

MAINE STATE LEGISLATURE

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CHAPTER 83

CEMETERY CORPORATIONS

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SUBCHAPTER I

GENERAL PROVISIONS

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§ 1031. Unauthorized establishment; injunction

Any cemetery, community mausoleum or columbarium established, maintained or operated in violation of or contrary to this chapter is declared to be a nuisance, which may be abated or enjoined as such by the civil action of any citizen of this State.

R.S.1954, c. 58, § 34; 1963, c. 414, § 42.

§ 1032. Disposal of bodies

Except as otherwise provided by law, or in case of a dead body being rightfully carried through or removed from the State for the purpose of burial or disposition elsewhere, every dead body of a human being dying within the State and the remains of any body after dissection therein shall be decently buried, entombed in a mausoleum, vault or tomb, or cremated within a reasonable time after death. The permanent disposition of such bodies or remains shall be by interment in the earth, or deposit in a chamber, vault or tomb of a cemetery owned, maintained and operated in accordance with the laws of this State, by deposit in a crypt of a mausoleum, or by cremation. The remains of a human body after cremation may be deposited in a niche

of a columbarium or a crypt of a mausoleum, buried or disposed of in any manner not contrary to law. No deposit of the bodies or remains of the human dead shall be made in a single chamber, vault or tomb partly above and partly below the natural surface of the ground, unless the part thereof below such surface is of a permanent character, constructed of materials capable of withstanding extreme climatic conditions, waterproof and air tight, and capable of being sealed permanently to prevent all escape of effluvia, and unless the part thereof above the natural surface of the ground is constructed of natural stone of a standard not less than that required by the United States Government for monuments erected in national cemeteries, or durability sufficient to withstand all conditions of weather.

R.S.1954, c. 58, § 35.

§ 1033. Vested rights

This chapter shall not be construed as affecting any vested rights of any cemetery association or other agency owning, maintaining and operating a cemetery or crematory immediately prior to July 24, 1937. Insofar as this chapter does not violate any such vested rights, it shall, except as otherwise provided, apply to all such cemetery associations or other agencies.

R.S.1954, c. 58, § 39.

§ 1034. Jurisdiction

The Superior Court shall have original and concurrent jurisdiction in all cases under this chapter. Judges of the District Court may cause the persons brought before them on complaint for violation of sections 1342 or 1343 to recognize with sufficient sureties to appear at the next term of the Superior Court and, in default thereof, shall commit them.

R.S.1954, c. 58, § 38; 1963, c. 402, § 95.

§ 1035. Penalties

Whoever fails to comply with or violates any of the provisions of this chapter in respect to the establishment, maintenance or operation of a cemetery, community mausoleum, crematory or columbarium, or to the disposal of dead human bodies shall, unless another penalty is provided under this chapter, be punished by a fine of not less than \$100 nor more than \$500, or by imprisonment for not more than 6 months, or by both.

R.S.1954, c. 58, § 36.

§ 1036. Recovery of fines or penalties

All fines or penalties provided by section 1035 may be recovered or enforced by indictment, and the necessary processes for causing the crypts and catacombs to be sealed or the bodies to be removed and buried, and execution to recover the necessary expenses thereof, may be issued by the Superior Court.

R.S.1954, c. 58, § 37; 1963, c. 414, § 43.

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ARTICLE 1. ORGANIZATION

§ 1071. Incorporation

Persons of lawful age may organize themselves into a non-profit-sharing corporation for the purpose of purchasing land for a burying ground and for the purpose of owning, maintaining and operating a cemetery or cemeteries, as provided in sections 901 and 902 and may proceed in the manner and, except as restricted, with the powers provided in section 931.

R.S.1954, c. 58, § 1.

ARTICLE 2. DUTIES OF TOWN OR COUNTY

§ 1101. Maintenance and repairs; town

In any ancient or public burying ground in which any Revolutionary soldiers or sailors or soldier or sailor who served in the United States Army, Navy or Marine Corps in any war is buried, the town in which said burying ground is located shall keep in good condition and repair, all graves, headstones, monuments or markers designating the burial place of said Revolutionary soldiers or sailors or soldier or sailor who served in the United States Army, Navy or Marine Corps in any war and shall keep the grass suitably cut and trimmed on such graves during the summer season. Towns may raise and appropriate money for such purposes. Each said town shall be liable to a penalty of not more than \$100 for neglect to keep in good condition and repair all such graves, headstones, monuments and markers or failing to keep the grass suitably cut and trimmed on said graves. The penalties shall be recovered in a civil action brought in the name and for the use of any chapter of the Daughters of the American Revolution or post of the American Legion against such negligent town, parish, religious society, individual, association or corporation.

R.S.1954, c. 58, § 3; 1961, c. 317, § 160; 1963, c. 318, § 2.

§ 1102. —Neglect

If such officers, treasurer or committee neglect so to apply such fines, they each forfeit the amount thereof, in a civil action, to any person suing therefor.

R.S.1954, c. 58, § 4; 1961, c. 317, § 161.

§ 1103. —Unincorporated places

The county commissioners of any county in which there is an unincorporated place or places wherein are any ancient or public burying grounds shall cause the burying grounds to be kept in proper condition and any bushes therein to be cut. All expenses and costs incurred in any county while carrying out the provisions of this section shall annually be assessed, by the county commissioners, against the estates of said county.

R.S.1954, c. 58, § 5; 1961, c. 318; 1963, c. 318, § 3.

ARTICLE 3. EXEMPTION FROM ATTACHMENT

§ 1141. Grounds inalienable; description recorded

When any persons appropriate for a burying ground a piece of land containing not more than $\frac{1}{2}$ of an acre, it shall be exempt from attachment and execution, and inalienable and indivisible by the owners without the consent of all; and be kept fenced or otherwise substantially marked and occupied as a burying ground. They shall cause a written description of it, under their hands, attested by 2 disinterested witnesses, to be recorded in the registry of deeds in the county or district where it lies or by the clerk of the town where it is situated.

R.S.1954, c. 58, § 6.

§ 1142. Family burying grounds

When a person appropriates for a family burying ground a piece of land containing not more than $\frac{1}{4}$ of an acre, causes a description of it to be recorded in the registry of deeds of the same county or by the clerk of the town where it is situated and substantially marks the bounds thereof or encloses it with a fence, it shall be exempt from attachment and execution. No subsequent conveyance of it shall be valid while any person is interred therein; but it shall remain to him and his heirs as a burial place forever.

R.S.1954, c. 58, § 7.

§ 1143. Lots

Lots in public or private cemeteries are exempt from attachment and levy on execution and from liability to be sold by executors and administrators of insolvent estates for the payment of

debts and charges of administration. Only one lot shall be so exempt for any one person.

R.S.1954, c. 58, § 8.

ARTICLE 4. ENLARGEMENT OF GROUNDS

§ 1181. Restrictions and conditions

The municipal officers of any town may on petition of 10 voters enlarge any public cemetery or burying ground or incorporated cemetery or burying ground within their town by taking land of adjacent owners, to be paid for by the town or otherwise as the municipal officers may direct, when in their judgment public necessity requires it. The limits thereof shall not be extended nearer any improved land used for recreational purposes or dwelling house or well, from which the water is used for domestic purposes, than 25 rods, against the written protest of the owner made to said officers at the time of the hearing on said petition. Nor shall any person, corporation or association establish, locate or enlarge any cemetery or burying ground by selling or otherwise disposing of land so that the limits thereof shall be extended nearer any improved land used for recreational purposes or dwelling house or well than 25 rods against the written protest of the owner. Nothing in this section shall prohibit the sale or disposition of lots within the limits of any existing cemetery or burying ground, nor the extension thereof away from any improved land used for recreational purposes or dwelling house or well.

R.S.1954, c. 58, § 9; 1957, c. 247.

§ 1182. Notice

Notice of a time and place for a hearing held under section 1181 shall be given by posting written notices thereof, signed by said officers, at least 7 days prior thereto, in 2 public places in said town. A copy of such notice and of the petition shall be served on the owners of the land at least 10 days before the day of hearing.

R.S.1954, c. 58, § 10.

§ 1183. Damages for land taken; town vote

If the municipal officers at the hearing held under section 1181 grant the prayer of the petitioners, they shall then determine

what land shall be taken and assess the damages suffered by each person thereby, make a written return of their proceedings, specifying the land taken and the damages awarded each person and file the same with the town clerk. Such cemetery or burying ground shall not be enlarged, pursuant to such return, until so voted by the town at its next annual meeting.

R.S.1954, c. 58, § 11.

§ 1184. Persons aggrieved; remedy

Any person aggrieved by the amount of damages awarded may have them determined by written complaint to the Superior Court in the manner provided respecting damages for the establishment of town ways.

R.S.1954, c. 58, § 12.

ARTICLE 5. CONVEYANCE TO TOWN

§ 1221. Proceedings

Any private cemetery or burying ground, by written agreement of all the owners thereof, recorded by the clerk of the town in which it is situated may, by vote of such town within one month after the recording of such agreement by the town clerk, become public and subject to the law relating to public cemeteries or burying grounds, provided such agreement is not in conflict with the terms of any conveyance or devise of land for the purposes of a burying ground.

R.S.1954, c. 58, § 13.

§ 1222. Acceptance; exemption from liability; trust funds for repairs

Any city, town, cemetery corporation, trust company or trustee may accept any conveyance of land not exceeding $\frac{1}{2}$ acre, to be forever held, kept and used for a private or family burying ground for the grantors and such of their heirs and relatives by blood or marriage as the conveyance shall designate. Such lot and all erections thereon, including the erection and maintenance of the same, and fixtures thereto suitable for its use or adornment as a burying ground, are forever inalienable and indivisible and exempt from liability for debt. Such city, town, corporation, company or trustee may accept and forever hold any donation or legacy for insuring proper care and attention to any

burial lot or ground and the avenues thereof and the monuments thereon. Having accepted such donation or legacy, said trustee becomes bound to perform the duties appertaining to the trust as specified in the writing creating the same or, in default of such specification, as required by law, and as in cases of public charity. Any city or town without giving bond therefor may be appointed by the probate court testamentary trustee for the purpose of holding forever, in accordance with this section and the terms of the devise, any fund devised for the purposes aforesaid. Any such city, town, cemetery corporation, trust company, or trustee failing to furnish proper care and attention to any burial lot, the perpetual care whereof has been provided for as above, shall be punished by a fine of not less than \$50 nor more than \$100, to be recovered by complaint or indictment. The District Court and the Superior Court shall have concurrent jurisdiction. Of all fines provided for under this section and recovered on complaint, $\frac{1}{2}$ shall go to the prosecutor and $\frac{1}{2}$ to the county where the city, town, cemetery corporation, trust company or trustee committing the offense is situated. Nothing herein contained shall be construed to compel any such city, town, cemetery corporation, trust company or trustee to expend in any one year upon any such lot more than the income from any such fund.

R.S.1954, c. 58, § 14; 1963, c. 402, § 94.

§ 1223. Investment of funds

Cemetery trust funds of any cemetery corporation or association, trust company, church, religious or charitable society, or other trustee, shall be invested in the manner provided in Title 30, section 5051, and, unless the instrument or order creating the trusts prohibits, may be combined with other similar trust funds in the manner provided in Title 30, section 1903, and the annual income only shall be expended in performance of the requirements of the trust.

R.S.1954, c. 58, § 15; 1957, c. 405, § 10; 1959, c. 330, § 3.

§ 1224. Recording of acceptance

A copy of the record of the vote of the trustee so accepting a conveyance of lands shall be indorsed on the conveyance and certified thereon by the clerk of the grantee and recorded in the registry of deeds with the conveyance.

R.S.1954, c. 58, § 16.

ARTICLE 6. TRUST FUNDS

§ 1261. Authority to hold

Any person owning or interested in a lot or lots in a public burying ground of a city or town may deposit with the treasurer of such city or town a sum of money for the purpose of providing for the preservation and care of such lot or lots, or their appurtenances, which sum shall be entered upon the books of the treasurer and invested and held in accordance with Title 30, section 5051.

R.S.1954, c. 58, § 17; 1957, c. 405, § 11.

§ 1262. Bylaws and ordinances

A city or town may pass such ordinances or bylaws as may be necessary for the purposes of section 1261 and not repugnant to law, and may receive such money for said purposes, and may invest and hold the same as provided in section 1261.

R.S.1954, c. 58, § 18.

§ 1263. Acceptance of deposits

When any person owning or interested in a lot in a public burying ground in a city or town deposits with the treasurer of such city or town a sum of money for the preservation or care of such lot as provided by section 1262, said city or town may accept a conveyance of such lot for the uses and upon the trusts which may be set forth in said conveyance, and may bind itself to keep and perform the agreements, uses and trusts contained in the deed of conveyance of such lot.

R.S.1954, c. 58, § 19.

SUBCHAPTER III

PUBLIC CEMETERIES

Sec.

- 1301. Incorporation; exemption from attachment and taxation.
- 1302. Recording of deeds.
- 1303. Ownership and operation.
- 1304. Sales for speculation or investment.
- 1305. Care and maintenance.

§ 1301. Incorporation; exemption from attachment and taxation

Any 7 or more persons may be incorporated, not for profit, in the manner provided in sections 901 and 902 for the purpose of owning, managing and protecting lands and their appurtenances appropriated for public cemeteries. The property of such corporations and the shares of stock therein are exempt from attachment and taxation. Any cemetery corporation may accept and receive donations of money, general legacies and devises of real estate or legacies in trust, for the purpose of landscaping, general beautification and care of lots, memorials, avenues and plots in said cemetery, without being appointed or confirmed by any court as such trustee.

R.S.1954, c. 58, § 20.

§ 1302. Recording of deeds

Deeds of burial lots in any public cemetery may be recorded in the registry of deeds for the county or district where such cemetery is situated.

R.S.1954, c. 58, § 21.

§ 1303. Ownership and operation

Every cemetery hereafter established shall be owned, maintained or operated by a municipality or other political subdivision of the State, a church, a religious or charitable society, or by a cemetery association incorporated as provided in section 1071 or 1301.

Every such cemetery shall be located in accordance with statutes already in force and effect, and only after consent for such location has been obtained from the municipality or other political subdivision where the same is proposed to be located, as well as from the Bureau of Health. No cemetery, community mausoleum, crematory or columbarium hereafter established shall be maintained or operated for the purpose of private profit or gain, either directly or indirectly, to any director, officer or member of the cemetery association or other agency owning, maintaining or operating the same, or of any holding company or development company employed to develop, build and dispose of the same. A cemetery lawfully established prior to July 24, 1937 may continue to be owned, maintained and operated under the form of organization adopted therefor. Any corporation organized prior to July 24, 1937 which is authorized or empow-

ered to own, construct, maintain or operate cemeteries or burial grounds may lawfully own, construct, maintain or operate mausoleums, crematories or columbaria in connection therewith, in accordance with the laws existing and effective up to the time of July 24, 1937.

R.S.1954, c. 58, § 22.

§ 1304. Sales for speculation or investment

The sale of cemetery lots and plots, or the sale of crypts in a community mausoleum or niches in a columbarium for speculative or financial investment purposes, or the conveyance of any portion of a cemetery already dedicated to burial purposes as security for debt, is prohibited. Every such conveyance, whether made by a person or by a cemetery association, or by a company or association owning and operating a community mausoleum, crematory or columbarium, or by any holding, development or subsidiary company, shall be void and of no effect. Whoever makes or attempts to make a sale or conveyance contrary to this section shall be guilty of a misdemeanor and punished as provided in section 1035.

R.S.1954, c. 58, § 23.

§ 1305. Care and maintenance

The proceeds of the sales of lots and plots in a cemetery shall be applied solely to the management, superintendence, improvement and maintenance of the cemetery and the avenues, paths and structures situated therein, for the purchase of additional cemetery land and for the accumulation of a permanent care and improvement fund. If any indebtedness of a fixed amount is incurred in the purchase of lands for such cemetery, or in making any improvement therein, a sum not exceeding 50% of the gross receipts from the sale of burial lots and plots may be applied to the liquidation of such indebtedness. All moneys received from the sale of personal property and surplus real estate of a cemetery shall be applied first to the liquidation of any fixed indebtedness incurred by it on account of the purchase or improvement of the lands dedicated to cemetery purposes, and any residue remaining after the liquidation of such indebtedness shall be deposited in the permanent care and improvement fund of the cemetery. This section shall not apply to any cemetery now organized and operating.

R.S.1954, c. 58, § 24.

SUBCHAPTER IV

MAUSOLEUMS AND VAULTS

Sec.

- 1341. Location.
- 1342. Approval of health authority.
- 1343. Type of construction; examinations.
- 1344. Supervisory control of health authorities.
- 1345. No use before completion.
- 1346. No sales before completion.
- 1347. Improper conditions; removal of bodies.
- 1348. Permanent care and improvement fund.
- 1349. —Custodian.

§ 1341. Location

Every community mausoleum, other than a structure containing crypts erected or controlled by a church or a religious society and used only as a repository for the remains of the clergy or dignitaries of such church or religious society, and every crematory, columbarium or other structure intended to dispose of, or hold or contain the bodies or remains of the dead, shall be located only within the limits of a cemetery containing not less than 20 acres, which shall have been in existence and actually used for burial purposes for a period of at least 2 years immediately preceding the time of the erection thereof.

R.S.1954, c. 58, § 25.

§ 1342. Approval of health authority

Before any person, firm or corporation shall build, construct or erect any such community mausoleum, vault or other burial structure entirely above ground or partly above and partly by excavation, with the intention and purpose that when so built, constructed and erected the same may contain 20 or more deceased human bodies for permanent interment, such person, firm or corporation shall present all plans for such construction to the Bureau of Health and shall obtain the written approval of such plans by said bureau before proceeding with the construction and erection of said mausoleum, vault or other burial structure.

R.S.1954, c. 58, § 26.

§ 1343. Type of construction; examinations

Any such community mausoleum or other burial structure shall be constructed of such materials and workmanship as will

insure its durability and permanency as well as the safety, convenience, comfort and health of the community in which it is located, as dictated and determined at the time by modern mausoleum construction and engineering science, and all crypts or catacombs placed in a mausoleum, vault or other burial structure as described in section 1342 shall be so constructed that all parts thereof may be readily examined by the Bureau of Health or any other health officer. Such crypts or catacombs, when used for the permanent interment of a deceased body or bodies, shall be so hermetically sealed that no offensive odor or effluvia may escape therefrom.

R.S.1954, c. 58, § 27.

§ 1344. Supervisory control of health authorities

The Bureau of Health shall have supervisory control over the erection of any such community mausoleum and shall enforce compliance with the approved plans and specifications therefor. Such bureau shall determine the reasonable amount of compensation for such supervision, which compensation shall be paid by the cemetery association or other agency erecting such community mausoleum. No departure from the original plans and specifications shall be permitted, except upon approval of the said Bureau of Health evidenced in like manner and form as the approval of the original plans and specifications.

R.S.1954, c. 58, § 28.

§ 1345. No use before completion

No community mausoleum, crypt or structure so erected shall be used for the purpose of depositing therein the remains of any dead body until the same, or a component section thereof, is fully completed and the permanent care and improvement fund required by section 1348 has been provided.

R.S.1954, c. 58, § 29.

§ 1346. No sale before completion

No crypt in a community mausoleum shall be sold or offered for sale before said structure, or a component section thereof, is fully completed.

R.S.1954, c. 58, § 30.

§ 1347. Improper conditions; removal of bodies

Whenever any mausoleum, vault, crypt or other structure containing one or more dead human bodies shall, in the opinion of the Bureau of Health, become a menace to public health and the owner thereof fails to remedy or remove the same to the satisfaction of the said bureau, any court of competent jurisdiction may order the owner of said structure to remove the dead body or bodies for interment in some suitable cemetery at the expense of such owner. If such owner cannot be found, such removal and interment shall be at the expense of the cemetery association in the cemetery in which such mausoleum, vault, crypt or other structure is situated.

R.S.1954, c. 58, § 31.

§ 1348. Permanent care and improvement fund

Every cemetery association or other agency establishing, maintaining and operating a community mausoleum shall create and establish a permanent care and improvement fund, distinct and separate from the permanent care and improvement fund of its cemetery, the income whereof shall be devoted to the care, maintenance and improvement of such community mausoleum. Such permanent care and improvement fund shall be created by applying to such fund at least 30% of the proceeds received, in full and installments, from the sales of crypts in such mausoleum.

R.S.1954, c. 58, § 32.

§ 1349. —Custodian

The treasurer of the cemetery in which such community mausoleum is situated shall be the custodian of the permanent care and improvement fund established therefor in section 1348 and every such fund shall be held, administered and invested in the manner provided by law for funds in savings banks of this State.

R.S.1954, c. 58, § 33.