

Cemetery, Use by City or Town.

Title to land used as a public cemetery in or near any city or town or village vests in the inhabitants of the city, town or village after five years continuous use. Either the city or town council, or the board of county commissioners, may assume the management and control of a public cemetery.

Helena, Montana, August 5, 1909.

Hon. F. P. Leiper,
County Attorney,
Glendive, Montana.

Dear Sir:

I am in receipt of your letter of August 3, asking my opinion as to whether the control of the cemetery at Glendive should vest in the city or county authorities.

From the meagre statement of facts, it is difficult to determine where the title rests. Section 1988, revised codes, provides that the title to land used as a public cemetery or grave yard, situated in or near any city, town or village, and used by the inhabitants thereof continuously as a burial ground for five years, is vested in the inhabitants of the city or town or village.

If the inhabitants of the city of Glendive used the tract of land in question for a burial ground continuously for a period of five years prior to the deed made by the Northern Pacific Railway Company to Dawson county, it seems that under the authority of the statute above referred to the inhabitants had gotten title to the land used for the purposes of burial. However, if the land in question was used both by the inhabitants of the city of Glendive and those of Dawson county outside of the city, then the board of county commissioners, especially in view of their deed from the Northern Pacific Railway Company, might properly assume the control and management of the cemetery.

It is probably true that the cemetery was used before the incorporation of the city of Glendive, and, in that event, even without relying upon the conveyance from the railway company, the county commissioners are vested with the control by section 1988, and following sections.

If you will give me a fuller and more detailed statement of facts I will give you my opinion as to where the legal title rests. However, it would be necessary, for the city to obtain record title, to either receive

a conveyance from the county or by proper action in court. Under the circumstances it seems to be a matter which could be amicably adjusted by the county commissioners and the city council.

Yours very truly,

ALBERT J. GALEN,

Attorney General.