



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

February 29, 2024

Michael R. Moore, Esq.
Attorney, City of Pascagoula
Post Office Box 1529
Pascagoula, Mississippi 39568-1529

Re: Cost of Cleaning Perpetual Care Cemeteries

Dear Mr. Moore:

The Office of the Attorney General has received your request for an official opinion.

Background

You provide in your request that you are seeking guidance on the applicability of Mississippi Code Annotated Section 21-19-11 to perpetual care cemeteries. The city of Pascagoula (“City”) desires to clean a neglected perpetual care cemetery. The perpetual care cemetery shows signs of unchecked vegetative overgrowth, excess rubbish and debris, the disintegration of grave markers and other signs of improper maintenance. The City is exploring options to clean the cemetery and desires to recover the costs related to cleaning the same.

Questions Presented

1. May the City clean a perpetual care cemetery and enroll the actual cost of cleaning as a lien on the land?
2. May the City clean a perpetual care cemetery and assess the actual cost of cleaning as a judgment against the cemetery’s owner?
3. May the City clean a perpetual care cemetery and assess penalties that are enrolled as a lien on the land?

Brief Response

1. No. To recover the actual cost of cleaning a perpetual care cemetery, the governing authority of the municipality must follow the procedure provided in Section 21-19-11(7).

2. See response to question 1.
3. The assessment of penalties against the cemetery's owner is expressly prohibited.

Applicable Law and Discussion

Section 21-19-11 authorizes the governing authority of a municipality to adjudicate property or a parcel of land as a menace to the public health, safety, and welfare of a community and to go in and clean the property if the owner fails to do so. Subsections (1) through (4) provide the scheme for recouping actual cleaning costs and assessing penalties when the municipality proceeds with cleanup and contemplates the enrolling of those costs and penalties as liens and judgments. However, the Legislature has specifically provided a separate scheme to be followed for recouping costs associated with the cleanup of perpetual care cemeteries.

Section 21-19-11(7)(a) authorizes the governing authority of a municipality to determine, using the procedure provided in subsection (1), whether a perpetual care cemetery and all structures on the cemetery are not being properly maintained and are detrimental to the public health and welfare. Upon notice and an opportunity to be heard, the governing authority may adjudicate the property or parcel of land as such, and once adjudicated, the municipality may clean the property if the owner does not do so himself. *Id.*

The actual cost of cleaning the property may be reimbursed to the municipality by making application to the Mississippi Secretary of State "for an order directing the trustee of the perpetual care cemetery trust fund to release accrued interest or principal of the trust fund sufficient to reimburse the municipality." Miss. Code Ann. § 21-19-11(7)(b). *See also* Miss. Code Ann. § 41-43-57(2). If the notice and hearing requirements are met, and the application to release accrued interest from the perpetual care cemetery trust fund would not threaten the ability of the fund to provide for the cemetery's care and maintenance, the Secretary of State may order the trustee to release accrued interest sufficient to reimburse the actual costs of cleanup. Miss. Code Ann. § 21-19-11(7)(c). If the Secretary of State determines that the accrued interest is not sufficient to reimburse the municipality for the actual costs of cleanup or that releasing the accrued interest would threaten the fund's ability to provide for the care and maintenance of the cemetery, then the Secretary of State may consider an order directing the release of principal of the trust fund to reimburse the municipality. Miss. Code Ann. § 21-19-11(d). If the Secretary of State determines that the solvency of the trust fund will not be threatened by such an order to release principal, then the release of principal in the amount sufficient to reimburse the actual costs of cleanup may be ordered. *Id.* We find no authority for the City to enroll the actual cost of cleaning as a lien on the land or to assess the actual cost of cleaning as a judgment against the cemetery's owner in order to recoup the actual costs of cleaning a perpetual care cemetery. This answer is also responsive to your second question.

In response to your third question, Section 21-19-11(7)(a) specifically prohibits penalties authorized in subsection (1) from being assessed against the owner of a perpetual care cemetery, and we find no statute elsewhere that authorizes a municipality to assess a penalty for the cleanup of perpetual care cemeteries. Therefore, the City may not assess a cleanup penalty and enroll it as a lien on the land.

Michael R. Moore, Esq.

February 29, 2024

Page 3

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Abigail C. Overby*

Abigail C. Overby
Special Assistant Attorney General

OFFICIAL OPINION