

VOLUME NO. 43

OPINION NO. 31

CEMETERY DISTRICTS - Authority of cemetery board of trustees to sell headstones;

COUNTY GOVERNMENT - Authority of cemetery board of trustees to sell headstones;

LOCAL GOVERNMENT - Authority of cemetery board of trustees to sell headstones;

MONTANA CODE ANNOTATED - Sections 7-35-2101 to 7-35-2125, 7-35-2109;

MONTANA CONSTITUTION - Article XI, section 4;

OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 17 (1983).

HELD: The board of trustees of a cemetery district has the authority to sell headstones and grave markers at the cemetery for use in the cemetery, so long as the profits are used in furtherance of the purposes of the cemetery district.

September 7, 1989

Larry Nistler
Lake County Attorney
Lake County Courthouse
Polson MT 59860

Dear Mr. Nistler:

You have requested my opinion on the following question:

May the board of trustees of a cemetery district organized pursuant to section 7-35-2101, MCA, advertise and sell grave

markers and headstones at the cemetery site for use in the cemetery?

Cemetery districts are organized and created upon petition and election by landowners within the district for the purpose of acquiring, operating, and maintaining a cemetery or cemeteries. §§ 7-35-2101 to 2150, MCA. The powers of the board of trustees, as set forth in section 7-35-2109, are to:

- (1) maintain a cemetery or cemeteries within said district;
- (2) hold title to property by grant, gift, devise, lease, or any other method; and
- (3) perform all acts necessary or proper for the carrying out of the purposes of 7-35-2101 through 7-35-2125, including the selling or leasing of burial lots.

The powers of local government units are to be liberally construed, and include powers expressly or impliedly granted by statute. Mont. Const. Art. XI, § 4. See also 40 Op. Att'y Gen. No. 17 at 63 (1983). Thus, the issue is whether the authority to sell headstones or grave markers may be fairly implied from the powers granted the trustees by section 7-35-2109, MCA. The two courts which have addressed this question have reached opposite conclusions. Inch Memorials v. City of Pontiac, 286 N.W.2d 903 (Mich. Ct. App. 1979); Morrison v. City of Portland, 286 A.2d 334 (Me. 1972). The Michigan court followed a state constitutional directive to liberally construe grants of authority to home-rule municipalities, and held that the legislature's grant of authority to the municipality to acquire, maintain, develop, and operate cemeteries and to provide for the costs and expenses thereof reasonably included by implication the authority to sell grave markers and headstones in and for use in the municipality's own cemeteries. On the other hand, the Maine court's conservative construction resulted in the denial of authorization for the sale of monuments or markers. Consistent with the Montana Constitution, which directs liberal construction of powers granted to local government units, I adopt the reasoning in Inch Memorials v. City of Pontiac, *supra*, and conclude that a board of trustees of a cemetery district has the authority to sell headstones and grave markers for use in the cemetery or cemeteries operated by the board, with the caveat that the proceeds must be used in furtherance of the purposes of the cemetery district.

THEREFORE, IT IS MY OPINION:

The board of trustees of a cemetery district has the authority to sell headstones and grave markers at the cemetery for use in the cemetery so long as the profits are used in furtherance of the purposes of the cemetery district.

Sincerely,

MARC RACICOT
Attorney General