

STATE AFFAIRS COMMITTEE
February 8, 1968

The meeting was called to order by the Chairman, who asked Mr. Buchele to explain H.B. 1888. Mr. Buchele explained that he had introduced the bill at the request of Mr. Harold Cromwell, and asked Mr. Cromwell to explain the bill. Mr. Cromwell stated that the law prohibits a liquor store from being nearer than 200 feet to a church, but that there is no prohibition on a beer package store; that this bill would change the law to 100 feet; that he presently has a package beer store and would like to put in a package liquor store but that the law does not permit.

Mr. Mikesic explained H.B. 1925, stating that it has over a dozen sponsors and would lift some of the restrictions presently in the law dealing with licensing liquor dealers; that he feels the law should not prohibit someone who has been free of violations for five years.

Rev. Hollomon appeared to oppose both of these bills, stating he believed that the distance should be increased instead of being decreased, and that he favored even more stringent laws on dealers in liquor.

Mr. Bell appeared on H.B. 1316, and stated that on the assumption that voting would not take place at this time, he felt he could get together with the sponsors on 1706 and could probably work out their differences. Mr. William Staley appeared with amendments but agreed with Mr. Bell at this time that he would probably concur in what had been suggested. (see attached or in exhibit file) He agreed in general with what the bill proposed to do and agreed to work with the sponsors of 1706 to come to an agreement.

The Chairman stated that the sub-committee had reported on H.B. 1480, the unclaimed property bill, and that they had been unable to agree; that Mr. Buchele and Mr. Woodworth agreed and Mr. Turner and Mr. Rogers did not; that later on consideration and discussion would be had in this matter.

Discussion was resumed on H.B. 1137, and Mr. Jelinek inquired about the expenses for administration. Mr. McGill explained that federal funding is available; \$200,000 distributed over a period of three years and already granted to KU. Mr. Jelinek inquired if this is 100% funded and Mr. McGill stated that this is a possibility. Mr. McGill then moved that HB 1137, as amended, be recommended favorably. Motion was seconded by Mr. Rogers and carried 14 yes and no dissents.

Mr. Buntzen stated that he had amendments to HB 1681 which he had previously explained, and moved their adoption. Motion was seconded by Mr. McGill and carried by a vote of 13 yes and no dissents. Mr. Buntzen then stated that at first he hadn't been in favor of

licensing bills and that he had introduced this bill with some feeling of caution, but that he had been convinced that a great deal of fraud was going on in the TV service and he had a lot of support in this bill. After considerable discussion, he moved that the bill as amended be recommended favorably. Mr. Turner seconded the motion, explaining that the Committee had passed a bill licensing landscape architects and a lot of other professions and that he had become convinced that there was indeed a lot of public sentiment for this bill. Mr. Brown stated that some of his TV men had come to him supporting this. Upon vote, the motion carried 10 yes and 4 no.

Concerning H.B. 1758, Mr. McGill stated that the proponents who appeared last week had said they had resolved their differences and there was no real need for this bill by their own admission, and moved that the bill be reported adversely. Motion was seconded by Mr. Fribley. Motion lost by a vote of 3 yes to 9 no. Thereupon, Mr. Buchele presented amendments which would exempt hospitals and moved their adoption. Motion was seconded by Mr. Doyen. Mr. Boyer protested that it wasn't clear to him why Chiropractors wanted to amend this; that the bill was for optometrists who have no argument with Chiropractors. Mr. Jelinek stated he thought it had something to do with Title 19. Upon vote, the motion carried by a vote of 10 yes and no opposition. Mr. Buchele then moved that HB 1758 as amended, be recommended favorably. Motion was seconded by Mr. Turner and carried 11 yes with no opposition.

The meeting was adjourned.

1314
Ross Doyen

BILL NO. 12

By Committee on Labor and Industries

(To Carry Out 1965 Proposal No. 12, in part)

AN ACT relating to cemetery corporations; providing for permanent maintenance funds and for the investment thereof; amending K. S. A. 17-1307, 17-1308, 17-1311 and 17-1312 and repealing the existing sections.

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

Section 1. K. S. A. 17-1307 is hereby amended to read as follows: 17-1307. Every corporation hereafter formed or organized or that has been organized subsequent to March 1, 1914, for the purpose of the establishment and maintenance of cemeteries in, or within two (2) miles of any city of the third class, four (4) miles of any city of the second class having a population of less than twelve thousand (12,000), or within eight (8) miles of any city of the first class or of any city of the second class having a population of twelve thousand (12,000) or more, shall have a capital stock and board of directors elected by the stockholders with the same duties and powers as the board of directors of other corporations for profit, and is empowered to acquire and hold lands for cemetery purposes only, within such distances of such cities, not to exceed two hundred (200) acres, and is hereby authorized to enclose, lay out, or ornament and improve such lands held by such corporation for such purposes, and to divide said lands into burial lots; and that all of the acts of any board of directors heretofore legally elected by stockholders in any such company, which would be legal if done by any other private corporation, are hereby recognized, confirmed and made valid: Provided, That no owner of any lot in any such cemetery shall be a stockholder or member of any such corporation by reason of his being such owner: Provided further, That from and after September 1, 1967, all such corporations shall register with the state bank commissioner in the manner prescribed by the commissioner in rules and regulations authorized by this act.

Sec. 2. K. S. A. 17-1308 is hereby amended to read as follows: 17-1308. Before such corporation shall have the power to sell or in any manner convey, for burial purposes, any of the lands held by it, it shall cause such lands to be surveyed and platted into burial lots and said plat to be filed in the office of the register of deeds in the county wherein such lands are situated; and all conveyances of said lots shall be by reference to said recorded plat: Provided, Said corporation may plat its said lands in lots of not less than five (5) acres at any one time: Provided, however, That before any such corporation shall have power to sell or convey lands, acquired from and after the effective date of this act for the purpose of establishing or making an addition to any cemetery, it shall place and maintain ten thousand dollars (\$10,000) in the permanent maintenance fund established under the provisions of this act and an additional five hundred dollars (\$500) for each acre of land, or fraction thereof, in excess of twenty (20) acres acquired for such purposes; said deposits, prerequisite to selling or conveying lands, shall not be required to exceed thirty-five thousand dollars (\$35,000), but nothing herein shall be construed as affecting the requirements imposed on the permanent maintenance fund in K. S. A. 17-1311 and any amendments thereto: Provided further, That from and after July 1, 1968, no such corporation shall have power to sell or convey lands, acquired prior to the effective date of this act for the purpose of establishing or making an addition to any cemetery, until it shall comply with the requirements hereinbefore imposed on the permanent maintenance fund for lands acquired from and after the effective date of this act.

Sec. 3. K. S. A. 17-1311 is hereby amended to read as follows: 17-1311. ~~That~~ (a) Such corporation shall fix and set aside, within the state of Kansas, a percentage of the purchase price of each burial lot sold by it, not less than ~~ten~~ twenty percent ~~(10%)~~ (20%) thereof, for the permanent maintenance of the said cemetery, ~~which sum so as aforesaid set aside shall be by~~

7 said-corporation: Provided, That moneys placed in such fund
8 under the provisions of section 2 of this act shall be included
9 for the purposes of fulfilling such requirement. Moneys in such
10 fund may be invested in first-mortgages-upon-Kansas-real-estate,
11 or-in-bonds-issued-by-any-municipality-of-the-state-of-Kansas,
12 or-in-obligations-of-the-United-States-government,-except-rail-
13 road-aid-bonds,-and assets eligible for investment of funds of
14 legal reserve life insurance companies in the state of Kansas as
15 authorized by K. S. A. 40-403: Provided, That only moneys in
16 such fund in excess of thirty-five thousand dollars (\$35,000)
17 may be invested in corporate bonds and stocks: And provided
18 further, That investments in common stock shall be permitted only
19 in an amount not exceeding fifteen percent (15%) of the total
20 book value of such fund in excess of thirty-five thousand dollars
21 (\$35,000). The proceeds of the said permanent maintenance fund
22 shall be used exclusively for the maintenance of said cemetery:
23 Provided,-however,-. No part of the principal of said fund shall
24 ever be used for any purpose except for such investment:--And
25 provided-further,-. In no event shall any loan of said funds be
26 made to any stockholder in such corporation,-nor-unless-the-said
27 proposed-loan-shall-have-been-approved-by-a-unanimous-vote-of-the
28 board-of-directors-duly-entered-upon-the-records-of-the-said
29 corporation.

30 (b) The state bank commissioner shall annually audit the
31 records of all such corporations with respect to said permanent
32 maintenance funds, and the commissioner is hereby authorized to
33 adopt such rules and regulations as are necessary to administer
34 the powers and duties conferred on him by this act.

Sec. 4. K. S. A. 17-1312 is hereby amended to read as fol-
2 lows: 17-1312. That said permanent-maintenance fund shall at
3 all times be in the custody of the treasurer of said corporation,
4 who shall give a surety-company bond in a sum not less than the
5 amount of funds in his hands, conditioned for the safekeeping of
6 such funds and to account for and turn over the same whenever

7 called upon so to do by said corporation: Provided, however,
8 That in lieu of such custody by the treasurer the directors of
9 said cemetery corporation may entrust the custody of the perma-
10 nent maintenance fund and may delegate their responsibilities
11 and powers to invest, reinvest, exchange, retain, sell and manage
12 the permanent maintenance fund to any trust company or bank hav-
13 ing general trust powers within the state of Kansas.

Sec. 5. K. S. A. 17-1307, 17-1308, 17-1311 and 17-1312 are
2 hereby repealed.

Sec. 6. This act shall take effect and be in force from
2 and after its publication in the statute book.

PROPOSED CHANGES TO HOUSE BILL NO. 1706

Sec. 1. Eliminate the proposed last proviso so as not to amend this section. The reason for deleting the proposed amendment is that the subject is covered in new sections 5 through 9.

Sec. 2. We suggest that the \$10,000.00 figure be changed to \$25,000.00 and that the \$500.00 figure be changed to \$1,250.00 and that the \$35,000.00 figure be changed to \$50,000.00.

Sec. 3. K.S.A. 17-1311 is hereby amended to read as follows: 17-1311. Same; maintenance; permanent fund. Such corporation shall fix and set aside, within the State of Kansas, a percentage of the purchase price of each burial lot sold and conveyed by it, not less than fifteen percent (15%) thereof or Fifteen Dollars (\$15.00), whichever sum is greater, which sum so set aside shall be by said corporation forthwith deposited in a permanent maintenance fund to be used exclusively for the maintenance of the cemetery within which said burial lot lies. The provisions of K.S.A. 17-5004 shall apply to the investment of sums held in said fund. No part of the principal of said fund shall ever be used for any purpose except for such investment. The income of said fund shall be used exclusively for the maintenance of said cemetery. In no event shall any loan from said fund be made to any stockholder in such corporation. The Board of Directors of such corporation may receive, acquire and hold donations or bequests for said fund and may retain property so acquired without limitation as to time

NEW

NEW

NEW

and without regard to its suitability for original purchase.

Sec. 4. K.S.A. 17-1312 is hereby amended to read as follows: 17-1312. Same; custody of permanent maintenance fund; bond. Said permanent maintenance fund shall at all times be in the custody of the treasurer of said corporation, who shall give a surety company bond in a sum not less than the amount of funds in his hands, conditioned for the safe keeping of such funds and to account for and turn over the same whenever called upon so to do by said corporation: Provided, however, that in lieu of such custody by the treasurer the directors of said cemetery corporation may entrust the custody of said fund and may delegate their responsibilities and powers to invest, reinvest, exchange, retain, sell and manage said fund to any trust company or bank having general trust powers within the State of Kansas. Such trust company or bank may serve without bond and may be reasonably compensated for its services out of the income of said fund.

NEW

Sec. 5. Same; registration with and reports to State Bank Commissioner. (a) On September 1, 1968 all cemetery corporations shall register with the State Bank Commissioner. Each cemetery corporation thereafter formed under the laws of the State of Kansas and each foreign corporation granted a certificate of authority to own or operate a cemetery within the State of Kansas shall register with the State Bank Commissioner before commencing business in Kansas. Each cemetery corporation shall prepare and forward to the commissioner before the first day of February in each year a statement verified

NEW

NEW { by the treasurer of said corporation describing the corpus and any accumulated income on the preceding December 31 in each permanent maintenance fund established by said corporation, the cost and the market value on said December date of each security then held in each such fund, and the income of and disbursements from each such fund during the calendar year then ended. This statement shall otherwise be in such form as the commissioner shall prescribe.

9-1705
9-1707 { (b) Whenever and as often as he deems it necessary, the commissioner shall have the power to call upon any cemetery corporation for a report of the condition on any given day of each such fund established by said corporation. Such call shall be mailed to said corporation by registered mail addressed to it at its registered office in the State of Kansas.

Sec. 6. Same; examination by State Bank Commissioner.

9-1701 { The State Bank Commissioner, or his assistants or examiners, shall visit each cemetery corporation at least once in each year, and oftener if the commissioner deems it necessary, for the purpose of making a full and careful examination and inquiry into the condition of its permanent maintenance fund or funds. For such purpose the commissioner, his assistants and examiners, are authorized to administer oaths and to examine under oath the directors, officers, employees and agents of any cemetery corporation. Such examination shall be reduced to writing by the person making it and his report shall contain a full, true and careful statement of the condition

9-1701
of each permanent maintenance fund examined by him, provided that the commissioner in lieu of making a direct examination and inquiry may accept once during each year the examination and report of a public accountant certified by the State Board of Accounting. Each cemetery corporation examined by the commissioner, his assistants or examiners, shall pay to the commissioner a fee of \$65.00 for each permanent maintenance fund examined provided, that whenever the commissioner accepts a report of any examination made by a certified public accountant in lieu of making a direct examination, the commissioner shall collect from the cemetery corporation a fee of \$35.00 instead of \$65.00.

9-1708
Sec. 7. Same; penalty for refusal to be examined. Whenever any officer of any cemetery corporation shall refuse to submit the books, records, papers and instruments of such cemetery corporation to the examination and inspection of the commissioner, or any of his assistants or examiners, or in any manner obstruct or interfere with the examination and investigation of its permanent maintenance funds, or refuse to be examined on oath concerning any of the affairs of its permanent maintenance funds, the commissioner, with the concurrence of the attorney general, may institute proceedings for the appointment of a receiver for such cemetery corporation.

Sec. 8. Same; forfeiture of franchise for non-compliance.

9-1709 { Any cemetery corporation which shall refuse or neglect to establish or maintain a permanent maintenance fund in accordance with the requirements of this act for each cemetery owned by it for a period of ninety days after demand to do so is made upon it by the commissioner shall be deemed to have forfeited its franchise. The attorney general, upon the request of the commissioner, shall then begin action for the appointment of a receiver for such cemetery corporation and to dissolve the same.

Sec. 9. Same; examination records of commissioner

9-1712 { confidential. All information which the commissioner 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 commissioner or any assistant, or examiner, or employee thereof, except to the attorney general when in the opinion of the commissioner the same should be disclosed.

Sec. 10. K.S.A. 17-1307, 17-1308, 17-1311 and 17-1312 are hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.

Chapel Hill Memorial Gardens, Inc.

CITY OFFICES

601 MINNESOTA • MAYfair 1-3487

KANSAS CITY, KANS.

January 31, 1968

The Honorable Ross Doyen
House of Representatives
State of Kansas
Topeka, Kansas

Sir:

We have studied House Bill No. 1706 and enclose changes to this bill which we believe should be made.

As we see the problem, the occasion for legislation is to insure the upkeep of cemeteries in Kansas which are owned by corporations organized for profit. In our view legislation to achieve this end must contain three elements:

1. The initial establishment of an adequate permanent maintenance fund.
2. Prudent investment of the fund.
3. Verification of the existence and the proper use of the fund by the State Bank Commissioner.

With these elements in mind, we will discuss House Bill No. 1706 and the changes to it which we propose.

Sec. 1. We suggest eliminating the proposed last proviso because the subject is covered in new sections 5 through 9 of the enclosed.

Sec. 2. We suggest that the \$10,000.00 figure be changed to \$25,000.00 and that the \$500.00 figure be changed to \$1,250.00 and that the \$35,000.00 figure be changed to \$50,000.00 and that the last proviso (which makes existing cemeteries come up to these standards by July 1, 1969) be dropped. We believe there are only two cemeteries in the state which would come under the last proviso in any event - ones at Wellington and Leavenworth - and we do not believe that either could meet its terms. These are respectable cemeteries owned by permanent Kansas

residents whom we believe to possess integrity and we don't believe the public would be served by putting them out of business.

Respecting persons establishing new cemeteries, we do not believe it realistic to expect an income greater than 4% from the permanent maintenance fund. A \$10,000.00 fund will provide \$400.00 annually. This is not enough to provide minimum care. \$1,000.00 is far closer to the mark and this is the reason for the \$25,000.00 recommendation. The change of the other figures relate to this concept. We don't think any legislation is going to get money into cemeteries like Manhattan, Kansas where the harm has already been done. The most that you can do effectively in our opinion is to prevent the establishment of additional cemeteries which do not have adequate permanent maintenance funds.

Sec. 3. We should first focus on the fact that cemetery corporations holding permanent maintenance funds are fiduciaries. They are unique fiduciaries in terms of the regulation of their investments because 17-1311 treats cemetery corporations differently from other Kansas corporate fiduciaries.

17-1311 as it now exists is in conflict with:

- (a) Investments permitted charitable cemetery corporations (17-1349); and
- (b) Investments permitted corporate fiduciaries in general such as trust companies (17-5004).

17-1311 imposes rigid investment standards (which the times have proved to be totally unwise economically) and 17-1349 and 17-5004 permit flexible standards subject to the requirement that they must be prudent standards.

House Bill No. 1706 as now proposed perpetuates the conflict between 17-1311 and 17-1349 and 17-5004 by artificially restricting investments in corporate bonds and stocks and by relating our investments to those of life insurance companies which we do not understand and with which we have not the remotest connection.

As a practical matter, the permanent maintenance funds for the two Kansas cemetery corporations of which I

am President are physically in the custody of Kansas banks whose investment counsel we invariably follow. Yet those same banks are required by 17-1311 to use a different (and much worse) investment standard for our funds than they use for the funds of their other trust accounts (17-5004). This makes no sense whatever because the result sought for the perpetual care funds is exactly the same end sought by trust accounts generally - prudent income and prudent protection of principal. What is prudent changes from time to time. If you set up inflexible standards by statute those standards will be good sometimes and bad sometimes. We want flexible standards in the hope that they will be good all of the time. We strongly urge that 17-5004 be incorporated into 17-1311 as the investment standard required by the latter section and that 40-405 be left to regulate the industry for which it was intended.

The reason that we have not sought to incorporate 17-1349 into 17-1311 is because 17-1349 permits charitable cemeteries to invest permanent maintenance funds in their own mausoleums. We think this is entirely wrong. It is not in the interests of the public to have the permanent maintenance funds of a cemetery invested in capital improvements for that very cemetery. Obviously the money is no longer available for care.

There are some other observations concerning Section 3 as we propose it in the enclosure to this letter:

(a) We believe the key to achieving an adequate permanent maintenance fund lies in Section 2 rather than in too large an increase of the percentage in Section 3. The latter will take too long to accumulate and it is all passed on to the public in a higher price. The former is put there immediately and this is what will prevent foreign promoters from coming into Kansas for a quick promotion followed by departure. Monday I attended a meeting conducted by the National Association of Cemeteries in St. Louis, Missouri and I believe it to be a fair statement that the industry consensus strongly favors 15% with a fixed dollar minimum rather than 20%.

(b) Again, to get an adequate fund we eliminated lines 7 through 9 in Section 3 of House Bill No. 1706 as it is now proposed. We understand the effect of those lines to be that the operator of a new cemetery could recoup his initial investment in the perpetual care fund.

We think the initial investment of \$25,000.00 should be a permanent deposit in the fund and should be permanently supplemented by all of the deposits made under Section 3. For example: If a new cemetery is established which sells lots at an average price of \$125.00, the deposit per lot in the perpetual care fund will be \$18.75. It will take sales of over 1,300 lots to produce \$25,000.00. Our judgment is that in the average cemetery this might take between five and ten years. If it takes five years and the initial \$25,000.00 is returned to the cemetery corporation then for another five years the perpetual care fund will remain around the minimum \$25,000.00 level. You have thus had a minimum fund for as long as ten years. If the money were not returned the perpetual care fund would be at the \$50,000.00 level after the first five years. We don't make any big point of this and are content to leave it entirely to your judgment. We do want to point out to you the time element involved.

(c) We added the words "and conveyed" at the end of the third line of Section 3 of our enclosure to eliminate the nuisance of depositing in the perpetual care fund a fraction of each installment of the purchase price received by us. This is nothing but a nuisance. It was a punitive measure inspired by the undertakers. From the recommendations that we are making we believe you must appreciate that we are as eager as anyone to develop adequate permanent maintenance funds throughout Kansas and are sincere when we tell you that the necessity of making a 15% deposit out of a \$5.00 installment payment received by us is vexatious to us in the extreme and of no public benefit whatsoever.

(d) At the present time permanent maintenance funds have no power to receive donations and we believe this power should be given them.

Sec. 4. Our enclosure adds to Section 4 the power to pay the bank or trust company out of the income of the permanent maintenance fund. If you have a defunct cemetery with an intact fund, the fund itself is going to have to pay for the administration of the fund. The bank service charges are not sufficiently large to cause any problem in this respect.

Sec. 5. We are strongly opposed to being licensed by the Kansas Bank Commissioner who at the same

The Honorable Ross Doyen
January 31, 1968
Page 5

time is given rule making powers. This is legislating by administrative rule. It surrenders the legislative function to the executive branch. Under House Bill No. 1706 as it is now proposed nobody knows what rules or regulations the commissioner might adopt nor who would influence the commissioner respecting their adoption. That we have affluent competitors operating a powerful lobby is not news to you. The power that is given the commissioner under House Bill No. 1706 is a life or death power subject to gross abuse and totally unwarranted by the problem. The problem is to inspect the permanent maintenance fund and to do something about it if the fund is not intact.

What can you do about it? If the fund is gone withholding a license to do business is of no value because the cemetery is probably defunct anyway. The only practical thing you can do about it is to take over the operation of the cemetery and this would have to be done through the medium of a receivership. If the cemetery corporation is not defunct then its only chance to repair the deficit in the permanent maintenance fund is by staying in business. These are the thoughts which underlie Sections 5 through 9 of the enclosure which give the commissioner of banking the broadest investigative powers coupled with the power to initiate receiverships through the attorney general. Real flexibility to deal with shortages is given the commissioner by Section 8 of the enclosed.

On the margin of each of the sections of the enclosure to this letter we have indicated the Kansas Banking Statute which we have followed as a model. If the Kansas Bank Commissioner is to be the administrator we believe the legislative requirements governing his activity respecting permanent maintenance funds should parallel the requirements for trust companies.

With the thought that you may wish to have other legislators or staff assistants screen these suggestions, we are enclosing three additional copies of this letter.

We are more eager than anyone to establish complete responsibility in our industry. Unwise regulation is at least as bad as no regulation at all because it will not produce the

The Honorable Ross Doyen
January 31, 1968
Page 6

results you wish. We will be very happy to come to Topeka and sit down with you and anyone else at any time you feel this would be helpful to you.

Sincerely,

CHAPEL HILL MEMORIAL GARDENS, INC.

William H. Staley
President

WHS:af