

HEALTH AND SAFETY CODE

TITLE 8. DEATH AND DISPOSITION OF THE BODY

SUBTITLE C. CEMETERIES AND CREMATORIES

CHAPTER 713. LOCAL REGULATION OF CEMETERIES

SUBCHAPTER A. MUNICIPAL REGULATION OF CEMETERIES

Sec. 713.001. MUNICIPAL CEMETERY AUTHORIZED. The governing body of a municipality may:

- (1) purchase, establish, and regulate a cemetery; and
- (2) enclose and improve a cemetery owned by the municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 47, eff. Sept. 1, 1993.

Sec. 713.002. LOCAL TRUST FOR CEMETERY. (a) A municipality that owns or operates a cemetery or has control of cemetery property may act as a permanent trustee for the perpetual maintenance of the lots and graves in the cemetery.

(b) To act as a trustee, a majority of the municipality's governing body must adopt an ordinance or resolution stating the municipality's willingness and intention to act as a trustee. When the ordinance or resolution is adopted and the trust is accepted, the trust is perpetual.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.003. LOCAL AUTHORITY TO RECEIVE GIFTS; DEPOSITS FOR CARE; CERTIFICATES. (a) A municipality that is a trustee for the perpetual maintenance of a cemetery may adopt reasonable rules to receive a gift or grant from any source and to determine the amount necessary for permanent maintenance of a grave or burial lot, including a family lot.

(b) A municipality that is a trustee for any person shall accept the amount the municipality requires for permanent maintenance of a grave or burial lot on behalf of that person or a decedent.

(c) The municipality's acceptance of the deposit is a

perpetual trust for the designated grave or burial lot.

(d) On acceptance of the deposit, the municipality's secretary, clerk, or mayor shall issue a certificate in the name of the municipality to the trustee or depositor. The certificate must state:

- (1) the depositor's name;
- (2) the amount and purpose of the deposit;
- (3) the location, as specifically as possible, of the grave, lot, or burial place to be maintained; and
- (4) other information required by the municipality.

(e) An individual, association, foundation, or corporation that is interested in the maintenance of a neglected cemetery in a municipality's possession and control may donate funds to the perpetual trust fund to beautify and maintain the entire cemetery or burial grounds generally.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.004. USE OF FUNDS. (a) A municipality may invest and reinvest deposits under this subchapter in interest-bearing bonds or governmental securities.

(b) The principal of the funds must be kept intact as a principal trust fund, and the fund's trustee may not use those funds.

(c) The income or revenue of the fund must be used for the maintenance and care in a first-class condition of the grave, lot, or burial place for which the funds are donated. Income or revenue that is more than the amount necessary to faithfully accomplish the trust may be used, in the discretion of the trustee, to beautify the entire cemetery or burial grounds generally.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.005. DEPOSIT RECORDS. (a) A municipality that acts as a trustee under this subchapter shall maintain a permanent, well-bound record book including, for each deposit made:

- (1) the name of the depositor, listed in alphabetical order;
- (2) the purpose and amount of the deposit;

(3) the name and location, as specifically as possible, of the grave, lot, or burial place to be maintained;

(4) the condition and status of the trust imposed; and

(5) other information required by the municipality.

(b) A certificate holder under this subchapter may, on payment of the proper cost or recording fee, record the certificate in the deed records of the county in which the cemetery is located. The county clerk shall file, index, and record the certificate in the deed records of that county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.006. TAX. (a) A municipality acting as a trustee for a cemetery may include in the municipality's annual budget an amount considered necessary for cemetery maintenance.

(b) The municipality may impose a tax on all property in the municipality in an amount not exceeding five cents for each \$100 valuation of the property for maintenance of the cemetery, regardless of whether the cemetery is located inside or outside the municipal limits.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.007. APPOINTMENT OF SUCCESSOR TRUSTEE. The district judge of the county in which the cemetery is located shall appoint a suitable successor or trustee to faithfully execute a trust in accordance with this subchapter if the municipality renounces a trust assumed under this subchapter or fails to act as its trustee and:

(1) the occasion demands the appointment; or

(2) a vacancy occurs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.008. TERMINATION OF MUNICIPAL TRUST BY CERTAIN MUNICIPALITIES. The governing body of a municipality in a county with a population of at least 128,000 but not more than 133,000 may abolish the municipality's perpetual trust fund for a cemetery and use the fund, including both principal and interest, for permanent improvements to the cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 222, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 597, Sec. 78, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 40, eff. Sept. 1, 2001.

Sec. 713.009. LOCAL POSSESSION AND CONTROL OF UNKEPT OR ABANDONED CEMETERY. (a) Except as provided by Subsection (i), a municipality with a cemetery inside the municipality's boundaries or extraterritorial jurisdiction may, by resolution, take possession and control of the cemetery on behalf of the public if the cemetery threatens or endangers public health, safety, comfort, or welfare.

(b) If a municipality does not take possession and control of a cemetery under Subsection (a) or acts to take possession and control but does not perform the work required by Subsections (d), (e), and (f), a district court on petition of a resident of the county in which the cemetery is located shall by order appoint a willing nonprofit corporation organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) to act in place of the municipality to protect the public health, safety, comfort, and welfare.

(c) A district court appointing a nonprofit corporation has continuing jurisdiction to monitor and review the corporation's operation of the cemetery. The court may, on its own motion, revoke the appointment and appoint another willing nonprofit corporation without the necessity of another petition. The court shall review the subsequent appointment if a county resident petitions for review of the appointment.

(d) A resolution of the municipality or an order of the court under this section must specify that, not later than the 60th day after the date of giving notice of a declaration of intent to take possession and control, the municipality or corporation, as appropriate, shall:

(1) remove or repair any fences, walls, or other improvements;

(2) straighten and reset any memorial stones or embellishments that are a threat or danger to public health,

safety, comfort, or welfare; and

(3) take proper steps to restore and maintain the premises in an orderly and decent condition.

(e) The notice must be given by mail to all persons shown by the records in the county clerk's office to have an interest in the cemetery, and to all interested persons by publication in a newspaper of general circulation in the municipality.

(f) After taking the action described by Subsection (d), the municipality or corporation shall continue to maintain the cemetery so that it does not endanger the public health, safety, comfort, or welfare. Additional burial spaces may not be offered for sale.

(g) A cemetery in the possession and control of a municipality or corporation under this section must remain open to the public.

(h) A municipality or an officer or employee of the municipality is not civilly or criminally liable for acts performed in the good faith administration of this section.

(i) This section does not apply to:

(1) a perpetual care cemetery incorporated under the laws of this state; or

(2) a private family cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.010. PRIVATE CARE OF GRAVES. This subchapter does not affect the right of a person who has an interest in a grave or burial lot, or who is related within the third degree by affinity or consanguinity, as determined under Chapter 573, Government Code, to a decedent interred in the cemetery, to beautify or maintain a grave or burial lot individually or at the person's own expense in accordance with reasonable municipal rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 561, Sec. 33, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.

SUBCHAPTER B. COUNTY REGULATION OF CEMETERIES

Sec. 713.021. COUNTY TRUST FOR CEMETERY. A commissioners court by resolution may establish a perpetual trust fund to provide

maintenance for a neglected or unkept public or private cemetery in the county. The commissioners court shall appoint the county judge as trustee for the fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.022. GIFTS FOR MAINTENANCE OF CEMETERY. (a) A trustee for a county perpetual trust fund may adopt reasonable rules to receive a gift or grant from any source and to determine the amount necessary for permanent maintenance of the cemetery.

(b) A person who is interested in the maintenance of a neglected or unkept public or private cemetery in the county may make a gift to the trust fund for maintenance of the cemetery.

(c) The trustee's acceptance of the gift is a perpetual trust for the maintenance of the cemetery.

(d) On acceptance of the gift, the trustee shall instruct the county treasurer to issue a certificate to the donor. The certificate must state:

(1) the amount and purpose of the gift; and

(2) other information determined necessary by the trustee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.023. USE OF FUNDS. (a) The trustee may invest the fund in interest-bearing bonds or federal, state, or local government securities.

(b) The principal of the fund must be kept intact as a permanent principal trust fund.

(c) The income or revenue of the fund may be used only for maintenance of a neglected or unkept public or private cemetery in the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.024. APPOINTMENT OF SUCCESSOR TRUSTEE. If a county judge who is acting as a trustee under this subchapter vacates the office or renounces the trust, the district judge shall appoint a person, other than a county commissioner, as successor trustee to execute the trust.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.025. PRIVATE CARE OF GRAVES. This subchapter does not affect the right of a person to maintain a grave or burial lot in a cemetery if the person:

(1) has an interest in the grave or burial lot; or

(2) is related within the third degree by affinity or consanguinity, as determined under Chapter 573, Government Code, to a decedent interred in a cemetery maintained by a trustee under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 561, Sec. 34, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.

Sec. 713.026. USE OF PUBLIC FUNDS AND PROPERTY PROHIBITED; EXCEPTIONS. (a) Except as provided by Sections 713.027 and 713.028, a trustee of a fund established under this subchapter or a member of the commissioners court or any other elected county officer may not pay or use public funds or county employees, equipment, or property to maintain a neglected or unkept public or private cemetery.

(b) Subsection (a) does not apply to a county if:

(1) the county owned the cemetery from September 1, 1976, through January 1, 1979; or

(2) the county used county funds, employees, equipment, or property to maintain a county-owned cemetery during 1976.

(c) A county described by Subsection (b)(1) or (2) may continue to own the cemetery or to provide maintenance for the cemetery that qualified the county for the exception if the county files with the secretary of state a certified copy of a commissioners court order certifying that the county qualifies to own or maintain a cemetery under this section. The order must be kept in a register entitled "County-Owned and -Operated Cemeteries."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.027. CEMETERY OWNED BY COUNTY OF 8,200 OR LESS.

(a) A county with a population of 8,200 or less may own, operate, and maintain a cemetery and sell the right of burial in the cemetery.

(b) The sale of the right of burial is exempt from the requirements of Sections 263.001-263.006, Local Government Code.

(c) Revenue received from the sale of the right of burial may be used to purchase additional land for cemetery purposes and for maintenance of county cemetery property.

(d) The commissioners court of the county may spend money in the general fund to maintain a public cemetery in the county and may dedicate not more than one-eighth of the maximum allowable tax levy for that purpose.

(e) The commissioners court of the county serves as the county cemetery board and shall manage cemetery property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.028. COUNTY CARE OF CEMETERY OLDER THAN 50 YEARS.

(a) For purposes of historical preservation or public health, safety, or welfare, a commissioners court may use public funds, county employees, county inmate labor as provided by Article 43.10, Code of Criminal Procedure, and county equipment to maintain a cemetery that has a grave marker more than 50 years old.

(b) This section does not apply to a perpetual care cemetery or a cemetery maintained by a religious or fraternal organization.

(c) At the discretion of the commissioners court, a county may permit the use of public funds, county employees, county inmate labor as provided by Article 43.10, Code of Criminal Procedure, and county equipment to open and close graves in a cemetery described by Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1168, Sec. 1, eff. June 15, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 853, Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1187, Sec. 2, eff. June 18, 2005.

Sec. 713.029. COUNTY AUTHORITY TO PURCHASE BURIAL GROUNDS

FOR VETERANS. (a) A commissioners court may purchase burial grounds to be used exclusively for the burial of honorably discharged persons who:

(1) have served in the United States armed forces during a war in which the United States participated; and

(2) die without leaving sufficient means to pay funeral expenses.

(b) A commissioners court may not purchase burial grounds under this section if there is a national military cemetery or other military plot in the county in which honorably discharged veterans of the United States armed forces may be buried free of charge.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.