



KANSAS FUNERAL DIRECTORS ASSOCIATION

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Topeka

To: Senate Local Government Committee

From: Pam Scott, Executive Director
Kansas Funeral Directors Association

RE: Senate Bill No. 97

Date: February 4, 2021

Madam Chair and members of the Committee, I am Pam Scott, Executive Director of the Kansas Funeral Directors Association (KFDA). The KFDA appreciates the opportunity to appear before you today in opposition to Senate Bill No. 97. The KFDA represents funeral homes across the state of Kansas.

The KFDA opposes amending K.S.A. 2019 Supp. 17-1301c to add a definition of "Purposes of sepulture". We do not believe it is necessary to add such a definition to the statute nor do we believe the definition proposed accurately describes the meaning of that term. It is likely the term has not been previously defined because the meaning is clear. According to the Merriam-Webster and other dictionaries, sepulture is defined as "burial, interment, the act of placing a body in a tomb". Burial and interment is a function of cemeteries and not funeral homes.

The term "sepulture" is not found in any of the statutes regulating funeral homes and funeral directors. A funeral home does not bury bodies. Cemeteries bury bodies. The term "sepulture" is only found in one statute in the cemetery corporation law, K.S.A. 17-1302. That statute states that "Such corporations shall have power to convey, by deed or otherwise, any lot or lots of the cemetery for purposes of sepulture... Every lot sold and conveyed in such cemetery shall be held by the proprietor, for the purpose of sepulture only, and shall not be subject to attachment or execution . . ." Again, the current meaning of the term "sepulture" is burial. This is reinforced by K.S.A. 17-309 which also deals with the conveyance of cemetery lots. It provides that burial plots can be conveyed for burial purposes only.

Adding a definition that does not accurately describe the historical meaning of "sepulture" could impact current Kansas case law and the intent of the only current Kansas cemetery statute that refers to sepulture.

It has come to our attention that this amendment is an attempt to change Kansas law to allow a funeral home to be built on cemetery property that has been dedicated for sepulture or burial purposes which is currently prohibited by Kansas statutes and case law.

It is a long established law in Kansas that a funeral home cannot be built on cemetery property that has been dedicated for purposes of sepulture. This was settled in *Connolly v. Frobenius*, 2 Kan. App 2d 18, 574 P 2d 971 (1978). I am attaching a copy of the case. That case involved a class action brought by cemetery lot owners to enjoin the construction and operation of a mortuary on cemetery property located in Salina, Kansas. The cemetery was subdivided and platted for the purposes of sepulture. Cemetery lots were sold to members of the public who either have been buried or will be buried in the cemetery in the future. In upholding the injunction, the Kansas Court of Appeals concluded "that the construction and operation of a mortuary on the real estate here involved (which was dedicated for purposes of Sepulture), or any other commercial use of any portion of the that area not directed to the selling of cemetery lots with proper access thereto or for the maintenance and beautification of the area, constitutes use in a manner not contemplated by the original dedication, not fairly within the terms of that dedication, and not within the scope of the statutes of this state regulating cemetery corporations". The Court, in its decision reasoned that "...it is doubtful that anyone will argue with the fact that services ordinarily provided by a mortuary in Kansas are competitive commercial enterprises, with aims and goals not solely for the enjoyment and use of the Public". The Court further stated "...purchasers of lots and crypts in the dedicated cemetery had every reason to believe that no part of the dedicated area would be used for any purpose other than for human interment and certainly not for commercial purposes". The retail sale of funeral merchandise and services, preparation and transportation of dead human bodies, selling of prearranged funeral agreements and insurance are certainly commercial activities.

In considering this amendment, the most important thing you should keep in mind are those who have been buried in the cemetery who can no longer speak for themselves as well as those who have purchased a cemetery lot for future burial. They likely chose a burial spot believing it would be a peaceful and tranquil environment for their family to visit their gravesite. Their expectations were not that there would be a commercial mortuary on the cemetery premises. If a funeral home is built on dedicated cemetery property, their grave site may end up being next to a busy parking lot or a loading dock where caskets are unloaded.

KFDA funeral homes for decades have followed the ruling in the *Connolly v. Frobenius* case and not pursued building funeral homes on dedicated cemetery property. Now we have someone who apparently wants to change those rules. To reverse established law would un-level the playing field for those funeral homes that have followed Kansas law and not located their funeral home on dedicated cemetery property. The KFDA would ask that you not let this happen.

I am attaching a February 16, 2020 Editorial by the Kansas City Star Editorial Board opposing last year's legislation on this topic. I quote the last line of their opinion referring to the bill "Bury it, to rest for all time".

We agree and ask that you oppose Senate Bill No. 97.

Thank you again for the opportunity to appear before you today. I would be happy to stand for questions.