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OPINION COMMITTEE

FILE # MI-41730-00

I.D. # 41730

October 25, 2000

The Honorable John Cornyn
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Attention: Opinions Committee

RQ-0304-JC

Dear General Cornyn,

Earlier in the year I requested an opinion regarding cemeteries in the State of Texas and the statutes relating to same. You provided a response to my request in Opinion #JC-0235. At this time I am again asking for further help in the clarification of some specific areas noted in this Opinion.

The Opinion addressed the statues relating to cemeteries dedicated by a cemetery organization under Section 711.034. I would like clarification on how Chapter 711 of the Health and Safety Code applies to cemeteries that were not dedicated under the Chapter.

Many public cemeteries are on private property and were created prior to this statute. The law contemplates two classes of graveyards, public and private. Public used by the general community, neighborhood or church and private used only by family.

Some of the small pioneer cemeteries across the state are dedicated of record as a cemetery and to public use and some used for burial purposes but not recorded or formally dedicated and are located on private property. These types of cemeteries, in use prior to the enactment of the statute, are not under the ownership or care of any cemetery organization. These are the ones for which I request the clarification of the Opinion.

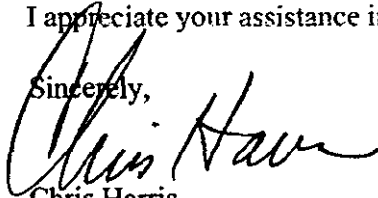
1. How does Chapter 711 apply to cemeteries with burials dating in the late 1800's which is located within a larger area of privately owned land? This small section of land was once devoted to burials and evidence of burials exists on the site. This type of cemetery property has not been dedicated by a cemetery organization under Section 711.034, but may have been recorded and formally dedicated by deed to cemetery use prior to the Act.



2. In a situation where a landowner owns property that contains a cemetery of the above described nature, does Chapter 711 of the Health and Safety Code apply to the cemetery?
3. Does a landowner of a property as described above act as a Trustee of the cemetery?
4. Do these types of cemeteries, once devoted to and used by the public, with or without recording or formal deeded dedication, remain public cemeteries by virtue of past use even though they re located within private property?
5. In a situation where the landowner of such property wishes to convey the entire property including the area used as cemetery, may the area of property used as cemetery be conveyed like any other property?

I appreciate your assistance in clarification of the original opinion as noted above.

Sincerely,



Chris Harris