

Cemeteries, regulation of municipal cemetery

Number: AGO 2000-51

Date: September 08, 2000

Subject:
Cemeteries, regulation of municipal cemetery

Mr. William F. Brewton
Dade City Attorney
38038 Meridian Avenue
Dade City, Florida 33525

RE: CEMETERIES--MUNICIPALITIES--FEES--regulation of municipal cemetery. Ch. 497, Fla. Stat.

Dear Mr. Brewton:

You have asked for my opinion on substantially the following question:

Are municipal cemeteries controlled by the provisions of Chapter 497, Florida Statutes?

In sum:

Municipal cemeteries are generally exempted from regulation under Chapter 497, Florida Statutes. However, section 497.003(2), Florida Statutes, makes sections 497.309(1), 497.321, 497.325, 497.341, and 497.345 applicable to all cemeteries in Florida, and section 497.003(3), Florida Statutes, makes municipal cemeteries of more than 5 acres subject to investigation and mediation procedures by the Department of Banking and Finance in the event of a consumer complaint.

According to your letter, the City of Dade City has adopted an ordinance regulating the Dade City Cemetery and, among other things, establishing prices for various burial spaces and setting certain permit or impact fees. There has been a suggestion that the fees imposed by the ordinance are in violation of section 497.325(2)(b)1., Florida Statutes. You question the applicability of provisions of Chapter 497, Florida Statutes, to municipal cemeteries.

Chapter 497, Florida Statutes, is the "Florida Funeral and Cemetery Services Act." [1] In adopting this chapter the Legislature recognized that

"purchasers of preneed burial rights, funeral or burial merchandise, or funeral or burial services may suffer serious economic harm if purchase money is not set aside for future use as intended by the purchaser and that the failure to maintain cemetery grounds properly may cause significant emotional stress. Therefore, it is necessary in the interest of the public welfare to regulate certificateholders, licensees, registrants, and cemetery companies in this state. However, restrictions shall be imposed only to the extent necessary to protect the public from

significant or discernible harm or damage and not in a manner which will unreasonably affect the competitive market." [2]

The provisions of the Florida Funeral and Cemetery Services Act (act) and all rules adopted by the Department of Banking and Finance to implement the act apply to all cemeteries "except for: . . . (b) County and municipal cemeteries." [3]

Although exempt cemetery facilities are not regulated by the act, certain provisions of Chapter 497, Florida Statutes, are made applicable to all cemeteries in the state. Section 497.003(2), Florida Statutes, specifically provides that "[s]ection 497.309(1) as to burial records, and ss. 497.321, 497.325, 497.341, and 497.345 apply to *all* cemeteries in this state." (e.s.)

Section 497.309(1), Florida Statutes, requires that records be kept of every burial in a cemetery and that such records reflect certain information. Section 497.321, Florida Statutes, relates to the solicitation of sales or burial rights, merchandise, or services. Section 497.325, Florida Statutes, prohibits tying arrangements, that is, the linking of the purchase of any grave space to the purchase of a monument. Section 497.341, Florida Statutes, prohibits the denial of burial space to any person because of race or color. [4] Section 497.345, Florida Statutes, provides that a municipality or county that has within its jurisdiction an abandoned cemetery may, after complying with certain notice requirements, "take such action as is necessary and appropriate to provide for maintenance and security of the cemetery." Further, section 497.003(3), Florida Statutes, requires that cemeteries that are exempted under this chapter and are larger than 5 acres must submit to an investigation and mediation procedure in the event of a consumer complaint.

Thus, while municipal and county cemeteries are not generally subject to regulation by the Department of Banking and Finance under Chapter 497, Florida Statutes, the Legislature has determined that local governments must recognize certain regulations.

You have asked whether section 497.325(2)(b)1., Florida Statutes, applies to the Dade City Cemetery. This statute provides:

"(1) No person authorized to sell grave space may tie the purchase of any grave space to the purchase of a monument from or through the seller of any other designated person or corporation.

(2)(a) Noncemetery licensed persons and firms shall have the right to sell monuments and to perform or provide on cemetery property foundation, preparation, and installation services for monuments. However, a cemetery company may establish reasonable rules regarding the style and size of a monument or its foundation, provided such rules are applicable to all monuments from whatever source obtained and are enforced uniformly as to all monuments. Such rules shall be conspicuously posted and readily accessible to inspection and copy by interested persons.

(b) No person who is authorized to sell grave space and no cemetery company may:

1. Require the payment of a setting or service charge, by whatever name known, from third party installers for the placement of a monument;
2. Refuse to provide care or maintenance for any portion of a gravesite on which a monument has been placed; or
3. Waive liability with respect to damage caused by cemetery employees or agents to a

monument after installation,

where the monument or installation service is not purchased from the person authorized to sell grave space or the cemetery company providing grave space or from or through any other person or corporation designated by the person authorized to sell grave space or the cemetery company providing grave space. No cemetery company may be held liable for the improper installation of a monument where the monument is not installed by the cemetery company or its agents.

(3) No program offering free burial rights may be conditioned by any requirement to purchase additional burial rights, funeral merchandise, or services. Any program offering free burial rights shall comply with s. 817.415."

Section 497.003(2), Florida Statutes, makes this section, which prohibits illegal tying arrangements, specifically applicable to municipal cemeteries. Therefore, to the extent the City of Dade City adopts any ordinance in conflict with the provisions of section 497.325, Florida Statutes, such ordinance would be legally suspect.

Thus, it is my opinion that municipal cemeteries are generally exempted from regulation under Chapter 497, Florida Statutes. However, section 497.003(2), Florida Statutes, makes sections 497.309(1), 497.321, 497.325, 497.341, and 497.345 applicable to all cemeteries in Florida, and section 497.003(3), Florida Statutes, makes municipal cemeteries of more than 5 acres subject to investigation and mediation procedures by the Department of Banking and Finance in the event of a consumer complaint.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgh

[1] Section 497.001, Fla. Stat., sets forth the title of the act.

[2] Section 497.002(1), Fla. Stat.

[3] Section 497.003(1), Fla. Stat.

[4] Section 497.341(1), Fla. Stat., was amended by s. 8, Ch. 00-195, Laws of Florida, to change the word "church" as it appears in that section to "religious institution."