

CHAPTER V

Cemetery and Related Corporations

I. PRESENT TREATMENT

PROVISIONS for the incorporation of cemetery, cremation, and related associations are not contained in the Michigan General Corporation Act. Instead, four distinct acts provide separately for (1) the incorporation of nonprofit cemetery organizations;¹ (2) the incorporation of cemetery companies for profit and also, since a recent amendment,² for nonprofit purposes;³ (3) the incorporation of cremation companies;⁴ and (4) the incorporation of vault associations.⁵ The first two of these acts are rather detailed. They are also heterogeneous in that many corresponding provisions have divergent requirements. Further, they are overlapping in that nonprofit organizations may be incorporated under both acts. The latter two acts are very brief and in fact incomplete.

It is obvious that many matters concerning routine corporate functioning of all of these corporations need not differ in any respect from similar matters relating to other profit and nonprofit corporations. Such items, for example, as the required number of incorporators, the mechanics of organization, general corporate powers, the regulations

¹ Mich. Pub. Acts 1855, No. 87; Mich. Comp. Laws secs. 456.1 *et seq.* (1948).

² Mich. Pub. Acts 1953, No. 167.

³ Mich. Pub. Acts 1869, No. 12, as amended by Mich. Pub. Acts 1953, No. 167; Mich. Comp. Laws secs. 456.101 *et seq.* (1948 and Mason's Supp. 1954).

⁴ Mich. Pub. Acts 1915, No. 58; Mich. Comp. Laws secs. 456.201 *et seq.* (1948).

⁵ Mich. Pub. Acts 1882, No. 13; Mich. Comp. Laws sec. 456.251 (1948).

concerning directors and their qualifications, membership, voting, and meetings are but some of the features that could and should be uniformly regulated as to all corporations. Providing independent acts results in either unnecessary repetition or incomplete statutes. Logic compels that these corporations be included in the general Act with special provisions pertaining only to their unique requirements.

Simplification can be accomplished by amalgamating these four acts into one. The continuation of two detailed acts for cemeteries is ridiculous. One is sufficient, with a simple statement that corporations organized thereunder may be either profit or nonprofit organizations. Further, cremation corporations, columbarium associations, vault societies, and other organizations providing facilities for the disposal and interment of the dead are performing essentially the same function. One act with an enlarged purpose clause and additional flexible provisions would accomplish the purpose.

II. THE SOLUTION

Detailing the separate provisions of each of these separate acts would emphasize in a monotonous fashion the aforementioned observations. Further, the explanatory notes to the proposed Act set forth in detail what portions of the present acts are recommended to be retained and what provisions are recommended to be changed.⁶ Thus, it would seem more profitable to elaborate herein the scheme of the proposed Act and the considerations behind its essential features.

Consistent with the general theory that one group of provisions is sufficient for all types of burial corporations,

⁶ Part II, Proposed Act, secs. 297 *et seq.*

section 297⁷ lists in a comprehensive manner the purposes for which such corporations may be formed. By listing all of the purposes mentioned in the existing four acts in as broad a manner as possible, it is intended to make the sections fully comprehensive. Section 298⁸ provides that any of these corporations may be organized either for profit or not for profit, and that they shall be governed accordingly by the applicable sections of the general Act. Thus is rendered unnecessary the repetition of provisions governing routine procedure. It is to be noted, however, that this section will necessitate an amendment to section 3⁹ of the general Act, which at present excludes cemetery corporations.

Section 299 of the proposed Act¹⁰ is in form a granting of power to acquire land in fee for cemetery and related purposes. It is in fact, however, also a limitation on the power of such corporations, as otherwise they would have power to acquire such land either in fee or in lesser estate under the general provisions.¹¹ An added provision that such land shall perpetually remain dedicated to burial uses until by law vacated is a further limitation. Both of these provisions are taken from the present acts and are justified. In choosing the provision of one existing statute¹² limiting the acquisition of such property to estates in fee, the contradictory provision of another,¹³ authoriz-

⁷ Part II, Proposed Act, sec. 297.

⁸ Part II, Proposed Act, sec. 298.

⁹ Mich. Comp. Laws sec. 450.3 (Mason's Supp. 1954).

¹⁰ Part II, Proposed Act, sec. 299.

¹¹ Mich. Comp. Laws sec. 450.10 (1948), as amended by Mich. Pub. Acts 1953, No. 156 and Mich. Comp. Laws sec. 450.125 (1948). Sec. 234 of the proposed Act is the analogous section relating to powers of nonprofit corporations.

¹² Mich. Comp. Laws sec. 456.204 (1948), relating to cremation corporations.

¹³ Mich. Comp. Laws sec. 456.2 (1948).

ing such acquisitions by lease, was rejected. Considering the permanence of a burial ground, the requirement that the corporation hold such land in fee is reasonable.

The burial ground. Both of the present cemetery corporation acts have provisions requiring the mapping or platting of the burial ground.¹⁴ This is a reasonable requirement and is therefore continued in the proposed Act.¹⁵ The recommended section,¹⁶ however, is broadened to require also plats or plans of mausoleums, columbariums, or similar structures. One copy of the plat or map shall be retained by the secretary of the corporation, and another shall be filed with the clerk of the county court.¹⁷ All land used for the burial of the dead is exempt from real estate taxation under both the present acts and the recommended provisions.¹⁸ The exemption applies to profit as well as nonprofit corporations.¹⁹ Land that is held in reserve and not yet used for such purposes, however, is subject to taxation.

Right of burial. The present four Acts contain a number of repetitious and nonuniform provisions relating to burial rights. The proposed Act retains the best of these provisions and broadens them to make them applicable to all corporations engaged in operating facilities for the repose of the dead. Section 303²⁰ broadly defines right of burial to include not only burial in the ground but entombment in a vault or crypt, as well as the storage of the ashes of a cremated body. The same section also recognizes the right

¹⁴ Mich. Comp. Laws secs. 456.17 and 456.106 (1948).

¹⁵ Part II, Proposed Act, sec. 300.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Mich. Comp. Laws secs. 211.7, 456.108, and 456.205 (1948). Part II, Proposed Act, sec. 301.

¹⁹ *Ibid.*

²⁰ Part II, Proposed Act, sec. 303.

of the corporation to enact regulations concerning such rights. These regulations might pertain to visitorial rights, erection of plaques or monuments, decorating resting places, payment for such rights, and similar matters.

Section 304²¹ is patterned after a current provision²² and restricts the corporation from mortgaging or otherwise encumbering land actually used for burial purposes. Similarly, interments are forbidden in land which is delinquent for taxes or special assessments.²³ Section 305²⁴ confers on the board of directors the power to determine the price of burial rights and requires the issuance of a certificate of burial upon full payment. This provision also is a consolidation of present provisions.²⁵ Provisions requiring a record of burial rights, burials, cremations, and disinterments are recommended.²⁶ The proposed Act²⁷ authorizes the corporation to enact regulations governing the transfer of burial rights, and makes such rights transferable only in accordance with those regulations. This is a sound method of treating the matter and is preferable to enacting rigid requirements. The parties should be free to choose the character of the locale of their final resting place, and reasonable restrictions on transfer should be recognized.

Perpetual care fund. Section 310 of the proposed Act²⁸ makes a perpetual care fund mandatory for all corporations engaged in interment activities. Under the present acts such a perpetual care fund is mandatory only for

²¹ Part II, Proposed Act, sec. 304.

²² Mich. Comp. Laws sec. 456.109 (1948).

²³ Part II, Proposed Act, sec. 304.

²⁴ Part II, Proposed Act, sec. 305.

²⁵ Mich. Comp. Laws secs. 456.31, 456.106 and 456.209 (1948).

²⁶ Part II, Proposed Act, secs. 306, 308 and 309.

²⁷ Part II, Proposed Act, sec. 307.

²⁸ Part II, Proposed Act, sec. 310.

columbarium corporations.²⁹ The acts for cemetery corporations³⁰ authorize such a fund on an optional basis. A compulsory fund is recommended to obviate periodic burdensome assessments and to insure the preservation of the grounds and buildings. Statutory recognition of such funds is desirable to preclude any possible conflict with the Rule Against Perpetuities. The proposed Act also authorizes burial corporations to act as trustees of private perpetual care funds.³¹ The mandatory provisions of the perpetual care fund sections are not made applicable to existing corporations not having such funds.³²

Cemeteries shall be vacated only upon authorization of the circuit court, which shall make reasonable and just orders concerning disinterment and reinterment.³³ Other provisions of the existing acts are not recommended for retention. These are set forth in the explanatory notes following section 313 of the proposed Act.

²⁹ Mich. Comp. Laws sec. 456.213 (1948).

³⁰ Mich. Comp. Laws secs. 456.35 and 456.115 (1948).

³¹ Part II, Proposed Act, sec. 311.

³² Part II, Proposed Act, sec. 310.

³³ Part II, Proposed Act, sec. 313.