

Opinion No. 56-6541

November 9, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Patrick F. Hanagan, District Attorney, Fifth Judicial District, Roswell, New Mexico

This is in reply to your letter of September 13, 1956, in which you raise the following question:

Can the Roswell Cemetery Association enter into a contract with W. R. Ballard under which terms Mr. Ballard will operate the cemetery and retain 75% of the proceeds and submit 25% to the Roswell Cemetery Association?

The following is submitted for your consideration:

Section 14-30-1, 1953 N.M.S.A., gives the city the right to create a board for the care, management and control of the municipal cemetery. At § 14-30-2 the following authority is given the board:

"The said cemetery board when organized, shall take charge of the public cemetery belonging to the city, town or village, and **shall have the absolute control and management of the same.**" (Emphasis supplied)

In this absolute grant of authority would be the implied power of the board to enter into arrangements with a third party for the care and operation, etc., of the cemetery, if in their considered judgment such would be beneficial to the city in the operation of the cemetery.

However, in view of House Bill No. 182, Approved March 28, 1955, which requires that cemeteries providing "perpetual care" or "endowment care" must set up certain trust reserves for this purpose, but exempts municipally owned cemeteries, the arrangement with the third party must be carefully spelled out. If the party entering into the contract is merely an agent of the city and board, then no trust fund, as required under this Act, would be necessary. However, if the party entering the contract is to be an independent operator, then trust fund provisions of the law would be required to be met.

Trusting this fully answers your inquiry, we remain

By Harry E. Stowers, Jr.

Assistant Attorney General