney General
Consumer Protection Section

Alaska State Legislature




Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

February 8, 1984

To: Labor and Commerce Committee
From: Joe L. Hayes
Speaker of the House 
Re: HB 569/ cemetery associations

The following information is provided as background for this legislation.

During the past year, the Angelus Memorial Park Association in Anchorage acquired the Valley Memorial Garden cemetery in Palmer. Valley Memorial was in bankruptcy proceedings and many community residents feared that this cemetery would be lost as would many relatives buried in the cemetery.

After Angelus had come to the rescue, so to speak, of Valley Memorial Garden, it was discovered that the cemetery had never been properly surveyed, burials had been improperly made and the entire 7½ acre facility was in need of substantial capital improvement. However, state law relating to cemeteries is extremely outdated and is very restrictive as to what money and assets possessed by a cemetery association may be used for such improvements or as collateral.

The legislation is intended to remedy that situation and allow non-profit cemetery associations as Angelus more flexibility in using their funds to serve the public. This bill will allow the cemetery association to better serve its clients. As the letter from the Attorney General's office provided as backup indicates, these associations act like cooperatives and there would be little danger of abusing the corporation's assets.

In general, will allow cemetery associations to provide for the desires of today's community in the area of cemetery services.

-2-

We suggest an amendment which has been recommended by the Attorney General's office.

* Add a section 13 to read

AS 45.50.561 is amended by adding a new paragraph to read:

(9) "cemetery lot" means a lot, plot, space, grave, niche, mausoleum, crypt, vault or columbarium, used or intended to be used for the interment of human remains.

This is an amendment to the unfair trade practices statutes referred to in the second page of the letter provided as further backup.

For further background, I would suggest the committee request testimony from Connie Sipe in the Consumer Protection section of the Attorney General's office. She has been instrumental in the drafting of this legislation.

Angelus Memorial Park

ALASKA'S FIRST MEMORIAL PARK CEMETERY

PHONE 344-1311
OFFICE HOURS:
10 A.M. TO 3 P.M.

January 19, 1984

CEMETERY
AND
OFFICE
ON KLATT ROADRepresentative Joe Hayes
Alaska State Legislature
Juneau, Alaska

Atten: Mr. Jeff Day:

The Board of Trustees of Angelus Memorial Park Association approved a motion to present to the Legislature, amendments to the Alaska Cemetery Statutes, pertaining to non-profit cemetery associations. A committee was appointed consisting of Mr. Alvah C. Buswell, Jr. and Mr. Robert F. Shary, who are board members and Mr. Sidney Abbott, park manager, to work on the proposed amendments of the present statutes.

The present Alaska non-profit cemetery statutes were patterned after the Oregon Statutes many years ago before Statehood and are badly out dated. The State of Oregon has since amended their Statutes, twice, and now Alaska needs to do the same, so that a non-profit cemetery can better serve the community. To our knowledge Angelus is the only non-profit cemetery in the state.

Enclosed are copies of Oregon Statutes that have been amended and a copy of our proposed revisions to the Alaska State Cemetery Statutes.

The association really needs these changes in order to grow, as it is now, we can not serve the community as a modern cemetery, because of the way the laws are written. The public wants all the services a cemetery is suppose to supply, such as, a columbarium for inurnment of cremated remains, mausoleum, niches and storage vault. Also we can not even build a much needed administration building. We now have to rent a very inadequate building for an office. The association has never had a maintenance building. The present laws prevent our growth.

The reason we included association and or corporation in our amendments is that Angelus intends to incorporate in order to help lessen the personal individual liability of the board members. Angelus board members are non-paid.

Sincerely,
Mr. Douglas W. Brown
President of Board of Trustees

ANGELUS MEMORIAL PARK ASSOCIATION

Enclosures

This material has also been sent to Representative Randy Phillips

JAN 25 1984

Cregon

the bank or trust company shall be governed by the provisions of ORS 128.057 and shall not be required to invest the money according to the list approved by the State Treasurer. An officer of the corporation shall file with the Secretary of State on or before April 15 of each year a verified statement in duplicate containing the same information pertaining to the irreducible fund as provided in ORS 97.910 (2) regarding endowment care funds. The Secretary of State may require the corporation to file, as often as he considers it to be necessary, a detailed report of the conditions and assets of the irreducible fund.

(3) The interest or income arising from the irreducible fund provided for in this section or by any bylaws, or so much thereof as is necessary, shall be devoted exclusively to the preservation and embellishment of the grounds, buildings and property of the corporation and the lots and space in buildings or grounds sold to the members of the corporation, or to the payment of the interest or principal of the debts authorized by subsection (5) of this section for the purchase of land, erecting buildings, and improvements. Any surplus thereof not needed or used for such purposes shall be invested as provided in this section and shall become part of the irreducible fund.

(4) After paying for the land and the erection of the original buildings and improvements thereon, all the future receipts and income of the corporation subject to the provisions in this section relating to the creation of an irreducible fund, whether from the sale of lots and burial space, cremation of bodies, donations, gifts and other sources, shall be applied exclusively to laying out, preserving, protecting, embellishing and beautifying the cemetery or the crematory and grounds thereof, and the avenues leading thereto, and to the erection of such buildings and improvements as may be necessary or convenient for cemetery or crematory purposes, and to pay the necessary expenses of the corporation.

(5) No debts shall be contracted by such corporation in anticipation of any future receipts, except for originally purchasing the lands authorized to be purchased by it, laying out and embellishing the grounds and avenues, erecting buildings and vaults on such land, and improving them for the purpose of the corporation. The corporation may issue bonds or notes for debts so contracted and may secure them by way of mortgage upon any of its lands, buildings, property and improvements excepting lots or space conveyed to the

members. [1969 c.580 §96; 1971 c.228 §1]

61.765 Selling land unsuited for burials. If in the board of directors' opinion, any portion of the lands of a nonprofit corporation organized and existing solely for the purposes of either owning or operating a cemetery or the cremation of dead bodies and the burial and care of incinerate remains is unsuitable for burial purposes or other purposes of the corporation, the board of directors may sell such portion and apply the proceeds to the general purposes of such corporation in the same proportion and manner as provided by ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950. [1959 c.580 §97]

61.770 Burial lots or space; use, exemption from taxation, execution and liens; lien for purchase price of gravestone. Burial lots or space for burial of incinerate remains in buildings or grounds sold by a nonprofit corporation organized and existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains shall be for the sole purpose of interment or deposit and safekeeping of incinerate remains. Such lots or space shall be exempt from taxation, execution, attachment or other lien or process, if used as intended by the purchaser thereof from such corporation, or his assigns or representatives, exclusively for burial purposes, and in no wise with a view to profit. The vendor of any gravestone, however, shall not be prevented from having and enforcing a lien thereon for all or part of its purchase price. If a suit is brought to enforce such a lien, the decree therein is enforceable thereafter; and, for the purpose of enabling the lien to be had and enforced, the gravestone shall be deemed personal property and may be severed and removed, under execution and order of sale, from the lot where it is situated and may be sold in the same manner as any other personal property. [1969 c.580 §98]

61.775 Recording plan; power to improve and regulate grounds. A nonprofit corporation organized and existing solely for the purposes of owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains shall cause a plan of its land and grounds and of the lots laid out by it and of the niches or burial space in the buildings erected thereon to be made and recorded in the county in which such grounds and land are located, such lots or

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**SPECIAL PROVISIONS
RELATING TO ORS 97.010 TO
97.040, 97.110 TO 97.450, 97.510
TO 97.730, 97.810 TO 97.920 and
97.990**

97.010 Definitions for ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990. As used in ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990:

(1) "Human remains" or "remains" means the body of a deceased person in any stage of decomposition or after cremation.

(2) "Cemetery" means any place dedicated to and used, or intended to be used, for the permanent interment of human remains.

(3) "Burial park" means a tract of land for the burial of human remains in the ground used, or intended to be used, and dedicated for cemetery purposes.

(4) "Mausoleum" means a structure for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated for cemetery purposes.

(5) "Crematory" means a structure containing a retort for the reduction of bodies of deceased persons to cremated remains.

(6) "Columbarium" means a structure or room containing niches for permanent inurnment of cremated remains in a place used, or intended to be used, and dedicated for cemetery purposes.

(7) "Interment" means the disposition of human remains by cremation, inurnment, entombment or burial.

(8) "Cremation" means the reduction of a body of a deceased person to cremated remains in a crematory.

(9) "Inurnment" means placing cremated remains in an urn and depositing it in a niche.

(10) "Entombment" means the placement of human remains in a crypt or vault.

(11) "Burial" means the placement of human remains in a grave.

(12) "Grave" means a space of ground in a burial park used, or intended to be used, for burial of the remains of one person.

(13) "Crypt" or "vault" means a space in a mausoleum of sufficient size used, or intended to be used, to entomb uncremated human remains.

(14) "Niche" is a recess in a columbarium used, or intended to be used, for the interment

of the cremated remains of one or more persons.

(15) "Cemetery authority" includes cemetery corporation, association, corporation sole or other person or persons owning or controlling cemetery lands or property.

(16) "Cemetery association" means any corporation or association authorized by its articles to conduct any or all the businesses of a cemetery, but does not include a corporation sole or a charitable, eleemosynary association or corporation.

(17) "Cemetery business," "cemetery businesses" and "cemetery purposes" are used interchangeably and mean any business and purpose requisite or incident to, or necessary for establishing, maintaining, operating, improving or conducting a cemetery, interring human remains, and the care, preservation and embellishment of cemetery property.

(18) "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association.

(19) "Lot," "plot" or "burial space" means space in a cemetery owned by one or more individuals, an association or fraternal or other organization and used, or intended to be used, for the permanent interment therein of the remains of one or more deceased persons. Such terms include and apply with like effect to one, or more than one, adjoining grave, crypt, vault or niche.

(20) The term "plot owner" or "owner" means any person in whose name a burial plot stands as owner of the right of sepulture therein in the office of the cemetery authority, or who holds from such cemetery authority a conveyance of the right of sepulture or a certificate of ownership of the right of sepulture in a particular lot, plot or space.

(21) "Endowment care" means the general care and maintenance of developed portions of a cemetery and memorials erected thereon financed from the income of a trust fund established and maintained pursuant to the provisions of ORS 97.810 to 97.860. Endowment care cemeteries owned by a city or a county may supplement their general care and maintenance trust funds from general revenues.

(22) "Special care" is any care in excess of endowed care in accordance with the specific directions of any donor of funds for such purposes. (Amended by 1955 c 545 §1; 1965 c 396 §1)

Oregon

61.736 Procedure for revoking certificate of authority. ORS 57.735, relating to revocation of certificate of authority, is applicable to nonprofit corporations. [1963 c.492 §36 (enacted in lieu of 61.735)]

61.740 (Renumbered 61.984)

61.741 Application to corporation authorized to transact business in this state on December 31, 1959. Foreign corporations which are duly authorized to transact business in this state on December 31, 1959, for a purpose or purposes for which a corporation might secure such authority under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950, and from December 31, 1959, such corporations shall be subject to all the limitations, restrictions, liabilities and duties prescribed herein for foreign corporations procuring certificates of authority to transact business in this state under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950. 1959 c.580 §80(1)

61.745 Transacting business without certificate of authority. (1) No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state, until such corporation shall have obtained a certificate of authority. No action, suit or proceeding shall be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all its assets.

(2) The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state. [1959 c.580 §81]

CEMETERIES AND CREMATORIES

61.755 Lands of cemetery or crematory corporation; exemption from execution, taxation and condemnation. A nonprofit corporation organized and existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains, may purchase or take, by gift or devise, and own and hold lands for the sole purpose of either a cemetery or a crematory and burial place for incinerate remains. Such lands shall be exempt from execution and taxation, and from any appropriation for public purposes, and lots or portions of such land and space in any buildings thereon may be sold, if intended to be used exclusively for burial purposes, and in no wise with a view to the profit of the members of such corporation. The land so held for cemetery purposes shall not exceed 600 acres, but if the land already held for such purpose by the corporation is all practically used, the amount thereof may be increased by adding thereto not more than 20 acres at any one time. The land so held for the purposes of a crematory and the burial of incinerate remains shall not exceed 30 acres, but if the land already held for such purpose by the corporation is all practically used, the amount thereof may be increased by adding thereto not more than 10 acres at any one time. [1959 c.580 §95]

61.760 Revenues; restrictions on uses thereof. (1) A nonprofit corporation organized or existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains may, by its bylaws provide that a stated percentage of the money received from the sale of lots and burial space, cremation of bodies, donations, gifts or other sources of revenue shall constitute an irreducible fund. Any bylaw enacted for the creation of the irreducible fund cannot be amended to reduce the fund.

(2) The board of directors may direct the investment of the money in the irreducible fund, but all investments of money deposited in the fund on or after January 1, 1972, shall be in securities in classes and amounts approved by the State Treasurer and published in a list pursuant to ORS 97.820. If a bank or trust company qualified to engage in the trust business is directed by the board of directors to invest the money in the irreducible fund,

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HEALTH AND SAFETY CODE

DIVISION 7. DEAD BODIES

PART 1. GENERAL PROVISIONS

CHAPTER 1. DEFINITIONS

7000. The definitions in this chapter apply to this division and to divisions 8 and 9 of this code.

7001. "Human remains" or "remains" means the body of a deceased person, and includes the body in any stage of decomposition and cremated remains.

7002. "Cremated remains" means human remains after incineration and necessary processing under Section 7054.1 in a crematory.

7003. "Cemetery" means any one, or a combination of more than one, of the following, in a place used, or intended to be used, and dedicated, for cemetery purposes:

(a) A burial park, for earth interments.

(b) A mausoleum, for crypt or vault interments.

(c) A crematory, or a crematory and columbarium, for cinerary interments.

7004. "Burial park" means a tract of land for the burial of human remains in the ground, used or intended to be used, and dedicated, for cemetery purposes.

7005. Except in Part 5 of Division 8 of this code, "mausoleum" means a structure or building for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated, for cemetery purposes.

7006. "Crematory" means a building or structure containing one or more furnaces for the reduction of bodies of deceased persons to cremated remains.

7007. Except in Part 5 of Division 8 of this code, "columbarium" means a structure, room, or other space in a building or structure containing niches for inurnment of cremated human remains in a place used, or intended to be used, and dedicated, for cemetery purposes.

7008. "Crematory and columbarium" means a building or structure containing both a crematory and columbarium.

7009. "Interment" means the disposition of human remains by inurnment, entombment, or burial in a cemetery or, in the case of cremated remains, by inurnment, entombment, burial, or burial at sea as provided in Section 7117.

7010. "Cremation" means the reduction of the body of a deceased person to cremated remains in a crematory and the placement of the cremated remains in a grave, vault or niche or burial at sea as provided in Section 7117 of this code.

7011. "Inurnment" means placing cremated remains in an urn and placing it in a niche.

7012. "Entombment" means the placement of human remains in a crypt or vault.

7013. "Burial" means the placement of human remains in a grave.

7014. "Grave" means a space of ground in a burial park, used, or intended to be used, for burial.

7015. "Crypt" or "vault" means a space in a mausoleum of sufficient size, used or intended to be used, to entomb uncremated human remains.

7016. "Niche" means a space in a columbarium used, or intended to be

used, for inurnment of cremated human remains.

7017. "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains.

7018. "Cemetery authority" includes cemetery association, corporation sole, or other person owning or controlling cemetery lands or property.

7019. "Cemetery corporation," "cemetery association," or "cemetery corporation or association" means any corporation now or hereafter organized which is or may be authorized by its articles to conduct any one or more or all of the businesses of a cemetery, but do not mean or include a corporation sole.

7020. "Cemetery business," "cemetery businesses," and "cemetery purposes" are used interchangeably and mean any and all business and purposes requisite to, necessary for, or incident to, establishing, maintaining, operating, improving, or conducting a cemetery, interring human remains, and the care, preservation, and embellishment of cemetery property, including, but not limited to, any activity or business designed for the benefit, service, convenience, education, or spiritual uplift of property owners or persons visiting the cemetery.

7021. "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association.

7022. "Lot," "plot," or "interment plot" means space in a cemetery, used or intended to be used for the interment of human remains. Such terms include and apply to one or more than one adjoining graves, one or more than one adjoining crypts or vaults, or one or more than one adjoining niches.

7023. "Plot owner," "owner," or "lot proprietor" means any person in whose name an interment plot stands of record as owner, in the office of a cemetery authority.

7024. "Permit for Disposition of Human Remains" includes "burial permit" and is a permit, issued pursuant to law, for the interment, disinterment, removal, reinterment or transportation of human remains.

DIVISION 8. CEMETERIES

PART 1. GENERAL PROVISIONS

CHAPTER 1. CEMETERY DEFINED

8100. Six or more human bodies being buried at one place constitute the place a cemetery.

CHAPTER 2. VANDALISM

8101. (a) Every person is guilty of a misdemeanor and punishable by a fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not exceeding one year, or by both, who maliciously does any of the following:

(1) Destroys, cuts, mutilates, effaces, or otherwise injures, tears down, or removes any tomb, monument, memorial, or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any inclosure for the protection of a cemetery or any property in a cemetery.

(2) Obliterates any grave, vault, niche, or crypt.

(3) Destroys, cuts, breaks or injures any building, statuary, ornamentation, tree, shrub, or plant within the limits of a cemetery.

Senior Voice

OPAG

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Older Persons Action Group, Inc., Vol. 6, No. 12, December 1982

Bankrupt Palmer cemetery's fate still in limbo



Cemetery bankruptcy affects more than 1,000 consumers.

by Rebecca Goodman
Sighs of relief swept across a federal courtroom in Anchorage as nearly 100 older consumers heard Judge Douglas Williams' decision to delay for three months abandonment of the bankrupt Valley Memory Gardens Cemetery in Palmer.

But consumers' relief may be premature and, for some, may never come.

There are still no buyers ready to take over the cemetery property.

Even worse, consumers who purchased pre-need funeral services will probably never recover their money for those items.

The 90-day delay granted by Williams allows the state Consumer Protection Office time to locate a buyer for the nine-acre cemetery.

Included in the bankruptcy case—the biggest in Alaska's history in terms of numbers of creditors involved—are over 1,000 consumers who purchased plots and pre-need funeral services from the cemetery between 1966 and 1982. Many of those consumers, frustrated and angry about their financial losses, sat through long hours of court hearings last month trying

to figure out what happened to their money.

Court testimony painted a confusing picture of cemetery mismanagement and complicated land deals. It was testified that:

- Arthur Richmond, as
- The cemetery was a

major portion of collateral in a loan deal involving the cemetery firm, Arthur Richmond, and another businessman, Wayne Lofgren. They borrowed \$500,000 from the Matanuska

See related stories,
pages 8, 9, 10, 11
Opinion, page 4

president and major shareholder of Valley Memory Gardens, Inc., neglected to put consumers' money for pre-need services into individual trust accounts as required by state law.

• The cemetery firm used the proceeds from consumers' pre-need sales to buy more than 40 acres of residential lots in the Matanuska Valley with the intention of subdividing for profit.

• Consumers' deeds of trusts to their cemetery plots were not, according to Richmond, legal deeds of trust transferring ownership rights. The cemetery intended for those deeds to be considered "certifi-

Valley Valley Federal Credit Union to finance a new business venture, then defaulted on the loan.

As the major creditor in the case, the Matanuska Valley Federal Credit Union could become the new owner of the cemetery in mid-February. However, the court is accommodating consumers by allowing the Consumer Protection Office and assistant attorney general Connie Sipe a chance to locate a buyer for the cemetery by February 17, 1983.

If the credit union becomes owner, it is uncertain what would happen to the cemetery

Continued on page 7

Bankruptcy frustrates cemetery consumers

by Rebecca Goodman

The gray-haired woman jostled through the packed courtroom clearing a path for the disabled man behind her. He moved haltingly on his one leg with crutches, searching each row for vacant seats.

The pair had already spent an hour winding up and down corridors and stairs as court officials herded consumers through two courtrooms too small to hold everyone.

It was standing room only in this big courtroom too. The man and woman had to settle for vacant wall-

space to lean against.

During the next two hours they listened along with more than 100 other consumers to questions and testimony in the bankruptcy proceedings of the Valley Memory Gardens cemetery.

The man grew impatient and more agitated with every question. He muttered aloud: "They act as though there's nobody even buried out there... What's going to happen to my kids' graves?"

The audience exploded when one attorney explained that consumers probably would lose not only their

money, but also their cemetery plot.

Several consumers shouted. "We should've been warned if they weren't placing our money into trust accounts... Why aren't they filing criminal charges?"

Finally the man gathered his nerve and raised his hand to speak.

"I have some questions that I think every single person in this courtroom wants answered," he began.

"I bought land and headstones and vaults at Valley Memory and I have two people buried there. I scraped together money and paid for

Continued on page 9

OPINION PAGES

'Cemetery laws in this state are lousy'

"I didn't know that my cemetery plot came with a 'consumer beware' tag attached to the deed," said one disgruntled older consumer involved in the Valley Memory Gardens cemetery bankruptcy.

"Boy! The cemetery laws in this state are lousy," he fumed.

As is reported elsewhere in this issue, more than 1,000 Alaskan consumers are caught up in the Palmer cemetery's bankruptcy and stand to lose all or nearly all of the money they have paid for cemetery lots and funeral services. Probably all of them would agree with that assessment of Alaska's laws on cemetery operation.

The most startling single thing to come out of the Valley Memory case—aside from the losses suffered by individuals and families—is this:

As it stands right now, Alaska just doesn't even have basic laws regulating cemeteries.

It would certainly seem appropriate that the new state administration and the new legislature address this lack of consumer protection laws as a top priority.

This present lack of laws with teeth in them hit consumers three different ways in the Valley Memory case:

1. There are no regulatory boards overseeing cemetery sales practices.

2. There are no dedication procedures for cemeteries. (Proce-

dures that would recognize cemeteries as special purpose property and set aside that property forever.)

3. There are no requirements that each deed in a burial plot must be recorded as property.

The main problem—lack of regulatory boards to oversee cemetery practices—means that there is no clout behind the few cemetery laws that are on the books.

For example, a 1977 law requires that individual trust accounts be established by cemetery firms to handle every pre-need sale of funeral services.

In the Valley Memory Gardens case, court testimony revealed that consumers' money for pre-need sales was held for a short while in a single collective trust prior to 1979. Then, as a financial squeeze hit the firm, the trust moneys, according to court testimony, were removed from the trust account and distributed to general fund accounts. Consumers' money vanished.

Currently, Alaska has no statutes to provide for regular checks on established trust accounts of consumers' sales funds. It is left to the cemetery firm to establish and maintain these trust accounts. As evidenced in the Valley Memory Gardens bankruptcy, the requirement to establish trust accounts is a weak law.

A second problem that hurt

Valley Memory Gardens consumers was the lack of dedication procedures for cemeteries. Dedication means that designated property is recognized as a cemetery forever and cannot be abandoned. If something happens to the property to threaten its cemetery status, dedication would provide for "rescue" and maintenance by the state.

In the Valley Memory Gardens case, the cemetery was viewed as commercial property: 5,500 unsold, unoccupied cemetery plots. In a loan arrangement in 1980 with the Matanuska Valley Federal Credit Union, owners of the cemetery used this commercial value to obtain a \$500,000 loan. The cemetery with its 500 occupied gravesites became the major portion of collateral for the \$500,000 loan.

When the loan was defaulted upon, consumers who had purchased plots or had relatives buried in Valley Memory Gardens were astonished to discover that mortgages could be made on cemeteries.

According to Connie Sipe, assistant attorney general for Alaska: "No one should ever be allowed to make mortgages on cemeteries; that's why dedication procedures are important. We need to restructure the laws."

The third problem area needs attention too: there are no requirements that each deed to a burial plot must be recorded as property.

In the Valley Memory Gardens case, consumers' plots do not show up in the district recorder's title records. The nine-acre cemetery property is recorded, but not each individual gravesite.

There is now some question whether consumers' deeds of trust to their cemetery plots are actually legal deeds. In court testimony, Arthur Richmond, president of the cemetery firm, stated that those deeds were for "right to future interment" only. No ownership rights were transferred according to Richmond's testimony.

Since there were no plots recorded as property in the district recorder's office and no laws requiring such a record, consumers may be the ultimate losers in this controversy over deeds.

In commenting on the case, Sipe, who is head of the state's consumer protection agency, said:

"In most states there is more protection for consumers.

"Maybe we can prevent this from happening again if the statutes are changed to protect future consumers of cemetery services. Some good may still come out of this case."

But that will only happen if the state administration and the legislature take it upon themselves to make sure that a Valley Memory Gardens case doesn't happen again.

Need information? Try OPAG's directory

Recently we attended a large meeting of senior citizens where participants were urged to voice their most pressing problems.

"There's no place we can go to get all the information we need," said one woman to a round of applause.

lady seemed to want, it does contain a wealth of information of help to the senior citizen.

Two years ago the state Division of Adult and Aging Services gave OPAG a pilot project grant to publish the first directory, a 68-page compilation of agencies, programs, organizations and business

zations directly affecting seniors. These listings cover 89 different communities across the state.

Information for the directory was gathered from a variety of sources, including local senior citizen programs, local organizations and state aging officials.

Seniors have told us they like

"(This is) one of the best pieces here because it is just right," he said of the booklet. "Shape and contents and handling all fit together ideally; heads (headlines) visible at a glance, clear and incisive."

A grant from the Municipality of Anchorage to OPAG included

Valley Memory Gardens:

Cemetery 20-year history reveals land deals

A legal tangle of questions remains to be answered about events leading up to the Valley Memory Gardens Cemetery bankruptcy.

To put recent events into perspective, it's helpful to look at the history of the cemetery, from 1962 to present:

1962 - Arthur Richmond pur-

chased property for Valley Memory Gardens Cemetery on Old Palmer Highway. Richmond sold lots, vaults and funeral services. He testified during recent court hearings that no pre-need services were sold between 1962 and 1966.

1966 - Valley Memory Gardens is incorporated. Assets conveyed into the limited corporation include 26 acres with shop buildings, house, equipment and cemetery. Richmond's shareholder interest in the corporation is, by his own estimate, 85 percent. There are 10 to 12 other shareholders, all with small interests in the corporation.

In 1966 Richmond began selling a pre-need package plan that included a plot, vault and services. The average cost of these pre-need plans was \$4,000. According to Richmond, land was purchased by the corporation during this period and by 1980 over 40 acres of land had been acquired with the purpose

of subdividing and selling as residential lots.

Richmond testified recently that all proceeds from sales were plowed back into the cemetery corporation. Valley Memory Gardens, Inc. sold the contracts for both residential lots and cemetery plots and services to three finance corporations in exchange for cash advances. These cash advances ranged between 50 and 90 percent of the face value of the contracts. Although no total dollar figure was disclosed in recent testimony, Richmond testified that the cash advances for these contracts accounted for a significant portion of Valley Memory Gardens' operating income.

1977 - The State of Alaska amended the Alaska Consumer Protection Act to require that all funerals and other services sold to families on a pre-need basis be fully funded in individual trust accounts for the benefit of persons purchasing those services.

1978 - According to recent court testimony by Dean Erich, Valley Memory Gardens' secretary-treasurer, the corporation had a single collective trust endowment account in National Bank of Alaska that totaled approximately \$200,000 to \$300,000 during 1977-1978. Erich further stated that when he became a corporate officer in 1979, records indicated that these trust funds had been transferred to a general account.

1979 - Consumer Protection Office filed suit against Valley Memory Gardens, Inc. charging the cemetery with six counts of fraud in the sale of pre-need funeral services. The suit charged that Valley Memory Gardens was in violation of the 1977 law requiring trust accounts for pre-need contracts.

August 22, 1979 - Consumer Protection Office received sworn deposition from Arthur Richmond claiming that a trust account was established for pre-need services. No sum was disclosed in that deposition.

1980 - During recent court hearings, Richmond testified that he was approached by a loan broker, William Lang and an investor, Wayne Lofgren, in 1980 to arrange a \$500,000 loan for needed operating funds from the 11,000-member Matanuska Valley Federal Credit Union. Richmond claims that the credit union gave the cemetery corporation \$25,000, promised it another \$25,000 to be paid

planned to use the loan money for the plant.

The collateral used for that credit union loan included the cemetery, approximately 22 acres of adjacent property and contracts from cemetery sales. Richmond claims that no attorney was present during loan transactions. Richmond also testified that Lofgren put up no collateral of his own, yet received approximately \$450,000 of the \$500,000 loan.

According to credit union attorney, Jan Ostrowsky, Lofgren has paid back some portion of that \$500,000 loan. According to Richmond, Lofgren has paid back a \$28,000 Small Business Administration loan included in the \$500,000 loan package.

January 1981 - Dean Erich, secretary-treasurer of VMG, Inc., testified recently that the cemetery corporation had a single trust account during this time that totaled approximately \$6,000 to \$7,000.

...during this period...over 40 acres was acquired with the purpose of subdividing and selling residential lots

April 1981 - Two years after it initiated the suit, the Consumer Protection Office received a consent judgement in the 1979 suit against Valley Memory Gardens. The cemetery refused to acknowledge any wrongdoing. It later appealed the order to retroactively place all money it had received since January 1, 1977 for pre-need services into separate trust accounts. The cemetery corporation claimed it was sufficient that all money was in one collective trust.

September 1981 - Valley Memory Gardens, Inc. files for bankruptcy under Chapter 11 of the U.S. bankruptcy code to allow for reorganization of the corporation.

January 1982 - The 1981 appeal by Valley Memory Gardens regarding the legality of establishing a single collective trust fund fails. The Alaska Supreme Court upholds the earlier order that pre-need payments must be placed into individual trust accounts.

If you know someone who bought cemetery services and may be unaware of the current bankruptcy proceedings, contact Connie Sipe at the Consumer Protection Office, (907) 279-7428.

June 1982 - Bennie Leonard of Anchorage, a real estate sales representative, is appointed trustee by the bankruptcy court to take possession of all cemetery assets during bankruptcy proceedings. Services by the cemetery were officially halted June 16, 1982. No further payments were accepted by the corporation after this date.

July 1982 - Valley Memory Gardens, Inc. files for bankruptcy under Chapter 7, which mandates the complete liquidation of company assets and payment distribution to the creditors.

September 1982 - Federal bankruptcy court approves the motion to move Valley Memory Gardens into Chapter 7 bankruptcy. All consumers who have purchased services from the cemetery and received no "performance" on those purchases become creditors according to bankruptcy law.

November 16, 1982 - During abandonment hearings, a federal judge gives a 90-day continuance

to allow consumer creditors time to locate a buyer for the cemetery. This move delays abandonment of the cemetery to the major creditor with a secured (mortgaged) claim, the Matanuska Valley Federal Credit Union. Connie Sipe, assistant attorney general, was given until February 17, 1983 to locate a buyer for the Valley Memory Gardens cemetery. Sipe continued to explore options and benefits of starting a non-profit cemetery association or expanding an existing one. Sipe planned to poll creditors about their opinions on the non-profit association idea in late November.


November 18, 1982 - Arthur Richmond appeared in court during continuation of the first creditors' meeting. Three hours of questioning shed little light on what happened to consumers' money. Richmond refused to answer or failed to recall numerous details about the events that led to the bankruptcy.

Alert issued to locate all creditors

The State Consumer Protection Office is seeking all consumers involved in the Valley Memory Gardens Cemetery bankruptcy case.

So far the list has grown

to over 1,200 persons and is expected to reach 1,500. The state office is particularly concerned about consumers who purchased services on lots from the cemetery then moved outside of Alaska.



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Valley Memory Gardens:

Bankrupt Palmer cemetery's fate still in limbo

Continued from page 1

property. One option open to the credit union includes sale of the cemetery lands and consolidation of existing plots into a smaller parcel of land.

"We're hoping it won't come to that," Sipe explained. "The State's No. 1 priority in this case is to preserve the cemetery and the right to peaceful burial."

Consumers must now decide what options to pursue to save the cemetery and existing plots.

Since it is unlikely that a for-profit cemetery firm would move in and take over the financial woes of the Valley Memory Gardens cemetery, the current focus is on non-profit cemetery associations.

The Consumer Protection Office is exploring alternatives for non-profit associations and is about to poll consumers on those alternatives.

One alternative would expand an existing non-profit cemetery association. The other would form an entirely new non-profit association.

"From the poll, we'll decide whether consumers feel this is worth pursuing and how much they'd be willing to spend on membership fees," Sipe said.

As far as court proceedings are concerned, many questions remain unanswered.

Richmond's questioning during a recent creditors' meeting shed little light on what happened to consumers' money. He refused to answer many questions and often could not recall answers to other questions.

Attorneys for the creditors tried to determine whether any trust funds were established by

the cemetery for consumers' pre-need accounts.

Under a 1977 amendment to the Consumer Protection Act, funeral directors are required to place into individual trust accounts all funds for funerals and other services sold on a pre-need basis.

Court testimony from Richmond revealed that one collective trust may have been established sometime prior to 1979 and may have contained a total of \$100,000.

Secretary-treasurer of Valley Memory Gardens, Inc., Dean Erich, testified that those trust funds were transferred into general accounts sometime after 1979.

The cemetery firm operated for years as a land development company, according to attorney for the trustee, Cabot Christianson.

"The cemetery was really only a small part of the lands owned out there," Christianson said. "There's a 38-acre subdivision, and property all over in the valley being foreclosed upon."

"It appears that the corporation took consumers' money and put it into undeveloped lands with the hopes of big money from sales of residential lots," he added.

One of consumers' biggest concerns is whether their deeds of trust to cemetery plots are actually legal deeds with ownership rights.

Across the top of most deeds issued after 1966 are the words "deed for right to be interred."

There are no seals or stamps on most deeds, and Richmond claims that the cemetery considered the papers "certificates

of pre-arrangement" only, without rights of ownership.

The cemetery lots do not show up in the property records by the district recorder, and it would appear that the deeds are not considered acceptable property deeds.

In a similar case in Washington courts, certificates of pre-arrangement were not considered by the courts as real deeds of trust.

Some future ruling on the legality of these papers may be necessary if abandonment proceedings are continued in mid-February.

The court-appointed trustee for the case, Bennie Leonard, an Anchorage real estate representative, is currently reviewing all claims against the cemetery.

The biggest angle claim is held by the Matanuska Valley Federal Credit Union for its \$500,000 loan to Richmond, the cemetery and Lofgren.

Under bankruptcy laws, the credit union's claims take priority over all consumers' claims.

Leonard and attorneys in the case are attempting to piece together what happened in 1980 when the loan deal was arranged, then defaulted upon.

Richmond said that Lofgren intended to invest the loan money in a new fish processing plant in Palmer. Richmond said he received \$25,000 of the loan and a "promise" of another \$25,000 to be handed over in six months.

According to Richmond's testimony, Lofgren paid off a \$28,000 Small Business Administration loan, but ended up with the remaining \$400,000.

Credit union officials report that some portion of the loan

Questions about deeds, trusts, money and laws surround case

Editor's note: Throughout bankruptcy hearings for the Valley Memory Gardens cemetery, consumers have struggled to understand what happened. They want to know where their money went, whether their contracts will be honored, whether criminal charges will be filed and what the state cemetery laws cover. Senior Voice tackled answers to those questions and more...

Q: What happened to consumers' money? What did Valley Memory Gardens do with pre-need funeral service payments?

A: Arthur Richmond, president of Valley Memory Gardens, Inc., has refused to answer those questions. From court testimony of other witnesses, however, it appears that the cemetery took consumers' money and, rather than placing it into trust

through and invested moneys were lost.

Q: Do we have legal deeds of trust with ownership rights to our cemetery plots?

A: According to Connie Sipe, assistant attorney general, the deeds held by consumers may not actually be deeds. Most of the deeds are titled "deed for interment rights." Richmond said in court that those deeds were pre-arrangement rights, not ownership rights. It remains for the courts to figure out what consumers actually have in those "deeds."

Q: Why aren't the cemetery lots recorded as deeds of trust?

A: Apparently state law does not require deeds to burial plots to be recorded as property. Property record of cemetery lots does not show up in the official title records. Burial plots are not accepted by the district recorder.

vidual trust deposits for every consumer purchasing pre-need funeral services. The 1977 laws do not cover cemetery spaces, just pre-plot plans.

Q: Will criminal charges be filed against Richmond or others?

A: To bring criminal charges against Richmond would require the involvement of the district attorney. Currently the district attorney is reviewing the matter. It would have to be shown that Richmond took cor-

Continued on page 9

Cemetery president Richmond

President of Valley Memory Gardens cemetery, Arthur Richmond, has been an elusive figure throughout bankruptcy proceedings. Richmond tried unsuccessfully to dodge a Senior Voice photographer prior to his appearance at a recent creditors' meeting in the federal building in Anchorage.



was paid back by Lofgren. No other details were revealed.

Attorneys continue to explore the loan arrangement and the questions surrounding the signing of papers. Richmond said that no attorney was present during the signing procedures and has mentioned a number of "promises" that were never placed in writing.

No criminal charges have been filed in this case, but the district attorney is following the proceedings.

According to Sipe, the case

may not be resolved for another six to 12 months.

In the meantime, consumers are being informed of proceedings and requested to retain their opinion polls on the matter of forming a non-profit association.

"This case points out the need for more protection for consumers," Sipe said. "Some think that we over-regulate, but it should be known that Alaska lacks some basic laws for consumer protection in this area. We need to completely restructure cemetery laws in this state."

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Valley Memory Gardens:

Few alternatives left for cemetery creditors

It's a hard lump to swallow. No one likes being "kipped off." And no one likes the idea of plunking down more money just to hang onto what he or she already owns.

But that's the problem facing over 1,000 Anchorage area consumers, mostly older persons, as a result of the Valley Memory Gardens bankruptcy case.

The cemetery's bankruptcy is shaping up to be what the Internal Revenue Service calls a "totally worthless bad debt." Creditors who paid as much as thousands of dollars for lots and services may end up with little or nothing.

So where does that leave the persons who paid for cemetery services or lots? What alternatives are there for recouping losses or planning new funeral arrangements?

For those consumers who paid only for funeral services, but not for lots, there is little

hope of recovering any money owed them by the cemetery. About the only alternative these consumers have is a possible tax write-off for bad debts.

Any consumer involved in the bankruptcy case who wants to know what their tax write-off options are should call the Internal Revenue Service for publication 548, "Deductions for Bad Debts." Call 276-1040 or write the I.R.S., P.O. Box 1500, Anchorage 99510.

According to tax specialist Mane Lozano, "Consumers will have to prove that their contract with the cemetery is worthless and a mere bankruptcy doesn't prove that it's worthless."

In other words, to file capital loss deductions, consumers will have to wait until final distribution of assets has been made at the end of the bankruptcy hearings six to 12 months from now.

For consumers who purchased cemetery lots, the alter-



More than 100 consumers owed money by the bankrupt Valley Memory Gardens Cemetery line up outside federal courtrooms in Anchorage during a recent abandonment hearing. The crowds were so large that court officials had to move hearings to a larger courtroom. Involved in the case are some 1,000 consumers who purchased plots and pre-need funeral services.

natives look more positive.

If the State of Alaska Consumer Protection Office manages to locate a buyer for the cemetery before February 17, 1983, the federal bankruptcy court will not abandon the cemetery lot to the major creditor, the Matanuska Valley Federal Credit Union.

But finding a buyer won't be easy. It is unlikely that a for-profit cemetery would agree to take over Valley Memory Gardens. The legal and financial complications alone would probably prevent such a business from being a profitable enterprise.

For that reason, the Consumer Protection Office is exploring two alternatives involving non-profit cemetery associations.

The two alternatives include expanding an ongoing non-profit cemetery association such as Angelus Memorial Park in Anchorage, or forming an entirely new non-profit association.

Either way, all consumer creditors would be asked to join

the association for a membership fee that would cover equipment and caretaking costs for the cemetery. Membership would not be limited to those who purchased lots at Valley Memory Gardens, anyone could join.

A new non-profit cemetery association would require only five members to form and would be permitted to operate cemetery land so that people who have paid for plots could still be buried there in the places they have already paid for.

Conkie Sipe, assistant attorney general with the Consumer Protection Office, is currently polling all consumers involved in the case to determine their interest level in forming a non-profit association. Sipe also wants to find out how much consumers would be willing to pay for association membership fees.

"It's up to the consumers to let me know whether they think this idea is worth pursuing," Sipe said. "A non-profit cemetery association is really the best deal we can work out."

For consumers who want to

begin again to plan funeral arrangements, one local consumer-run, non-profit society assists consumers in funeral pre-arrangement details.

Whether you're interested in cremations, simple ceremonies or elaborate services, the Cook Inlet Memorial Society offers, for a \$10 one-time membership fee, the opportunity to compare cost levels of various funeral services and arrange through the society's contractual agreement with a local funeral director some of the lowest-cost services available in the Anchorage area.

As a new member, you are asked to fill out a simple form giving instructions to your family and/or funeral director spelling out exactly what you want. A copy of your form is kept on file with the society and with the funeral director.

For more information about Cook Inlet Memorial Society, contact Perry Gazaway, president, at 277-2073 or write CIMS, P.O. Box 2414, Anchorage, AK 99510.

Glossary spells out explanations of bankruptcy legal terminology

Chapter 11 bankruptcy - Bankruptcy laws are federal laws that pre-empt all state laws. Chapter 11 is corporate reorganization and allows a corporation to evaluate their situation and recover, if possible.

Chapter 7 bankruptcy - Chapter 7 bankruptcy is complete liquidation of assets with no hope of reorganization. All assets are taken and divided up according to federal bankruptcy law. Valley

federal court judge in a bankruptcy case to stop all actions by the corporation. It is the trustee's responsibility to figure out how to pay the biggest creditors and legally proceed to pay off debts.

Creditors - There are two sorts of creditors, those with secured claims and those with unsecured claims. The credit union is the major creditor in this case because it has a secured (mortgaged) claim on the cemetery for its

the cemetery and are now owed money because the cemetery either lost their money or failed to perform on consumers' contracts.

Creditors' Committee - Group of five consumers nominated by the consumer themselves to supervise the trustee. The creditors' committee may call creditor meetings for the purpose of gathering information. Creditors' meetings are not attended by federal court judges.

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Richard L. (Whitt) Whittington **Mutual**

Valley Memory Gardens:

Bankruptcy frustrates consumers

Continued from page 1
everything—\$12,000 for all of it. My question is, do I still have it?"

"And if my kids have to be moved, who's going to pay for it and who in the court will order it? And why isn't the judge here to hear this?"

The attorneys glanced at each other, not knowing where to begin to tackle the man's barrage of questions.

Breaking the uncomfortable silence, Candy Powers, clerk of court, answered his last question first.

"During the first meeting of creditors, the bankruptcy court operates without the bankruptcy judge. Please understand that this is only the beginning and it doesn't happen very fast," Powers said.

The man on crutches never did get any real answers to his questions until the proceedings ended.

That's when Connie Sipe, assistant attorney general, took over the task of fielding questions from frustrated, confused consumers.

"This is going to get more legally complicated, but I will keep you informed of everything that happens," Sipe promised.

"To answer your questions," Sipe nodded to the man on crutches, "the deeds held by consumers may not actually be deeds; it isn't a black-and-white issue."

"We're trying to figure out whether those papers are promises for interment rights or real deeds of ownership. We figure 90 percent of the consumers don't have any real deeds; they have pre-arrangement certificates."

Consumers who had begun to leave the courtroom at the end of proceedings drew closer to hear Sipe's remarks.

"And as to the removal of bodies," Sipe continued, "the state is in opposition to removal of anyone from that cemetery. We can prevent the abandonment of the cemetery if we start a non-profit cemetery association run by consumers. You must all show up at the next abandonment hearing to let the judge know how you feel. The state agrees with consumers; the cemetery should not be abandoned."

Questions surround use of money, deeds, trust

Continued from page 7
porate funds and used them for personal uses for any criminal charges to be filed. Richmond invested funds for corporate uses in the documents renewed by the court.

Q: Who are the major creditors with outstanding claims against the cemetery property?

A: Those with secured or mortgaged claims include the Matanuska Valley Federal Credit Union, \$500,000 loan; Alaska Pacific Bank, \$15,000 loan; National Bank of Alaska, \$10,000

priority under bankruptcy law.

Q: What will happen if the cemetery is abandoned to the Matanuska Valley Federal Credit Union, the largest creditor?

A: The credit union is under obligation to its shareholders to get the most money possible from property and investments. That obligation may also apply to the commercial value of the cemetery property. In three similar cemetery abandonments in the State of Washington, the cemeteries were consolidated, bodies exhumed

information saying that Valley Memory Gardens belonged to a national cemetery organization and if we purchased services with him, those would be transferable to other cemeteries. Is that so?"

Sipe promised to ask Richmond this question and did so during a second creditors' meeting. Court testimony revealed that despite the \$50 annual dues required for membership in the national cemetery organization, about the only guarantees provided were for yearly certificates to post on the cemetery's office wall.

One man listened a long while to the questions and answers, then held up his deed and said, "I'll sell this to anyone who wants it—real cheap."

There was little laughter. Sipe summed up the feelings of consumers by saying, "We need big improvements in the cemetery laws. Too many consumers have spent considerable sums of money and have no hope of ever recovering it."

This is the hardest and saddest case I've ever dealt with."

Another woman asked: "What happens if I die tomorrow?"

Sipe replied: "No one can be buried in that cemetery right now, everything's in limbo. About all I can say is try not to die for awhile."

Another woman asked: "When we said it was no longer a sound business we stopped our payments into the pre-need account. Valley Memory went to a collections agency and they tried to ruin our credit rating. All we wanted was to be sure that it was a sound business. Who wants to pay for something they won't ever get to use?"

Sipe explained how Valley Memory took its consumer contracts to finance corporations in exchange for cash advances for about 60 percent of the face value of the contracts.

"Even if a business sells a payment to a third party, you still don't have to pay that third party if the original contract was broken," Sipe added. "You can see how complicated each individual case can become."

Others complained about not being notified of the bankruptcy.

"I wasn't even aware of the problem," said one man. "My wife died last spring and I ordered a headstone in July. My check was cashed by the cemetery, but no headstone ever showed up. I got nothing."

Another consumer remarked, "Richmond gave me

information saying that Valley Memory Gardens belonged to a national cemetery organization and if we purchased services with him, those would be transferable to other cemeteries. Is that so?"

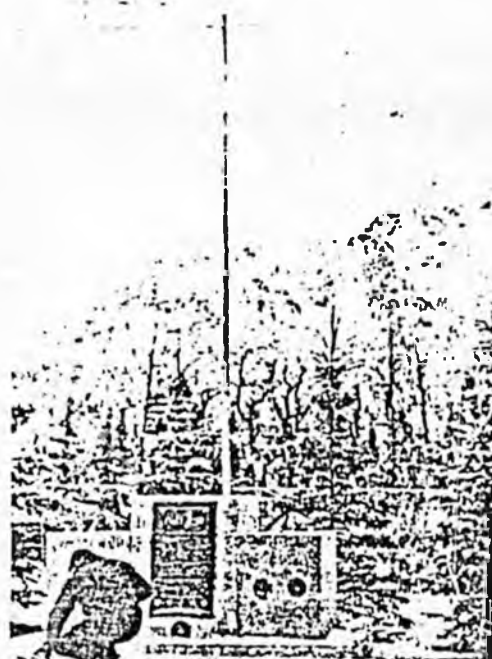
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"We need big improvements in the cemetery laws. Too many consumers have spent considerable sums of money and have no hope of ever recovering it."

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Visitor lays wreath at military honor memorial at Valley Memory Gardens Cemetery. Over 500 persons are buried in the nine-acre Palmor cemetery.

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LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 13, 1984

SUBJECT: Sectional analysis of HB 569

TO: Representative Randy Phillips

FROM: Edward H. Hein *EHA*
Legislative Counsel

Section 1 allows a nonprofit cemetery to incorporate under AS 10.20 as an alternative to forming as a cemetery association.

Section 2 adds clean-up provisions necessitated by section 1.

Section 3 expands to which a cemetery's endowment fund may be put to include improvement of the grounds, buildings, and lots, and the repayment of debts.

Section 4 adds clean-up provisions necessitated by section 1.

Section 5 expands a nonprofit cemetery's authority borrow money to construct and repair buildings and mausoleums, to purchase or lease equipment, and other purposes. Such debts may be secured by mortgages on the cemetery's land, except those burial lots in which association members or corporate officers, trustees, or employees have more than a one-half interest.

Sections 6 - 11 add clean-up language necessitated by section 1.

Section 12 adds a definition for the term "cemetery lot".

EHH:ojb
J3/089

Angelus Memorial Park

ALASKA'S FIRST MEMORIAL PARK CEMETERY

PHONE 344-1311
OFFICE HOURS:
10 A.M. TO 3 P.M.

January 19, 1984

CEMETERY
AND
OFFICE
ON KLATT ROADRepresentative Joe Hayes
Alaska State Legislature
Juneau, Alaska

Atten: Mr. Jeff Day:

The Board of Trustees of Angelus Memorial Park Association approved a motion to present to the Legislature, amendments to the Alaska Cemetery Statutes, pertaining to non-profit cemetery associations. A committee was appointed consisting of Mr. Alvah C. Buswell, Jr. and Mr. Robert F. Shary, who are board members and Mr. Sidney Abbott, park manager, to work on the proposed amendments of the present statutes.

The present Alaska non-profit cemetery statutes were patterned after the Oregon Statutes many years ago before Statehood and are badly out dated. The State of Oregon has since amended their Statutes, twice, and now Alaska needs to do the same, so that a non-profit cemetery can better serve the community. To our knowledge Angelus is the only non-profit cemetery in the state.

Enclosed are copies of Oregon Statutes that have been amended and a copy of our proposed revisions to the Alaska State Cemetery Statutes.

The association really needs these changes in order to grow, as it is now, we can not serve the community as a modern cemetery, because of the way the laws are written. The public wants all the services a cemetery is suppose to supply, such as, a columbarium for inurnment of cremated remains, mausoleum, niches and storage vault. Also we can not even build a much needed administration building. We now have to rent a very inadequate building for an office. The association has never had a maintenance building. The present laws prevent our growth.

The reason we included association and or corporation in our amendments is that Angelus intends to incorporate in order to help lessen the personal individual liability of the board members. Angelus board members are non-paid.

Sincerely,
Mr. Douglas W. Brown
President of Board of Trustees

ANGELUS MEMORIAL PARK ASSOCIATION

Enclosures

This material has also been sent to Representative Randy Phillips

JAN 25 1984

**SPECIAL PROVISIONS
RELATING TO ORS 97.010 TO
97.040, 97.110 TO 97.450, 97.510
TO 97.730, 97.810 TO 97.920 and
97.990**

97.010 Definitions for ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990. As used in ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990:

(1) "Human remains" or "remains" means the body of a deceased person in any stage of decomposition or after cremation.

(2) "Cemetery" means any place dedicated to and used, or intended to be used, for the permanent interment of human remains.

(3) "Burial park" means a tract of land for the burial of human remains in the ground used, or intended to be used, and dedicated for cemetery purposes.

(4) "Mausoleum" means a structure for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated for cemetery purposes.

(5) "Crematory" means a structure containing a retort for the reduction of bodies of deceased persons to cremated remains.

(6) "Columbarium" means a structure or room containing niches for permanent inurnment of cremated remains in a place used, or intended to be used, and dedicated for cemetery purposes.

(7) "Interment" means the disposition of human remains by cremation, inurnment, entombment or burial.

(8) "Cremation" means the reduction of a body of a deceased person to cremated remains in a crematory.

(9) "Inurnment" means placing cremated remains in an urn and depositing it in a niche.

(10) "Entombment" means the placement of human remains in a crypt or vault.

(11) "Burial" means the placement of human remains in a grave.

(12) "Grave" means a space of ground in a burial park used, or intended to be used, for burial of the remains of one person.

(13) "Crypt" or "vault" means a space in a mausoleum of sufficient size used, or intended to be used, to entomb cremated human remains.

(14) "Niche" is a recess in a columbarium used, or intended to be used, for the interment

of the cremated remains of one or more persons.

(15) "Cemetery authority" includes cemetery corporation, association, corporation sole or other person or persons owning or controlling cemetery lands or property.

(16) "Cemetery association" means any corporation or association authorized by its articles to conduct any or all the businesses of a cemetery, but does not include a corporation sole or a charitable, eleemosynary association or corporation.

(17) "Cemetery business," "cemetery businesses" and "cemetery purposes" are used interchangeably and mean any business and purpose requisite or incident to, or necessary for establishing, maintaining, operating, improving or conducting a cemetery, interring human remains, and the care, preservation and embellishment of cemetery property.

(18) "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association.

(19) "Lot," "plot" or "burial space" means space in a cemetery owned by one or more individuals, an association or fraternal or other organization and used, or intended to be used, for the permanent interment therein of the remains of one or more deceased persons. Such terms include and apply with like effect to one, or more than one, adjoining grave, crypt, vault or niche.

(20) The term "plot owner" or "owner" means any person in whose name a burial plot stands as owner of the right of sepulture therein in the office of the cemetery authority, or who holds from such cemetery authority a conveyance of the right of sepulture or a certificate of ownership of the right of sepulture in a particular lot, plot or space.

(21) "Endowment care" means the general care and maintenance of developed portions of a cemetery and memorials erected thereon financed from the income of a trust fund established and maintained pursuant to the provisions of ORS 97.810 to 97.860. Endowment care cemeteries owned by a city or a county may supplement their general care and maintenance trust funds from general revenues.

(22) "Special care" is any care in excess of endowed care in accordance with the specific directions of any donor of funds for such purposes. (Amended by 1955 c.545 §1; 1965 c.396 §1)

61.736 Procedure for revoking certificate of authority. ORS 57.735, relating to revocation of certificate of authority, is applicable to nonprofit corporations. [1963 c.492 §36 (enacted in lieu of 61.735)]

61.740 (Renumbered 61.984)

61.741 Application to corporation authorized to transact business in this state on December 31, 1959. Foreign corporations which are duly authorized to transact business in this state on December 31, 1959, for a purpose or purposes for which a corporation might secure such authority under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950. [1959 c.580 §80]

61.745 Transacting business without certificate of authority. (1) No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state, until such corporation shall have obtained a certificate of authority. No action, suit or proceeding shall be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all its assets.

(2) The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state. [1959 c.580 §81]

CEMETERIES AND CREMATORIES

61.751 Lands of cemetery or crematory corporation; exemption from execution, taxation and condemnation. A nonprofit corporation organized and existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains, may purchase or take, by gift or devise, and own and hold lands for the sole purpose of either a cemetery or a crematory and burial place for incinerate remains. Such lands shall be exempt from execution and taxation, and from any appropriation for public purposes, and lots or portions of such land and space in any buildings thereon may be sold, if intended to be used exclusively for burial purposes, and in no wise with a view to the profit of the members of such corporation. The land so held for cemetery purposes shall not exceed 500 acres, but if the land already held for such purpose by the corporation is all practically used, the amount thereof may be increased by adding thereto not more than 20 acres at any one time. The land so held for the purposes of a crematory and the burial of incinerate remains shall not exceed 30 acres, but if the land already held for such purpose by the corporation is all practically used, the amount thereof may be increased by adding thereto not more than 10 acres at any one time. [1959 c.580 §95]

61.760 Revenues; restrictions on uses thereof. (1) A nonprofit corporation organized or existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains may, by its bylaws, provide that a stated percentage of the money received from the sale of lots and burial space, cremation of bodies, donations, gifts or other sources of revenue shall constitute an irreducible fund. Any bylaw enacted for the creation of the irreducible fund cannot be amended to reduce the fund.

(2) The board of directors may direct the investment of the money in the irreducible fund, but all investments of money deposited in the fund on or after January 1, 1972, shall be in securities in classes and amounts approved by the State Treasurer and published in a list pursuant to ORS 97.820. If a bank or trust company qualified to engage in the trust business is directed by the board of directors to invest the money in the irreducible fund,

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HEALTH AND SAFETY CODE
DIVISION 7. DEAD BODIES
PART 1. GENERAL PROVISIONS

CHAPTER 1. DEFINITIONS

7000. The definitions in this chapter apply to this division and to divisions 8 and 9 of this code.

7001. "Human remains" or "remains" means the body of a deceased person, and includes the body in any stage of decomposition and cremated remains.

7002. "Cremated remains" means human remains after incineration and necessary processing under Section 7054.1 in a crematory.

7003. "Cemetery" means any one, or a combination of more than one, of the following, in a place used, or intended to be used, and dedicated, for cemetery purposes:

- (a) A burial park, for earth interments.
- (b) A mausoleum, for crypt or vault interments.
- (c) A crematory, or a crematory and columbarium, for cinerary interments.

7004. "Burial park" means a tract of land for the burial of human remains in the ground, used or intended to be used, and dedicated, for cemetery purposes.

7005. Except in Part 5 of Division 8 of this code, "mausoleum" means a structure or building for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated, for cemetery purposes.

7006. "Crematory" means a building or structure containing one or more furnaces for the reduction of bodies of deceased persons to cremated remains.

7007. Except in Part 5 of Division 8 of this code, "columbarium" means a structure, room, or other space in a building or structure containing niches for inurnment of cremated human remains in a place used, or intended to be used, and dedicated, for cemetery purposes.

7008. "Crematory and columbarium" means a building or structure containing both a crematory and columbarium.

7009. "Interment" means the disposition of human remains by inurnment, entombment, or burial in a cemetery or, in the case of cremated remains, by inurnment, entombment, burial, or burial at sea as provided in Section 7117.

7010. "Cremation" means the reduction of the body of a deceased person to cremated remains in a crematory and the placement of the cremated remains in a grave, vault or niche or burial at sea as provided in Section 7117 of this code.

7011. "Inurnment" means placing cremated remains in an urn and placing it in a niche.

7012. "Entombment" means the placement of human remains in a crypt or vault.

7013. "Burial" means the placement of human remains in a grave.

7014. "Grave" means a space of ground in a burial park, used, or intended to be used, for burial.

7015. "Crypt" or "vault" means a space in a mausoleum of sufficient size, used or intended to be used, to entomb uncremated human remains.

7016. "Niche" means a space in a columbarium used, or intended to be

used, for inurnment of cremated human remains.

7017. "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains.

7018. "Cemetery authority" includes cemetery association, corporation sole, or other person owning or controlling cemetery lands or property.

7019. "Cemetery corporation," "cemetery association," or "cemetery corporation or association" mean any corporation now or hereafter organized which is or may be authorized by its articles to conduct any one or more or all of the businesses of a cemetery, but do not mean or include a corporation sole.

7020. "Cemetery business," "cemetery businesses," and "cemetery purposes" are used interchangeably and mean any and all business and purposes requisite to, necessary for, or incident to, establishing, maintaining, operating, improving, or conducting a cemetery, interring human remains, and the care, preservation, and embellishment of cemetery property, including, but not limited to, any activity or business designed for the benefit, service, convenience, education, or spiritual uplift of property owners or persons visiting the cemetery.

7021. "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association.

7022. "Lot," "plot," or "interment plot" means space in a cemetery, used or intended to be used for the interment of human remains. Such terms include and apply to one or more than one adjoining graves, one or more than one adjoining crypts or vaults, or one or more than one adjoining niches.

7023. "Plot owner," "owner," or "lot proprietor" means any person in whose name an interment plot stands of record as owner, in the office of a cemetery authority.

7024. "Permit for Disposition of Human Remains" includes "burial permit" and is a permit, issued pursuant to law, for the interment, disinterment, removal, reinterment or transportation of human remains.

DIVISION 8. CEMETERIES

PART 1. GENERAL PROVISIONS

CHAPTER 1. CEMETERY DEFINED

8100. Six or more human bodies being buried at one place constitute the place a cemetery.

CHAPTER 2. VANDALISM

8101. (a) Every person is guilty of a misdemeanor and punishable by a fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not exceeding one year, or by both, who maliciously does any of the following:

(1) Destroys, cuts, mutilates, effaces, or otherwise injures, tears down, or removes any tomb, monument, memorial, or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any inclosure for the protection of a cemetery or any property in a cemetery.

(2) Obliterates any grave, vault, niche, or crypt.

(3) Destroys, cuts, breaks or injures any building, statuary, ornamentation, tree, shrub, or plant within the limits of a cemetery.