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SENATOR FLORENCE SHAPIRO  
DISTRICT 8

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OPINION COMMITTEE  
**The Senate of  
The State of Texas**

September 30, 2002

**RQ-0614-JC**

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

FILE # ML-42820-02  
I.D. # 42820

**ATTN: Opinions Committee**

**RE: Request for Attorney General's Opinion regarding Municipality's Authority to own, operate and regulate a cemetery**

Dear General Cornyn:

The ownership and regulation of places of interment is regulated by Subtitle C of the TEXAS HEALTH AND SAFETY CODE being Chapter 711.001 *et. seq.* Under Subchapter A, a "cemetery" is defined as "a place that is dedicated to and that is used or intended to be used for interment, and includes a graveyard, burial park, or mausoleum". § 711.001(2). Subchapter A delineates general provisions which apparently apply to all operated cemeteries with crematories and other interment parks despite the type of ownership. Subchapter B regulates cemetery corporations and specifically provides in §711.021 as follows:

"(a) An individual, corporation, partnership, firm, trust, or association may not engage in a business for cemetery purposes in this state unless the person is a corporation organized for those purposes.

(b) A corporation conducting a business for cemetery purposes, including the sale of plots, may be formed only as provided by this section. The corporation must be either:

(1) a nonprofit corporation organized in accordance with Section A or B, Article 3.01, Texas Non-Profit Corporation Act (Article 1396-3.01, Vernon's Texas Civil Statutes), or with Section 711.022; or

(2) a private corporation operated for profit.

...."

Thereafter, a number of other exceptions apply concerning the operation of cemeteries that are organized prior to certain specified dates. Subsection (g) of § 711.021 specifically states that this section does not apply to:

"(g) This section does not apply to:

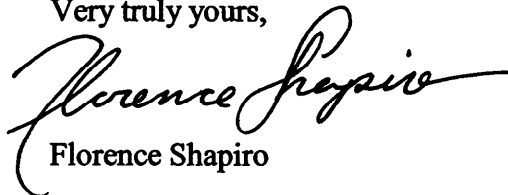


- (1) a family, fraternal, or community cemetery that is not larger than 10 acres;
- (2) an unincorporated association of plot owners not operated for profit;
- (3) a church, a religious society or denomination, or an entity solely administering the temporalities of a church or religious society or denomination; or
- (4) **a public cemetery belonging to this state or a county or municipality."**

In Section 713, Subchapter A, Municipal Regulation of Cemeteries, it is specifically provided in §713.001 that the governing body of a municipality may: (1) purchase, establish and regulate a cemetery; and (2) enclose and improve a cemetery owned by the municipality. It thus appears that a City may purchase, establish or regulate. The question is may a city actually "operate" a cemetery. There appears to be words of limitation and conflict with § 711.021, as set forth above, in that there is not a specific grant of authority for the operation to be vested in a city. Thus, the question presented is whether the Home Rule City may operate a cemetery or is a city required to contract with a qualifying corporation under Section 711.021, HEALTH AND SAFETY CODE.

As a result, I hereby respectfully request an Attorney General's opinion as to the authority of a home rule municipality's right to own and operate a cemetery as defined by § 711.001, Subparagraph 2, of the TEX. HEALTH AND SAFETY CODE. This request is made on behalf of the Senate Committee on State Affairs of the Texas Legislature pursuant to § 402.042(7) of the TEXAS GOV'T CODE.

Very truly yours,



Florence Shapiro

cc: The Honorable Candy Sheehan, Mayor, City of Coppell  
Mr. Jim Wirt, City Manager, City of Coppell