

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Mark Parkinson at 9:00 a.m. on March 15, 1994, in Room 531-N of the Capitol.

All members were present except: Sen. Ranson

Committee staff present: Michael Heim, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Shirley Higgins, Committee Secretary

Others attending: See attached list

Conferees appearing before the committee:

Representative Bob Tomlinson
Shelly Gasper, Assistant Attorney General
Jennifer Wentz, Deputy Assistant Secretary of State
David Newcomer, Kansas Cemetery Association
Barbara Butts, Municipal Accounting Section
Richard Maginot, Soldier Township
Gary Wray, Elk Township

HB 3052--Concerning cemetery districts; requiring the filing of certain reports.

Representative Bob Tomlinson testified in support of the bill. (See Attachment 1)

Sen. Ramirez made a motion to report HB 3052 favorable for passage, Sen. Downey seconded, and the motion carried.

HB 2944--Concerning cemetery corporations; relating to the regulation thereof; concerning certain trust funds.

Shelly Gasper, Assistant Attorney General, testified in support of the bill. (See Attachment 2) She noted that the bill had been requested by Representative Rock and covers several areas of the cemetery corporation and pre-need burial contract laws.

Jennifer Wentz, Deputy Assistant Secretary of State, followed with further testimony in support of HB 2944. (See Attachment 3) She suggested another amendment, which is not covered in her written testimony, in Section 2, line 24 of the bill as shown on the balloon of the bill she had prepared. The amendment adds restrictions with regard to loans.

Mr. Heim raised the question as to if the Secretary of State could be held liable in a case where a person had called the Secretary of State's office and confirmed that a cemetery was in compliance with the law but later that cemetery fails. Ms. Wentz responded that this issue has not come up, however, when there are problems of this nature, the Secretary of State's office involves the Attorney General.

David Newcomer, Kansas Cemetery Association, testified in support of the bill. He explained that he had expressed reservations in the House Local Government Committee hearing, but since that time, the Secretary of State's office had worked on amendments, and now he agrees with the bill as amended.

This concluded the hearing on HB 2944. The Chairman said the bill would be worked later this week after staff has had time to review the proposed amendments.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT, Room 531-N Statehouse, at 9:00 a.m. on March 15, 1994.

HB 3017--Concerning townships; relating to the powers and duties of the township board.

The Chairman called attention to written testimony submitted by Representative Elaine Wells which explains the need for the bill. (See Attachment 4)

Barbara Butts, Municipal Accounting Section, testified in support of the bill and suggested that the language in subsection (f) starting on line 23 with "and" through the end of the subsection be deleted, explaining that although this is current law, it is not being practiced. (See Attachment 5)

Richard Maginot, Soldier Township, testified in support of the bill with one amendment. He suggested that on page 1, line 22 "real" be inserted before "property." (See Attachment 6)

Gary Wray, Elk Township, gave final testimony in support of the bill. (See Attachment 7)

Sen. Reynolds made a motion to conceptually amend HB 3017 on line 22 as suggested, Sen. Ramirez seconded the motion, and the motion carried.

Sen. Reynolds made a motion to amend the bill by striking language regarding approval by the Board of County Commissioners in subsection (f), Sen. Langworthy seconded, and the motion carried.

Sen. Langworthy made a motion to report HB 3017 favorable for passage as amended, Sen. Gooch seconded, and the motion carried.

The minutes of March 10 and March 14 were approved.

The meeting was adjourned at 9:56 a.m.

The next meeting is scheduled for March 16, 1994.

Date: wed 3/15/94

GUEST REGISTER
SENATE
LOCAL GOVERNMENT

NAME	ORGANIZATION	ADDRESS
John Peterson	Ks Cemetery Assn	Topeka
Barbara Butts	Dept of Admin	Topeka
Dan May	ELK HWS	Overbrook, KS
Rep Robert Tomlinson	District 24	Reelwood, MO
DWM	KCA	OP, KS
Jenny Ann West	Sec. of State	Topeka
RICHARD MAGINOT	SOLDIER TOWNSHIP	TOPEKA
Ken Bahr	Ks. Cemetery Assn	"
Wayne Guthrie	Ks. Cem. Assn	"
Shelly Cooper	KSAG	Topeka

BOB TOMLINSON
REPRESENTATIVE 24TH DISTRICT
STATE CAPITOL
TOPEKA, KS 66612-1504
913 296-7640
5722 BIRCH
ROELAND PARK, KS 66205
913 831-1905



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: EDUCATION
LOCAL GOVERNMENT
JOINT COMMITTEE ON PLANNING EDUCATION

March 15, 1994

Testimony Before the
Senate Local Government Committee
House Bill 3052

Mr. Chairman and Members of the Committee:

HB3052 requires cemetery districts to submit reports on the amount of their idle funds.

The change is simple, it is designed to make district more accountable without overburdening them with new mandates recognizing the uniqueness of their situation.

Bob Tomlinson

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3-15-94
Attachment 1



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

**Statement of
SHELLY GASPER
Assistant Attorney General
Re: House Bill 2944
Before the Senate Local Government Committee
March 15, 1994**

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

I am here today to speak in support of House Bill 2944 which amends various provisions of the cemetery corporation and pre-need burial contract laws. Several cemeteries per year become abandoned. An abandoned cemetery is one which no longer has the proper care. It is this situation that is addressed by this bill.

The purpose of this legislation is three-fold: It is first to **clarify** some requirements regarding pre-need sales and trusting, then to **increase accountability** to the public, and finally, to provide **greater protection** to individuals in cases where an abandonment occurs.

One of the purposes of this bill is to clarify the requirements regarding pre-need sales and maintenance fund trusting. In section two, the proposed changes would delete language that limits what type of services are covered. Currently, the statute (K.S.A. 16-301) requires pre-need sales of **professional** services to be trusted. The necessity to trust such non-professional services as opening and closings of the grave is unclear at present. The overall purpose of the statute is to make sure money is available at need to cover goods and services sold in advance of need, and this change would make that purpose more clear. At one cemetery alone,

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Attachment 2*

the owner had sold over \$30,000 worth of opening and closing services. None of those people will receive those services because the owner died last year without trusting the money.

Another clarification made is that permanent maintenance funds are required to be trusted if they are over \$45,000. It became apparent that the cemeteries with smaller funds could not afford trustee fees, but that the larger funds **must** be trusted. The current law is vague as to trusting requirements.

Another purpose of the bill is to increase accountability to the public. Currently, the status of a cemetery's accounts is shrouded in secrecy. Unfortunately, the effect of a cemetery going out of business, or becoming "abandoned," affects every single person who has purchased a marker, vault, opening and closing, or other good or service who has not received it. And in that sense, those who could be affected by the financial condition of the cemetery should have access to its financial status. This bill proposes two ways in which this is done. First, the trust documents must be on file, and second, the secretary of state may report the compliance of cemeteries it has audited.

Finally, this bill has a provision to allow for the payment of merchandise out of permanent maintenance funds if a cemetery is abandoned and turned over to a municipality. Currently, the permanent maintenance funds go to the municipality and people who have purchased goods or services are simply out the money. In a majority of the cases handled by the attorney general's office in the past six years, there was money in the permanent maintenance fund but not in the merchandise trust fund. A good number of the folks who lost everything they invested would have gotten much of what they purchased had this provision been in effect.

Bill Graves
Secretary of State



2nd Floor, State Capitol
Topeka, KS 66612-1594
(913) 296-2236

STATE OF KANSAS

Senate Committee on Local Government
Testimony on HB 2944
March 15, 1994

Mr. Chairman and Members of the Committee: Thank you for the opportunity to appear before you to testify on HB 2944. The Secretary of State's office supports this bill, and asks that you recommend it favorably for passage.

The Secretary of State's office is charged with examining the permanent maintenance funds and cemetery merchandise trust funds of approximately 74 cemetery corporations, which include "every individual, firm, partnership or other organization hereafter selling or conveying land for cemetery purposes...". Cemetery corporations do not include municipal, county or township cemeteries, religious cemeteries, cemeteries located in urban counties operated by nonprofit organizations, and cemeteries organized prior to January 1, 1900. It is our view that this bill, particularly sections two, four, and five, clarifies questions and concerns which have been brought to the attention of our office. Attached to my testimony are balloons which further refine sections one, three, four and five of the bill. After discussing these additional amendments with the Attorney General's Office and the Kansas Cemetery Association, we are in agreement that such changes better address the consumer protection concerns this bill seeks to advance.

The amendments proposed in section two clarify that a cemetery which sells opening and closing services is required to deposit 100 percent of the funds paid in advance for these services. Opening and closing is not defined as cemetery merchandise, and questions have been raised about whether the current language of K.S.A. 16-301 covers funds prepaid for opening and closing.

Section four of the bill clarifies that permanent maintenance funds must be trusted. Currently, some cemetery corporations which maintain the correct level of monies in their permanent maintenance funds do so without using a trust. This bill, as amended by the attached balloon, permits an individual trustee to be utilized if the value of the fund is less than \$45,000.

Section five of the bill, as amended by the attached balloon, authorizes the Secretary of State's office to disclose certain financial information about a cemetery corporation to the public. We do get inquiries from the media and individuals about whether cemeteries properly maintain their funds. This information is currently confidential.

Jennifer Chaulk Wentz, Legal Counsel
Deputy Assistant Secretary of State

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Attachment 3*

As Amended by House Committee

Session of 1994

HOUSE BILL No. 2944

By Representatives Rock, Cox, Goodwin, Grant, Krehbiel, Larkin,
Mays, Minor, Novak, Pauls, Pettey, Ruff, Sawyer, Sebelius, D.
Smith, Tomlinson, Toplikar, Welshimer and Wootton

2-4

AN ACT concerning cemetery corporations; relating to the regulation thereof; concerning certain trust funds; amending K.S.A. 17-1312e and 17-1367 and K.S.A. 1993 Supp. 16-301, 17-1311 and 17-1312 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. Cemetery corporations subject to an audit by the secretary of state pursuant to K.S.A. 16-325 or 17-1312a, and amendments thereto, shall file a copy of each trust ~~document~~ in the office of the ~~county clerk in each county where a cemetery of such cemetery corporation is located.~~

agreement or instrument

secretary of state

Sec. 2. K.S.A. 1993 Supp. 16-301 is hereby amended to read as follows: 16-301. Any agreement, contract or plan requiring the payment of money in a lump sum or installments which is made or entered into with any person, association, partnership, firm or corporation for the final disposition of a dead human body, or for funeral or burial services, or for the furnishing of personal property or funeral or burial merchandise, wherein the delivery of the personal property or the funeral or burial merchandise or the furnishing of professional services by a funeral director or embalmer is not immediately required, is hereby declared to be against public policy and void, unless all money paid thereunder shall be deposited in a bank or savings and loan association which is authorized to do business in this state and insured by a federal agency, or invested in a credit union which is insured with an insurer or guarantee corporation as required under K.S.A. 17-2246, and amendments thereto, all as herein provided, and subject to the terms of an agreement for the benefit of the purchaser of the agreement, contract or plan. For the purposes of this act, personal property or funeral or burial merchandise shall include caskets, vaults and all other articles of merchandise incidental to a funeral service, but shall not include grave lots, grave spaces, grave memorials, tombstones, crypts, niches and mausoleums.

1 Sec. 3. K.S.A. 1993 Supp. 17-1311 is hereby amended to read
 2 as follows: 17-1311. Such corporation shall maintain, in a state or
 3 national bank located within the state of Kansas, a state or federally
 4 chartered savings and loan association located within the state of
 5 Kansas or a federally chartered savings bank located within the state of
 6 Kansas, a percentage of the purchase price of each burial lot sold
 7 by it, or any payment thereon, not less than 15% thereof, for the
 8 permanent maintenance of the cemetery within which the burial lot
 9 lies, but the total amount set aside shall not be less than \$25 for
 0 each burial lot at the time of conveyance of such lot. Deposits to
 1 the permanent maintenance fund shall be made within 45 days of
 2 receipt of moneys for which deposits are required to be made.
 3 Moneys placed in such fund under the provisions of K.S.A. 17-1308,
 4 and amendments thereto, shall be credited for the purposes of ful-
 5 filling such requirement. Moneys in such fund may be held and
 6 invested to the same extent as is provided in K.S.A. 17-5004, and
 7 amendments thereto, but the total amount of money invested in any
 8 mortgage upon real property shall not exceed an amount equal to
 9 75% of the market value of such property at the time of such in-
 0 vestment. The income of the permanent maintenance fund shall be
 1 used exclusively for the maintenance of the cemetery. No part of
 2 the principal of the fund shall ever be used for any purpose except
 3 for such investment. In no event shall any loan of the funds be
 4 made ~~to any stockholder in such corporation.~~ The treasurer of
 5 such corporation may deposit, to the credit of such fund, donations
 6 or bequests for the fund and may retain property so acquired without
 7 limitation as to time and without regard to its suitability for original
 8 purchase. As used in this section, the term "burial lot" means a
 9 plotted space for one grave. Such maintenance shall include, but
 0 not be limited to, mowing, road maintenance and landscaping, but
 1 shall not include administrative costs, expense of audits or the portion
 2 of any capital expense for equipment used to maintain portions of
 3 a cemetery not sold for burial purposes or in use for grave sites.

Sec. 4. K.S.A. 1993 Supp. 17-1312 is hereby amended to read
 as follows: 17-1312. The permanent maintenance fund required to
 be established by K.S.A. 17-1311, and amendments thereto, shall
 at all times be in the custody of a trust company located within the
 state of Kansas, a state or national bank located within the state of
 Kansas, a state or federally chartered savings and loan association
 located within the state of Kansas or a federally chartered savings
 bank located within the state of Kansas. ~~The treasurer of any cem-
 etery corporation may establish a trust account for moneys in the
 permanent maintenance fund in accordance with this section, if the~~

to any stockholder, officer or
 employee of such corporation, or
 to any person related to a
 stockholder, officer or employee
 by blood or marriage

Each cemetery corporation shall
 establish a trust for moneys
 deposited in the permanent
 maintenance fund in accordance
 with this section. If the
 market value of the trust is
 less than \$45,000, the trust
 may have an individual trustee
 so long as the trust's assets
 are maintained in a segregated
 account. If the market value
 of the trust is \$45,000 or
 more, the trustee shall be a
 trust company, state or
 national bank, state or
 federally chartered savings and
 loan association or federally
 chartered savings bank located
 within the state of Kansas.

~~value of the fund is less than \$45,000, but shall establish a trust account for such fund if the value of the fund is \$45,000 or more.~~

Any such trust company, bank, savings and loan association or federally chartered savings bank with which the custody of a permanent maintenance fund has been entrusted may invest, reinvest, exchange, retain, sell and manage the moneys within such fund. If the treasurer of any cemetery corporation shall entrust the custody of the permanent maintenance fund to a savings and loan association or associations or federally chartered savings bank or banks, the amount of moneys in the custody of any such association or savings bank shall not exceed the amount for which deposits in such savings and loan association or savings bank are insured by the federal savings and loan insurance corporation or other insurer approved by the state commissioner of insurance. If the treasurer of any cemetery corporation shall entrust the custody of the permanent maintenance fund to a bank or banks or federally chartered savings bank or banks, the amount of money in the custody of any such bank or savings bank shall not exceed the amount for which deposits in such bank or savings bank are insured by the federal deposit insurance corporation or other insurer approved by the state bank commissioner.

Such trust company, bank, savings and loan association ~~or federally chartered savings bank~~ may serve without bond and may be reasonably compensated for its services out of the income of the fund. It shall be a provision of any such trust agreement that no moneys, other than income from the trust, shall be paid over to the cemetery corporation by the trustee, except upon the written permission of the secretary of state.

or individual trustee

Sec. 5. K.S.A. 17-1312e is hereby amended to read as follows: 17-1312e. All information which the secretary of state shall gather or record in making an investigation and examination of any cemetery corporation shall be deemed to be confidential information, and shall not be disclosed by the secretary of state, any assistant, examiner or employee thereof, except to: (a) Officers of the cemetery corporation being audited; ~~or to~~ ; (b) the attorney general, when in the opinion of the secretary of state the same should be disclosed; or (c) others, ~~the minimum funding requirements for a cemetery corporation and the total amount held in a cemetery merchandise trust fund established under K.S.A. 16-322, and amendments thereto or the total amount held in a permanent maintenance fund established under K.S.A. 17-1311, and amendments thereto~~

whether the cemetery maintains

, and whether such funds are maintained in compliance with Kansas law

Sec. 6. K.S.A. 17-1367 is hereby amended to read as follows: 17-1367. Whenever the attorney general determines the existence of an abandoned cemetery in this state, the attorney general shall

1 immediately proceed to dissolve the cemetery corporation owning
2 the same. Upon the dissolution of such corporation, *the following*
3 *property and funds shall be transferred to the treasurer of the*
4 *municipality in which the cemetery is located and shall become the*
5 *property of such municipality: (a) Title to all property owned by*
6 *the cemetery corporation shall vest in the such municipality in*
7 *which the cemetery is located; and ; (b) the permanent main-*
8 *tenance fund, together with all investments then outstanding; and*
9 *, except that such fund shall be used to pay first any claim made*
10 *in a prepaid contract, entered into pursuant to K.S.A. 16-301*
11 *through 16-333, and amendments thereto; and (c) all books, records*
12 *and papers of such cemetery corporation shall be transferred to*
13 *the treasurer of such municipality and shall become the prop-*
14 *erty thereof.* Upon the transfer of such property and funds, the
15 governing body of such municipality shall care for and maintain such
16 cemetery with any moneys of the cemetery corporation including
17 the principal of and income from the permanent maintenance fund
18 and, if such moneys are insufficient to properly maintain such cem-
19 etery, with funds of the municipality. The principal of and income
20 from the permanent maintenance fund may be deposited in any
21 appropriate fund of the municipality or may be invested in the
22 manner provided in K.S.A. 17-1311, *and amendments thereto* but
23 shall be used exclusively for care and maintenance of such cemetery.

24 Sec. 7. K.S.A. 17-1312e and 17-1367 and K.S.A. 1993 Supp. 16-
25 301, 17-1311 and 17-1312 are hereby repealed.

26 Sec. 8. This act shall take effect and be in force from and after
27 its publication in the statute book.

ELAINE L. WELLS
REPRESENTATIVE, FIFTY-NINTH DISTRICT
OSAGE AND NORTH LYON COUNTIES
R.R. 1, BOX 166
CARBONDALE, KANSAS 66414
(913) 665-7740

STATE CAPITOL
RM. 182-W
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(913) 296-7637



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE-CHAIR: GOVERNMENT ORGANIZATION
AND ELECTIONS
MEMBER: PUBLIC HEALTH AND WELFARE
JUDICIARY

TESTIMONY ON H.B. 3017

TOWNSHIPS; SALE OF REAL PROPERTY

APPOINTMENT OF ROAD OVERSEER

Thank you, Mr. Chairman, for the hearing on this bill and for my opportunity to submit written testimony on it.

The first part of this legislation will remedy the current problem that exists when a township is wanting to sell property. Under K.S.A. 80-109 township officers have to place the question to sell property on a ballot for a vote of the electors of the township to be voted on at any general election or a special election.

H.B. 3017 will change this process to the one used by counties by placing a notice in a newspaper of general circulation, for three consecutive weeks.

Passage of this legislation will save townships the expense of holding a special election when the board deems it necessary to sell property.

The second part of the bill remedies a problem cited by the Attorney General regarding the road overseer.

Two statutes currently apply to who appoints the road overseer or who fills the vacancy when it occurs. One states that the trustee will fill vacancies, and the other gives the authority to the board.

This summer the Attorney General notified the Revisor's office that since the one giving the authority to the board was the most recent, that it was the one to be used.

H.B. 3017 makes this clear by striking the language for the road overseer vacancies to be filled by the township trustee. It resolves the conflicting statutes.

Again, thank you.

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Attachment 4*

HOUSE BILL 3017
SENATE LOCAL GOVERNMENT COMMITTEE
Barbara Butts, Municipal Accounting Section
March 15, 1994

Currently K.S.A. 80-109 requires that any land now owned by a township can't be sold until approval by election.

Counties can sell property with a value exceeding \$50,000 by three publications in the newspaper and the provision for a protest petition. Sale of property with a value under \$50,000 requires no public notice in most cases, see K.S.A. 1993 Supp. 19-211.

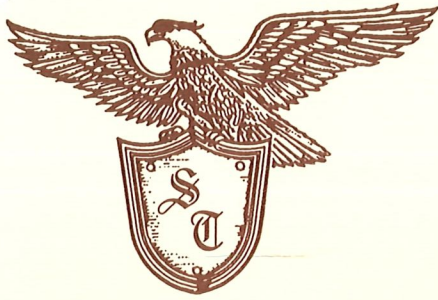
Elk Township (Osage County) would like to sell property to U.S.D. 434 if the U.S.D. bond issue is approved by the voters. It does not seem reasonable that an election is required when the property was donated by the state of Kansas, and the township no longer needs the property.

The procedure in HB 3017 would require townships to give notice in the newspaper of the proposed sale, with provision for a protest petition. However, property acquired from the state of Kansas would be exempt from this provision by Sec. 1(b).

This bill would provide some equity between the county and township provisions for disposing of property. Public notice would still be required in most cases, and taxpayers would have the ability to protest. We support this change in procedures.

Section 2 is a clarification of the township trustees' powers. Subsection (f) requires county commission approval of the township budget. The townships have not been following this practice, and it is not practicable to implement. We recommend deletion of the language starting on line 23 with "and" through the end of the subsection.

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Attachment 5



Soldier Township

600 N.W. 46th, Topeka, Kansas 66617

SENATE LOCAL GOVERNMENT COMMITTEE

March 14, 1994

HB 3017

Soldier Township, located in northeastern Shawnee County, supports this bill with one amendment.

The Township occasionally sells surplus property by sealed bid after placing a notice in the local newspaper. If passed in its current form this bill would unreasonably restrict the ability to dispose of this surplus property.

The original intent of this bill was to change the method of disposing of real property, therefore it should be amended on line 22 by inserting "Real" before the word property.

The Township currently owns a tract of land less than an acre in size, the former site of a water tower. The current process to sell this site would require that a question be placed on the ballot during an election. The cost to do this would be greater than any revenue from the sale of the land.

HB 3017 would give the Township Board the ability to dispose of property like this at a reasonable cost. The citizens of the township would still have the right to have the sale placed on the ballot if they wished.

If amended as suggested above, Soldier Township would request your support of HB 3017.

Richard Maginot
Business Administrator

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3-15-94
Attachment 6*

March 15, 1994

Senate Local Government Committee:

The Santa Fe Trail School District #434 has approached Elk Township about purchasing the township property to enlarge their school facilities. Before the township can sell their property, the present law requires the township to have an election.

Elk Township acquired this property from the Department of Transportation in 1976 at no cost, and it doesn't seem reasonable that the township should have to spend the time and expense of having an election to sell their property to the school district; therefore, Elk Township supports House Bill 3017.

A handwritten signature in cursive script, appearing to read "Gary L. Wray", written in dark ink.

Gary L. Wray, Clerk
Elk Township
Route 2, Box 262
Overbrook, KS 66524-9437

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Attachment 7