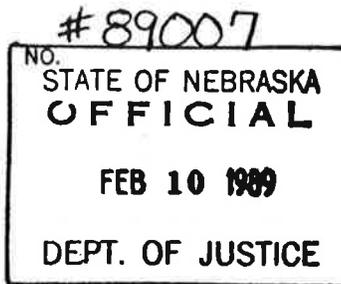


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



ROBERT M. SPIRE  
Attorney General  
A. EUGENE CRUMP  
Deputy Attorney General

**DATE:** February 10, 1989

**SUBJECT:** Legislative Bill 633; Proposed Amendments to Neb.Rev.Stat. §17-938 (Reissue 1987) to Authorize Forfeiture or Reclamation of Burial Lots for "Non-use"

**REQUESTED BY:** Senator Dennis Baack  
Nebraska State Legislature

**WRITTEN BY:** Robert M. Spire, Attorney General  
Fredrick F. Neid, Assistant Attorney General

**QUESTION:** "Is LB 633 needed in order for such cemeteries to obtain title to unused gravesites or are the current provisions in Section 17-938 sufficient?"

**CONCLUSION:** Amendment of Neb.Rev.Stat. §17-938 (Reissue 1987) would be necessary to authorize forfeiture or reclamation of burial lots due to "non-use."

This is in response to your request for an opinion of this office concerning reclamation of burial lots. Your specific inquiry is whether Neb.Rev.Stat. §17-938 (Reissue 1987) requires amendment as provided in LB 633 to authorize reclamation of unused burial lots or gravesites.

You have indicated that the proposed bill (LB 633) addresses those cemeteries which are financed by a tax levy, levy no fees or assessments, and charge only for sale of lots and openings.

Neb.Rev.Stat. §17-938 (Reissue 1987) currently provides for forfeiture or reclamation of lots if any charges, liens, or assessments have not been paid after a period of three years. These provisions do not permit or authorize forfeiture of burial lots for "non-use" only. Accordingly, it would be necessary to amend the statute to authorize forfeiture or reclamation for these purposes.

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Senator Dennis Baack  
February 10, 1989  
Page -2-

It is appropriate to point out that changing the statute to authorize reclamation of burial lots for "non-use" would significantly change the nature of ownership of burial lots. The amendments to Neb.Rev.Stat. §19-738 (Reissue 1987) as set forth in LB 633, in essence, means that cemetery lots would be sold for a "term of ten years" since lots would be subject to reclamation for "non-use" after a period of ten years.

Sincerely,

ROBERT M. SPIRE  
Attorney General

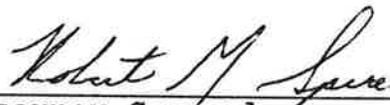


Fredrick F. Neid  
Assistant Attorney General

21-01-14

cc: Patrick J. O'Donnell  
Clerk of the Legislature

APPROVED:

  
\_\_\_\_\_  
Attorney General