

# MAINE STATE LEGISLATURE

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Mausoleums R.S., Chapter 58, Sections 26 through 35

To me, this particular law is the most baffling and meaningless that I have tried to interpret. I am not sure whether I am right or not, but I will try to make an interpretation that has some sense.

The phrase "such community mausoleum" seems to be used consistently throughout these sections. Use of the phrase "community mausoleum" appears in Chapter 58, Section 22 wherein it says, "and 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." Apparently from this a community mausoleum is a mausoleum which is to be built or erected by a cemetery association for the sale of crypts in the mausoleum and located in the cemetery. This is further substantiated by the provision in Section 25 that every community mausoleum, except structures erected by churches or religious societies for the use as a repository for the remains of clergy or dignitaries of the church, shall be located only within the limits of a cemetery containing not less than 20 acres.

Section 26 provides that before anyone may build or erect a community mausoleum or other burial structure entirely above ground or partly above and partly by excavation, with the intention and purpose that when so built it may contain 20 or more deceased human bodies for permanent interment, the person building the mausoleum 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. This simply provides that where a mausoleum shall contain 20 or more deceased human bodies for permanent interment, the bureau of health must approve plans before it can be erected. Apparently any mausoleum which is designed to contain less than 20 deceased human bodies does not require the prior approval of the bureau of health.

However, I would call to your attention Section 31 which provides that whenever any mausoleum, vault, crypt or other structure containing 1 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 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 the owner cannot be found, the 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.

I will now attempt to answer the questions raised in the letter from the Osborne - Kasper - Thomas, Inc. concern. The first question is:

1. Will it be necessary for the bureau of health to have supervisory control over the erection of a private mausoleum after it has approved the building plans?

Answer: If the mausoleum will contain 20 or more deceased human bodies for permanent interment, then the bureau of health will have supervisory control over the erection in my opinion. If it is to contain less than 20 human bodies, then the bureau has no control until such time as in the opinion of the bureau the mausoleum becomes a menace to public health under the provisions of Section 31.

2. Will it be necessary for the bureau of health to approve each private mausoleum location in a selected cemetery?

Answer: It is not necessary provided the mausoleum is to contain less than 20 dead human bodies.

3. Will it be necessary to submit to the bureau plans for construction of a private mausoleum containing more than 20 crypt spaces?

Answer: Yes, in accordance with the provision of Section 26.

4. Does a mausoleum construction containing more than 20 crypt spaces constitute a public construction or (Community Mausoleum) provided that the crypt spaces are all reserved in advance of construction, and that when construction is completed no further crypt spaces may be offered for sale to the general public in any given community?

Answer: I think the answer to number 3 answers this question. As I read Section 26 any mausoleum, vault, or burial structure which will contain 20 or more deceased human bodies for permanent interment must have written approval of its plans by the bureau. In answering this question I would also refer to Section 22 in the last paragraph which was quoted above which would indicate to my mind that a community mausoleum cannot be maintained or operated for the purpose of private profit or gain and it would seem to me therefore that the only one who can build one would be the cemetery association. I would question, under the law as it exists, whether a private individual or a corporation could build a mausoleum containing this many crypt spaces.

5. Does the size of a small town cemetery prohibit a private construction?

Answer: This question is difficult to answer because it is not dependent upon the size of a town, but on the size of the cemetery. As provided in Section 25, every community mausoleum shall be located only within the limits of a cemetery containing not less than 20 acres.

If the question is meant to talk of a private mausoleum to be owned by an individual for the purposes of burying himself or his immediate family, I think perhaps that the size of the cemetery is not involved in the matter. I find nothing in the statutes which would prohibit an individual from erecting or having erected for him a mausoleum for the use of his family.

I am not sure whether I have thoroughly answered the questions raised here, but I have tried to give as direct answers as possible. As I stated at the beginning, I feel that the statutes relative to mausoleums is somewhat vague and is possibly susceptible of more than one interpretation in some places.

GCW:dib

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