



New York State
DEPARTMENT OF STATE

DIVISION OF CEMETERIES
41 State Street, Suite 1110
Albany, NY 12231-0001

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CEMETERY BULLETIN

Director's Notes —

It has been sometime since our last edition, but as you will read, the Cemetery Board has had to deal with several important issues. The recent Attorney General's opinion on General Business Law 453 regarding Pre-Need sales of merchandise should be of special interest to cemeteries that sell bronze markers, grave liners, etc.

A bill we are hoping to see become law is the reclamation of graves which have had no activity for at least 75 years. At this time, the bill has passed the Senate.

I would like to welcome aboard Diane Christensen as our new accountant in the Albany region. Diane is doing very well which indicates she is receiving a great deal of cooperation from cemeterymen.

INDEX of recent Cemetery Bulletin Articles

4 / March 2000 (*transfer of burial rights: inalienability, consanguinity and irrevocable designations*)

5 / May 2000 (*Informational Cemetery Board Meeting in Syracuse, June 27, 2000; §201.7 of Title 19 NYCRR, posting of sign at cemetery*)

6 / November 2000 (*vandalism fund expanded; new vandalism payment date; permanent main tenance fund changes; ECI rate for 2000*)

7 / August 2001 (*pre-need purchases; crematory reminder re: batteries and battery packs; repair or removal of dilapidated or disrepaired monuments that create a dangerous condition*)

ATTORNEY GENERAL'S OPINION

Pre-Need Purchases (GBL §453)

As it applies to cemeteries, General Business Law §453 requires, in part, that any and all moneys paid to a cemetery for the sale of merchandise to be used in connection with a burial, wherein the merchandise is not to be delivered until the occurrence of the death of the person for whose burial such merchandise is to be furnished shall continue to be the money of the person making such payment and shall be held in trust for such person by the cemetery.

A question arose as to whether, under GBL §453, a public cemetery corporation could receive pre-need payment for funeral or burial merchandise (i.e., grave liners), immediately acquire and store the merchandise for the purchaser (termed *constructive delivery*) and therefore treat the merchandise as delivered. The concept of constructive delivery would allow the a cemetery corporation to avoid the requirement to place the money in trust until such time as the merchandise is needed (i.e., upon the death of the designated beneficiary).

The State Cemetery Board felt that cemeteries engaging in this practice may have circumvented the intent of the law by not placing the money in trust until such time as the merchandise is needed. In Spring 2001 the Board requested a review and opinion from the Attorney General's office.

In a June 8, 2001 letter to the chairman of the State Cemetery Board, Attorney General Eliot Spitzer declared that pre-need *constructive delivery* of merchandise otherwise covered by GBL §453 is inconsistent with and thus not contemplated by the statute as an alternative to actual delivery of the same merchandise at or after the time of death. The opinion reasoned that the statute's purpose is clear on its face: to protect consumers making *pre-need* purchases of merchandise or services relating to a burial or funeral between the time of the purchase and the time of death, when the merchandise or services are actually needed. Thus, constructive delivery cannot be used by a cemetery corporation to avoid compliance with the consumer protections provided by GBL §453.

Moneys exchanged for merchandise sold by cemeteries in advance of need and stockpiled, but not *actually delivered*, must be placed in trust and remain the money of the person making the payment. An engraved bronze marker paid for in advance of need *and installed* on a grave, however, is an example of *actual delivery*. See full text of Attorney General's Opinion No. 2001-F1 on Division of Cemeteries web page at: http://www.dos.state.ny.us/cmty/pdfs/op2001_f1.pdf.

Crematory rights: Batteries and battery packs

Public Health Law §4202 requires that when a body is to be cremated it is to be accompanied by a statement from a physician, coroner or medical examiner that such body does not contain a battery or power cell. A crematory may refuse to cremate any body not accompanied by this statement. There is widespread non-compliance with this mandate.

Continued over, see BATTERIES

BATTERIES . . .

We strongly urge crematories to take advantage of the current statutory tools to refuse to cremate any body not accompanied by both a permit to cremate and the required statement that no such potentially explosive device remains implanted in the body of the deceased. When *all* crematories unite in this fashion, physicians, coroners and medical examiners will become better informed about this dangerous situation and comply with the law.

Funding for Repair, Removal, Replacement

The last *Cemetery Bulletin* contained the full text of §1510-a of the Not-for-Profit Corporation Law. We promised then to update you on the regulations that followed this new law, which will provide for funds for the repair and/or removal and replacement of monuments that create a potentially hazardous condition. These regulations are in 19 NYCRR §200.11, and can be found within the law manual on our web page:

<http://www.dos.state.ny.us/cmtty/cemetery.html>

Some of the important highlights of these regulations are as follows:

1. Applications may be obtained from any of our offices and must be completed in full.
2. Cemeteries must demonstrate, by describing in detail in a statement and in photographs, that the monuments have a clear and actual potential for danger.
3. Applications must include at least two estimates from two separate bidders for the cost of repairs, or removal and replacement.
4. Applications must include proof that the cemetery has given regulatory notice to the lot owner to make corrections and the owner has failed to do so.
5. Applications must include a *notarized* statement from a cemetery corporate officer that the cemetery was unsuccessful in obtaining moneys from the family of the deceased and that the proposed costs are fair and reasonable.
6. The cemetery must report in a *notarized* statement, within 90 days of receipt of disbursements, how it distributed the funds.

Applications will soon be available through our web page.