

**Cemeteries—Cities and Towns—Funds.**

A city can provide by ordinance for the sale of cemetery lots and place part of the money received from the sale of the lots in a fund, the income from which is to be used for the purpose of perpetual care of said lots. This fund would have to be handled by the city council and not by the cemetery board.

Thomas N. Marlowe, Esq.,  
City Attorney,  
Missoula, Montana.

December 27, 1928.

My dear Mr. Marlowe:

You have requested my opinion on the following questions:

"1. Can the city cemetery board or the city council raise the price of cemetery lots yet to be sold and use a portion of the purchase price received from the sale to create a fund, the income from which is to be used solely for the purpose of perpetual care of the lots thus sold?

"2. If this can be done, would the city council handle the fund or the city cemetery board, and what procedure should be followed in establishing the fund?"

In answer to your first question will say that Section 5168 R.C.M. 1921 places the title to cemetery grounds in the city, and Section 5172 R.C.M. 1921 gives the city the power to manage the same, including the disposition of lots and keeping the same in order, and I see no reason why the city cannot raise the sale price of the lots and proceed to use part of the money received to create a fund for the care of the same in the manner you suggest, as long as the price fixed on the lots is not unreasonable so as to amount to a clear abuse of discretion.

In answer to your second question, the only provision for the appointment of a cemetery board is that found in Section 5173 R.C.M. 1921, as follows:

"The board of county commissioners, city trustees, or other corresponding authorities having jurisdiction and control of cemeteries, may make general rules and regulations therefor, and appoint sextons and other officers to enforce obedience to the same, with such other powers and duties regarding the cemetery as they may deem necessary, including the right by taxation to raise money, purchase land, lay out cemeteries, and manage them."

Of course I do not know what powers have been granted the cemetery board by your city council, but this section apparently attempts to give the council the right to put the entire management and control of cemeteries in the cemetery board. However, our Supreme Court has already held that such a board cannot be given the right to raise money by taxation. (*Gerry vs. Edwards*, 42 Mont. 135).

As a cemetery is city property and any money derived from the sale of lots therein becomes city money, I do not believe that even under the provisions of this statute the city council can delegate the handling of the money to the cemetery board, and, in my opinion, a separate fund should be set up by the city and all claims against the same should be presented and allowed as in the case of other city claims. This whole matter would have to be provided for by proper ordinances and resolutions.

Very truly yours,  
L. A. FOOT,  
Attorney General.