

CHAPTER 157.

CEMETERIES.

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157.01 Definitions. As used in this chapter:

- (1) "Corporation" means the cemetery association having charge of a cemetery.
- (2) "Board" means board of trustees, having charge of a cemetery.
- (3) "Municipality" means town, village or city. [1935 c. 421 s. 3]

157.02 Municipal cemeteries. (1) Municipalities may acquire by gift, purchase or condemnation land for cemeteries. For towns the land must be within the boundaries and acquisition and price must be authorized by the town meeting.

(2) The governing body of every municipality acquiring a cemetery shall provide for its operation and management. A cemetery board may be created to exercise such powers as the governing body shall provide. [1935 c. 421]

157.03 Cemetery association. (1) ORGANIZATION. Not less than seven persons residing in the same county may form a cemetery association. They shall meet, select a chairman and secretary, choose a name, fix the annual election date, and elect by ballot not less than three nor more than nine trustees whom the chairman and secretary shall immediately divide by lot into three classes, who shall hold their offices for one, two and three years, respectively. Within three days, this time limit being directory, the chairman and secretary shall certify the corporate name, the names of the organizers and of the trustees, and their classification, and the annual election date acknowledged by them, and record it in the office of the register of deeds. The association shall then have the powers of a corporation.

(2) AMENDMENTS. The association may change (a) its name, (b) the number of trustees, or (c) the annual election date by resolution at an annual meeting, or special meeting called for such purpose, by majority vote of the members present, and by recording in the office where the certificate of organization is recorded, copy of the resolution, with the date of adoption, certified by the president and secretary or corresponding officers. The register of deeds shall note on the margin of the original record the volume and page where the amendment is recorded.

(3) VALIDATION. When there shall have been a bona fide attempt to organize a cemetery association, but a failure to record a properly drawn and executed certificate of organization, and it has in good faith bought and platted grounds and conveyed lots and carried on business for over twenty-five years, the same shall be a body corporate from the date of conveyance to it of real estate, and its transfers and other transactions are validated.

(4) ELECTIONS. (a) Annual election shall be held at such place in the county as the trustees direct upon such public notice as the by-laws prescribe. Trustees chosen after the first shall be proprietors of lots in the cemetery, residents of the state, and hold office for three years. Election shall be by ballot, and a plurality shall elect. Each owner of one or more lots shall be entitled to one vote, and such one of several owners of a lot as the majority of them designate shall cast the vote.

(b) If the annual election be not held on the day fixed the trustees may appoint another day, not more than sixty days thereafter, and give public notice of time and place, and if an election is not so held five members may apply to the judge of a court of record in the county for an order granting power to hold an election, by publishing notice of the application for two weeks in a newspaper published in the county, and the judge shall grant the application, and election shall then be held upon like notice. The terms of trustees whenever elected shall expire at the same time as though elected on the regular date.

(5) TRUSTEES; DUTIES, REPORT. The trustees may fill vacancies for the unexpired term. One shall be chosen president, and they shall appoint a secretary and treasurer, and may require security of the treasurer. The trustees shall manage the affairs and property of the association, control the cemetery and beautify the same, and may establish

regulations respecting it. At each annual meeting the trustees shall make a written report of their transactions and the condition of the association, giving a particular account of receipts and expenditures.

(6) **DISSOLUTION; REORGANIZATION.** (a) The association is dissolved by failure to hold annual election for three successive years.

(b) If an association so dissolved, has cemetery grounds, and interments remain therein, seven or more members may, by giving at least three weeks' public notice in a newspaper published in the municipality in which the cemetery is, or if no newspaper be there published by posting therein for at least three weeks three notices in three of the most public places of the time, place and object of the meeting, assemble and reorganize by the election of trustees, the same as at the regular time, and divide them into classes as provided in subsection (1) the commencement to be computed from the next annual election date, and the proceedings of such meeting shall be entered by the secretary on the records, and thereby the association shall be reorganized.

157.04 Change of ownership. (1) Upon organization of a cemetery association to take over a municipal cemetery, the municipality may convey real property and all funds and other personal property to the association. In towns the conveyance must be authorized by the town meeting.

(2) When a cemetery association abandons or fails to manage or care for the cemetery for a period of five or more years, and is not reorganized in the meantime, the municipality wherein the cemetery is becomes vested with the control of the property, and shall manage and care for it, and collect and manage all trust funds connected therewith received other than by a will.

(3) When a town cemetery becomes embraced within a city or village, it shall be managed as though acquired thereby.

157.05 Holding property. (1) A cemetery or religious association authorized to hold lands for cemetery purposes may take and hold not exceeding eighty acres of land, to be used exclusively for burial of the dead, and personal property not exceeding one hundred thousand dollars in value, to promote the objects of the association; and if the cemetery is near to a city of more than ten thousand and less than one hundred thousand inhabitants the association may so take and hold not exceeding one hundred sixty acres of land; and if near to or within a city of one hundred thousand or more inhabitants not exceeding two hundred forty acres.

(2) A cemetery or religious association incorporated in this state and having a cemetery in or near a city having, by the last United States census, a population of over one hundred thousand may acquire by gift or purchase up to thirty acres of adjoining lands for cemetery purposes, and may pay for it wholly or partly from the lot sales.

(3) When it is necessary to enlarge a public cemetery and adjoining lands cannot be acquired or can be acquired only at an exorbitant price, application may be made in writing to the county judge by twelve or more resident freeholders of the municipality in which the cemetery is located, describing the land and setting forth the facts and the price asked, whereupon the judge shall appoint three resident freeholders of the county, but not of such municipality, to appraise the damages of each owner, not to exceed the price asked, but, except in cities or incorporated villages, no lands shall be taken within twenty rods of a residence owned by the occupant without his written consent. The appraisers shall hear all parties upon ten days' notice and file report in writing with the judge within ten days after determination. Upon payment into court of the amount appraised, the lands shall be taken. Either party may appeal as provided in section 32.11. The commissioners shall be paid by the municipality two dollars for each day actually employed and six cents for each mile necessarily traveled.

157.06 Location of cemeteries. No cemetery shall be laid out or used for burial purposes, except such as are now in use, and except those which shall hereafter be organized, maintained and operated by towns, villages and cities, by churches, by fraternal and benevolent societies, by incorporated colleges of religious orders and by cemetery associations incorporated under the provisions of this chapter. No such cemetery shall be established or located (1) within recorded plat of a city or village, or recorded addition thereto, and within a mile of a building in any such plat, (2) outside such a plat and within two hundred rods of an inhabited dwelling in such a plat, without the consent of the municipal authorities, (3) within fifteen rods of a habitable dwelling, public building, watering place, or schoolhouse, but this clause shall not apply to the use for cemetery purposes of lands already owned for an extension to an existing cemetery and included within the same description, nor (4) within two hundred rods of the institutions for the deaf and dumb, for the blind, the hospitals for the insane, the industrial school for boys, the colonies for the feeble-minded, the state public school, or the state reformatory, without the consent of the state board of control; except that (1) an existing cemetery in a village may be extended toward or beyond either of the two nearest village limits with the consent

of the village board and the owners of any building within fifteen rods of the addition; (2) an existing cemetery in a city of the third or fourth class may be extended and enlarged with the consent of the state board of health and of the council; provided, that damages may also be allowed to owners of land adjoining that taken for cemetery purposes; (3) an incorporated college of a religious order in a city of the fourth class may, with the consent of the council, establish a private cemetery on land owned by the college for the interment of members of the order in such city, but not within fifty rods of a private dwelling or building without the consent of the owner; (4) a cemetery established within an incorporated village before April 30, 1887, within one hundred feet of the outer lines of the plat of such village, may be extended to the outer boundary of such plat with the consent of the village board, and (5) a cemetery established before said date may be enlarged subject only to the conditions of section 157.05. Violation of this section creates a nuisance which may be enjoined at the suit of anyone. [1933 c. 246 s. 1]

Note: Land which has been platted as a cemetery by a cemetery association, the plat approved and recorded and many lots therein sold for burial purposes was a cemetery "now in use" within the meaning of the quoted phrase as used in chapter 246, Laws 1933. A cemetery corporation organized

thereafter could by acquiring a cemetery then in use obtain all of the rights of the cemetery association from which it was acquired. *Town of Blooming Grove v. Rose-lawn Memorial Park Co.*, 231 W 492, 286 NW 43.

157.07 Platting. The board of trustees shall survey and plat such portions of the lands as may from time to time be required for burial, into lots, drives and walks, and record map thereof in the office of the register of deeds. No such plat or map shall be recorded unless laid out and platted to the satisfaction of the county board of such county, and the town board of the town in which such land is situated, and the board of trustees shall cause the same to be recorded within thirty days of the date of such approval, together with the evidence of the town and county boards' approval, which shall be a copy of the resolution adopted by such county board and by such town board, certified by the county clerk and the town clerk, respectively, and affixed to such map or plat. For failure to do so, the plat shall be void and of no effect and each trustee of an association shall forfeit twenty-five dollars to the county. [1931 c. 126]

Note: Plat of land for burial purposes need not conform to 236.02. 20 Atty. Gen. 888.

157.08 Conveyances. (1) After the map is so recorded, the board may sell and convey platted lots, expressly restricting the use to burials, and upon such other terms, conditions and restrictions as the board directs. Conveyances shall be signed by the chief officer of the board, and the secretary or clerk, and before delivering the secretary or clerk shall enter in a book kept for that purpose, the date and consideration and the name and residence of the grantee. The conveyances may be recorded with the register of deeds.

(2) The trustees of a cemetery association may sell and convey for other than burial purposes any portion of its cemetery in which there shall have been no lots sold or conveyed and no burials made. A majority of the trustees shall file with the county court their verified petition describing the portion and setting forth the facts and reasons for conveyance. The court shall by order fix a time for hearing upon not less than thirty days' notice by publication in a newspaper at least three weeks successively. If the court find that the proposed sale is for the best interest of the association and that the rights of none to whom lots have been conveyed will be injured it shall enter an order reciting the jurisdictional facts and its finding and authorizing the conveyance. The order shall be effective when recorded by the register of deeds.

(3) The board may sell personal property at discretion.

(4) The board may vacate or replat any portion of its cemetery upon the filing of a verified petition by a majority of the trustees with the county court describing the portion and setting forth the facts and reasons therefor. The court shall by order fix a time for hearing upon not less than thirty days' notice by publication in a newspaper at least three weeks successively. The owners of all lots affected by the proposed vacating or replatting shall be served with a written notice, either personally or by registered mail at least ten days before the time fixed for hearing. If the court finds that the proposed vacating or replatting is for the best interest of the association and that the rights of none to whom lots have been conveyed will be injured, it shall enter an order reciting the jurisdictional facts and its findings and authorizing the vacating or replatting of the lands of the cemetery. The order shall be effective when recorded by the register of deeds.

157.09 Use of proceeds. The proceeds of sales shall be used only to apply on the purchase of the grounds, the care and improvement of the cemetery and avenues leading thereto, and operating expenses.

157.10 Alienation and use of lots. While any person is buried therein a lot shall be inalienable without the consent of a majority of the board and on the death of the owner shall descend to his heirs; but anyone or more of such heirs may convey to any other heir

his interest therein. No corpse shall be interred in a lot except the corpse of one having an interest therein, or a relative, or the husband, or wife of such person, or his or her relative, except by the consent of all persons having an interest in the lot.

157.11 Improvement and care. (1) **FENCE; FUNERAL BUILDING.** The board shall as soon as practicable inclose the grounds with a suitable fence, and may erect thereon a building for funeral services.

(2) **REGULATIONS.** The board may make regulations for management and care of the cemetery. No person shall plant in the cemetery trees or shrubs, nor erect wooden fences or structures, or offensive or dangerous structures or monuments, nor maintain them if planted or erected in violation of the regulations; and the board may require any person owning or controlling a lot to do anything necessary to comply with the regulations by giving reasonable personal notice in writing if he is a resident of the county, otherwise by publishing at least once a week for three successive weeks in a newspaper published in the county; and if he fail to comply within twenty days thereafter the board may cause it to be done and recover from him the expense. The board may also impose a forfeiture not exceeding ten dollars for violation of the regulations posted in three conspicuous places in the cemetery, recoverable under chapter 288. Each member of the board and the superintendent or sexton shall have constable powers in enforcing the regulations.

(3) **CONTRACTS.** The trustees of a cemetery association may contract with individuals who own or are interested in a lot for its care; the contract shall be in writing, may provide that the lot shall be forever exempt from taxes, assessments or charges for its care and the care and preservation of the grounds, shall express the duty of the association, be recorded in a book kept for that purpose, and be effective when the consideration is paid or secured.

(4) **ASSOCIATIONS.** Persons owning a lot or having relatives buried in a cemetery may incorporate an association to hold and occupy a previously constituted cemetery, and to preserve and care for the same; section 157.03 shall apply to such association. Nothing in this section shall give rights of burial. A municipality may lease a municipal cemetery to a cemetery association for preservation and may contract to permit the association to use cemetery funds therefor. Such leases and contracts may be revoked at will by the municipal board.

(5) **SUM REQUIRED.** The board shall fix the sum necessary, annually for care of lots and care and improvement of the cemetery, or to produce a sufficient income therefor.

(7) **ASSESSMENTS.** (a) The board may annually assess upon the lots not exceeding two cents per square foot excluding drives and walks, for cleaning and care of lots and care and improvement of the cemetery. Notice with a copy of this section shall be mailed forthwith to each lot owner or person having charge of a lot, at his last known post-office address, directing payment to the treasurer within thirty days and such assessment shall be a personal liability.

(b) The board or any organization having a cemetery under its control may fix and determine the sum reasonably necessary for perpetual care of the grave or lot in reasonable and uniform amounts, which amounts shall be subject to the approval of the court, and may collect the same as part of the funeral expenses.

(c) Before ordering distribution of the estate of a deceased person, the court shall order paid any assessment under this section, or the sum so fixed for the care of the lot or grave of the deceased.

(d) When uniform care of a lot has been given for two consecutive years or more, for which assessments are unpaid, after notice as provided in subsection (2) of this section, right to interment is forfeited until delinquent assessments are paid. When uniform care has been given for five consecutive years or more and the assessments are unpaid, upon like notice, title to all unoccupied part of the lot shall pass to the association or municipality and may be sold, the proceeds to be a fund for perpetual care of the occupied portion.

(8) **GIFTS.** The corporation shall take, hold and use such gifts, or the income and proceeds thereof as may be made in trust or otherwise for the improvement, maintenance, repair, preservation or ornamentation of any lot or structure in the cemetery, according to the terms of the gift, and regulations by the board.

(9) **HANDLING OF PROPERTY.** (a) Before the trustees of an association receive a gift, the secretary and treasurer shall file in the county court bonds in a sum not less than twice the gross value of the gift and with two or more sureties approved by the county judge, and which shall be renewed when the judge so orders. If the bonds are not filed, or any officer fails to do anything required by this subsection, the judge may appoint a trustee, and all property and money so given and evidences of title and securities shall be delivered to him.

(b) Except as hereinafter provided in respect of funds for the perpetual care of public mausoleums and columbariums money received by an association for perpetual

care shall be invested as provided in chapter 320, or in such other manner as may be approved by the county judge of the county or adjoining counties wherein the cemetery is located, or it may be deposited with the treasurer of the county or city in which such cemetery is located, and the governing body of such county or city may determine to accept such deposits. In the case of all deposits hitherto or hereafter deposited with a city or county, or previously deposited with a village, there shall be paid to said association annually interest on sums so deposited of not less than three per cent per annum. The governing body of any city or county, village or town in the case of previous deposits, may determine to return all or a part of any sum deposited by an association, and such association shall accept such sum within thirty days after receiving written notice of such action. If such association is dissolved or becomes inoperative such county or city shall use the interest on such fund for the care and upkeep of such cemetery. Deposit shall be made and the income paid over from time to time, not less frequently than once each year, and receipts in triplicate shall be given, one filed with the county clerk, one with the association and one given to the person making the deposit. Deposits shall be of five dollars or multiple thereof. Records and receipts shall specify the lot for the care of which the deposit is made. Reports of money received for perpetual care shall be made annually by the trustees of such association to the county judge on the first day of July in each year. All funds received by an association for perpetual care and now held by the treasurer, or trustees of such association may be transferred to said county or city treasurer. Failure to file such report for sixty days shall subject such trustees to a forfeiture of not less than ten nor more than twenty dollars, to be enforced as provided in chapter 288. Such trustees may also be cited to file such report by such judge and the expense of serving the citation shall be paid by such trustees and disobedience of such citation may be enforced as a contempt. This paragraph shall apply to all organizations that maintain cemeteries except municipalities, but shall not be effective in counties having a population of one hundred thousand or more, except as to cemeteries wholly within fourth class cities.

(d) The officer in charge of the gifts shall on the first secular day in January of each year make written report to the county judge showing in detail the amount of money and value of property received and its disposition. The judge shall audit the accounts and examine investments and securities.

(e) Anyone having in custody or control any cemetery care trust fund received other than by testament, shall upon demand deliver it to the cemetery corporation to be handled as provided in this section.

(f) If any money or property is not turned over when required by this section, or default occurs under a bond, the district attorney, when directed by the county judge, shall bring action to recover.

(g) Gifts and trusts hereunder shall be exempt from taxation and the law against perpetuities, accumulations and mortmain. [1931 c. 326; 1933 c. 134; 1933 c. 246 s. 1; 1933 c. 454 s. 9; 1935 c. 259, 298, 421; 1939 c. 436]

Note: Section 318.01 (3) limits allowance for perpetual care to \$100.

Proper maintenance of the burial place is, so far as it concerns the public health, a matter for regulation by the legislature. But 157.11 (7) (b) and (c) bear no relation to the public health or welfare. Their purpose is to provide funds which may be used to keep cemetery grounds attractive and beautiful. That is a worthy purpose, but the statute is not an exercise of the police power. It cannot, therefore, alter the terms

of Blackburn's contract with the claimant, or subject his estate to this charge for perpetual care. (Sec. 12, art I, Wis. Const.; sec. 10, art. I, U. S. Const.) In re Blackburn's Estate, 230 W. 570, 234 NW 491.

Under 157.11 (9) (b), as amended by chapter 259, Laws 1935, it is not mandatory for county to accept deposit of cemetery funds and pay interest thereon and county treasurer is not authorized to accept such funds without express authority of county board. 26 Atty. Gen. 622.

157.12 Vaults, etc. (1) Any municipality may construct and maintain in the municipal cemetery a suitable vault for the keeping of corpses; and the expense shall be paid as the municipal governing body directs.

(2) (a) No person shall build a structure for corpses, wholly or partly above ground, except in compliance with regulations of the state board of health, and plans and specifications previously approved by such board in writing. The state board of health may adopt and enforce regulations governing the location, materials and construction of the same. Municipalities may make and enforce additional consistent regulations. No public or community mausoleum, or columbarium, shall, after the passage of this act, be constructed or used for the disposition of the remains of the human dead unless the same shall be erected within the confines of an established cemetery, containing twenty acres or more, and which shall have been in existence for a period of ten years. No building or structure for use or intended to be used as a public mausoleum or columbarium for the permanent disposition therein of the remains of deceased persons, shall hereafter be constructed, and no such building now constructed and not now used for the permanent dis-

position of the remains of deceased persons, shall be altered or changed for such use, or used for such permanent disposition purposes, unless constructed in accordance with plans and specifications approved by the state board of health and of such materials and workmanship as will insure its durability and permanence, as dictated and determined at the time by modern mausoleum construction and engineering science. These provisions shall not affect any public or community mausoleum or columbarium which is now being built or under construction, the plans and specifications for which have been approved by the state board of health, or any additions or extensions to any public or community mausoleum or columbarium now constructed or now in the course of construction, the plans and specifications for which shall be approved by the state board of health. Such board shall control the construction, and see that the approved plans and specifications are followed. No departure shall be made except upon approval in writing by such board. No such structure shall be used until such board certifies in writing that approved plans and specifications were followed and that the maintenance fund has been deposited.

(b) There shall be established and maintained a fund for the perpetual care and maintenance of said public mausoleum or columbarium in such sum as shall be fixed by the state board of health, but which shall in no case be less than twenty-five per cent of the cost of said structures. Said fund shall be accumulated and established by applying thereto at least twenty-five per cent of all proceeds received from sales of mausoleum rooms or crypts and columbarium niches, until said perpetual care fund has been accumulated, except a building or structure now constructed, in which said public or community mausoleum or columbarium is located or contained, is covered by a perpetual care fund of the cemetery in which it is located and such perpetual care fund shall be made up of at least fifteen per cent of the proceeds received by the cemetery from the sale of cemetery lots. Then, in such an event, the perpetual care fund for the public or community mausoleum or columbarium itself shall not exceed ten per cent of the cost of the construction of said public or community mausoleum or columbarium. The custodian or depository of said fund shall be the treasurer of the agency owning and operating the cemetery in which said public mausoleum or columbarium is located, who shall furnish and file with said agency, and at its expense, a bond in such sum and with surety or sureties approved by the county court, indemnifying and securing said agency against loss occasioned by the failure of said treasurer to properly protect, preserve and administer said fund, except where, by the terms of sale of said mausoleum rooms or crypts and columbarium niches, it is provided that the purchaser thereof shall pay directly to any trust company in the state of Wisconsin, designated by the cemetery as the custodian of the perpetual care fund for said public or community mausoleum or columbarium. Then, in such an event, it shall not be necessary for the treasurer of the agency owning and operating the cemetery to furnish and file the bond required by this section. Said fund shall be invested by said treasurer upon the written order of the board, as provided in chapter 320, and the income or avails therefrom used solely for the preservation and maintenance of said public mausoleum or columbarium, which shall be paid out or expended by said treasurer only upon the written order of said board.

(bc) No deposit of the remains of the human dead shall be made in a surface burial chamber, vault or tomb wholly or partially above the surface of the ground unless the part thereof below the natural surface of the ground be of a permanent character, constructed of materials capable of withstanding extreme climatic conditions, be waterproof and air-tight, and can be sealed permanently to prevent all escape of effluvia; that portion of the same above the natural surface of the ground shall be constructed of natural stone and material necessary to protect the construction of the same of durability sufficient to withstand all conditions of weather and of a character to insure its permanence.

(e) Any person, a member of a firm, or officer or director of a corporation, violating this section shall be personally liable and shall be fined not less than one hundred nor more than five hundred dollars, or imprisoned not less than ten days nor more than six months, or both. [1933 c. 246 s. 1, 2; 1933 c. 450 s. 9; 1935 c. 421 s. 3; 1939 c. 513 s. 10]

157.125 Trustees for the care of cemeteries or cemetery lots. Where a trust is created for the perpetual care of a burial place or grave but no trustee is named in the will to administer the trust, the county court having jurisdiction thereof may name the county treasurer of the county in which the burial place or grave is situated as such trustee. If not contrary to the terms of the trust the county treasurer may contract with the person in charge of the burial place or grave for its care and pay to such person the income from the trust property or such part of the income that may be necessary for such purpose, and if there is no person in charge of the burial place or grave then such income shall be paid to the city, village or town, in which the burial place or grave is situated, and for the purposes of this section the governing body of such municipality shall have the duty of such care to the extent of money

received for such purpose. The county treasurer shall annually render an account to the county court as provided in chapter 323 and the person or municipality receiving money for such care shall also render an annual accounting to the county court showing the amount received and in detail the purposes for which expended. [1941 c. 135]

157.13 Public cemeteries; taxation; control of funds. (1) (a) An annual town meeting, after notice as provided by section 60.13, may vote a special tax of not more than five hundred dollars in any one year for the improvement of the town cemetery, under supervision of the board.

(b) When a cemetery association having control of a cemetery in a town, has insufficient maintenance funds it may certify in writing to the town clerk the amount deemed necessary during the next ensuing year, the amount the association has therefor, and the deficiency, and the town board may levy and collect a tax therefor and pay the same to the association. If the cemetery is in more than one town the deficiency shall be equitably distributed.

(2) The executive subject to the approval of the governing body of any municipality may appoint a trustee or trustees of gift or trust property acquired by said municipality. The governing body may require bond approved by them, which may be increased.

(3) Any municipality having created a perpetual care fund shall invest the money received for perpetual care as provided by subsection (7) of section 66.04 of the statutes.

(4) Any municipality may proceed under subsection (7) of section 157.11, or otherwise as provided by ordinance. [1935 c. 421 s. 4]

157.15 [*Repealed by 1939 c. 445*]