



STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

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STEVE CLARK
ATTORNEY GENERAL

OPINION NO. 86-14

January 24, 1986

Ms. Beverly Bassett, Secretary
Arkansas Securities Department
#1 Capitol Mall
Little Rock, Arkansas 72201

Dear Ms. Bassett:

This office acknowledges receipt of your request for a formal opinion in behalf of the Arkansas Cemetery Board. You pose the following question:

If in a perpetual care sales contract for the sale of a burial space a separate and specific perpetual care fee is charged and paid in addition to the amount paid for the burial space, must the amount paid as the perpetual care fee be considered a part of the "gross proceeds" of the sale which is used to compute the amount to be deposited to the permanent maintenance trust fund pursuant to Section 13(B) of Act 352 of 1977, as amended?

The answer to your question is no.

The Cemetery Act for Perpetually Maintained Cemeteries, Acts 1977, No. 352, as amended, compiled at Ark. Stat. Ann. §§82-426.1 through 82-426.23 (1985 Cum. Suppl), provides for the establishment and maintenance of perpetual care cemeteries. The act provides that each regulated cemetery establish a trust fund, the income from which can be used only for general maintenance, administration, and preservation of the cemetery.

Ark. Stat. Ann. §82-426.14(A) provides:

The permanent maintenance fund is hereby declared to be a trust fund for the purpose of administration, care and maintenance of the cemetery, including lots, graves, spaces, crypts, niches, burial rights or otherwise. The net income from the fund shall be

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paid to and be exclusively used and expended by the owners/managers or officers and directors of the cemetery company for the care and maintenance of the cemetery and for no other purpose.

Ark. Stat. Ann. §82-426.13(B) provides:

Each cemetery company shall deposit not less than ten percent (10%) of the gross proceeds of each sale into such permanent maintenance fund...

The gross proceeds received by the cemetery are the moneys received in payment for the lot, grave, space, crypts, or niche. An amount equal to 10% of this amount is paid not to the cemetery but to the perpetual care trust.

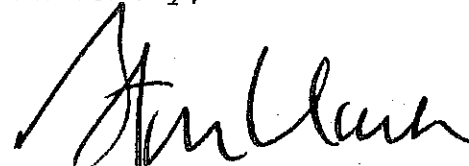
Using the example supplied in your letter, the figures are as follows.

Sales price of burial space	\$400.00
Perpetual care fee	<u>40.00</u>
Total amount paid by purchaser	\$440.00

The "gross proceeds" upon which the 10% perpetual care fee is determined would be \$400.00.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Arnold M. Jochums.

Sincerely,



STEVE CLARK
Attorney General

JSC:AMJ:jk