

Burr Oak and the Renewed Call for Greater Cemetery Regulation

— by Christopher E. Cummings, Esq.



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Family members and cemetery visitors were faced with signage such as this shortly after the news broke of the tragic vandalism.

“Who could have predicted that an industry largely devoid of oversight could have produced such a disaster?”

That was one blogger’s acerbic and largely inaccurate reaction to the Burr Oak scandal. Of course, there are plenty of existing consumer protection statutes and regulations at the state level.¹ There are laws dealing with the sale of pre-need burial lots and other products, and there are burial permits, disinterment permits, and transit permit requirements. There are plenty of regulations that govern cemetery trust funds. In many states there are licensing requirements for salespersons. Some states require cemeteries to file annual reports with a state agency.

But in view of the recent and outrageous events at Burr Oak Cemetery, the public, perhaps now more than ever, is

questioning the comprehensiveness of these regulations and the effectiveness of the myriad of regulatory state agencies that oversee various aspects of cemetery operations. At the same time, there is a renewed call for the federal government to take on a greater role in cemetery regulation. And there are questions being raised about whether the long standing exemptions of religious cemeteries in some states should be allowed to continue.

By now, cemeterians everywhere are aware of the extensive desecration that occurred this past July when workers at the Alsip, IL cemetery were alleged to have disinterred as many as 300 burials and then resold the lots, while dumping some of the displaced remains in weeded and overgrown areas on the cemetery grounds. Thousands of family

members were left to question and distress over whether their loved ones were among those defiled. The cemetery manager and three workers have been charged with felony offenses. Numerous civil lawsuits have been filed. And, of course, that was just the beginning of the fallout.

But once Catholic cemeterians begin to get past the anguish and consternation over the fact that some death care workers could be so callous as to treat human remains in such a shameful manner, there are the looming questions as to how the public will perceive their own cemetery, and will the vast majority of cemeteries, even religious cemeteries, now be subject to a rigorous regulatory scheme to appease government officials and an angry public.

Will the good be punished along with the bad?

Burr Oak is the latest cemetery mega scandal. In recent years there have been a number of similar scandals involving the errant treatment of human remains by death care providers.

Paradise Memorial Park in Santa Fe Springs, CA was accused of such malfeasance in 1996, and a class action lawsuit erupted. In 2001, Menorah Gardens Cemetery faced allegations that workers oversold cemetery lots and disinterred and scattered remains in the Palm County, FL cemetery. In that case, the cemetery’s corporate parent, Service Corporation International, reportedly agreed to a \$100,000,000 settlement.

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¹ See the United States Governmental Accounting Office August 2003 report “Death Care Industry: Regulation Varies across States and by Industry Segment” (GAO-03-7570).

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Shortly after Menorah, there was the Tri-State Crematory scandal in 2002, where the improper disposal of human remains at the Nobel, GA crematory made national headlines for weeks. In the immediate wake of Tri-State and Menorah, Senator Christopher Dodd (D-Conn) and former Congressman Mark Foley (R-Fla) introduced the now long-dormant *Federal Death Care and Disclosure Act*.

Oversight Task Force Formed

In response to the Burr Oak scandal, Illinois Governor Pat Quinn formed the *Cemetery Oversight Task Force* to review the circumstances surrounding the scandal and provide recommendations on laws and regulations that might prevent a reoccurrence.

The Task Force issued its 77-page report on September 15 and made three overarching recommendations:

- First was the consolidation of state regulatory authority over funeral and burial practices within the Illinois Department of Financial and Professional Regulation.
- The second, and most comprehensive recommendation, was for the enactment of a far-reaching *Cemetery Oversight Act*, which among other things, would require licensure of cemetery managers, continuing education, consumer disclosures, along with creating whistleblower protections and a variety of governmental enforcement powers.
- The Task Force's final recommendation was to consolidate Illinois' existing cemetery laws to create a more uniform system of regulation.

During the course of their proceedings, questions were raised over whether there is a public policy justification for cemeteries to be exempt from regulation. (Task Force Report, page 28)

The actual recommendation of the Task Force was a little muddled on this point, with the report noting that the proposed "*Act should consider exempting religious . . . cemeteries deemed appropriate to exempt, but the exempted cemeteries should still follow certain rules . . .*" (Task Force Report, page 70.) Indicating, perhaps at best, that regulatory exemptions should be determined on a case-by-case basis, the report noted that cemeteries claiming an exemption would need to file an application for such an exemption with the state. (Id.)

At the federal level, on September 25, Congressman Bobby Rush (D-Ill), whose district includes Burr Oak Cemetery, introduced *H.R. 3655* in the U.S. Congress. The bill entitled "*The Bereaved Consumer's Bill of Rights Act of 2009*" reads a lot like the Dodd-Foley bill. The purpose of Congressman's Rush's bill is to direct the Federal Trade Commission to establish rules to prohibit unfair and deceptive acts and practices in the provision of funeral services. As part of the consumer protections sought to be achieved by *H.R. 3655*, there are new and specific requirements for cemeteries regarding the maintenance, accuracy and retention of cemetery records.

The Rush bill contains no exemption for religious cemeteries. Prior to introducing his proposed legislation, Congressman Rush, as Chairman of the congressional Subcommittee on Commerce, Trade and Consumer Protection, convened a field hearing in Chicago, IL on the oversight of cemeteries and other funeral service providers.

Testifying at the hearing on behalf of the Federal Trade Commission was Charles Harwood, Deputy Director of the FTC's Bureau of Consumer Protection, who pledged that the FTC would cooperate and coordinate with state authorities and take further action if and as warranted.

Mr. Harwood noted during the course of his remarks that the FTC's current power, under the general mandate of the FTC Act, to curtail unfair and deceptive practices, and its authority

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H.R. 3655 -

The 2009 Bereaved Consumer's Bill of Rights Act

Introduced September 25, 2009 by Rep. Bobby Rush (D-IL)

Purpose:

The Act directs the Federal Trade Commission (FTC) to prescribe rules prohibiting unfair or deceptive acts or practices relating to the provision of funeral goods or services, including the practices of cemeteries (except for those cemeteries that perform or sell the rights of less than 25 interments, inurnments and entombments during one calendar year.)

The Act shall apply to cemeteries organized or operated by nonprofit and religious organizations or by States or any political subdivision of a State. **The Act specifically exempts itself and any resulting regulations from the requirements of the Religious Freedom Restoration Act.**

Provisions of the Act:

The FTC is to prescribe rules that include the following:

- Requiring that accurate price information be provided to consumers and that providers of funeral goods and services make no misrepresentations to consumers;
- Prohibiting that the provision of any funeral good or service is conditioned upon the purchase of any other funeral good or service from that provider, except as required by law;
- Requiring that contracts for funeral goods or services clearly state in writing what is being purchased and disclose any fees or costs that will be incurred in the future or when the funeral goods or services are provided;

- Regarding pre-need contracts, requiring that contracts disclose any penalties to the consumer for cancellation of the contract or transfer of the contract to another provider;
- Requiring that cemeteries provide consumers with a written explanation of its rules and regulations as well as a written explanation of the interment, inurnment or entombment rights being purchased;
- Requiring that cemeteries must keep records of all interment, inurnment or entombment rights sold after the Act is enacted as well as keeping all records already in existence at the time the Act is enacted, including maps or other means that indicate the location and date of each interment, inurnment or entombment.

Cemeteries shall make these records available to Federal, State and local governments.

Enforcement of the Act:

Any violation of the rules prescribed by the FTC under this Act is considered a violation of the Federal Trade Commission Act regarding unfair or deceptive acts or practices and is subject to the penalties under the FTC Act.

Also, the Bereaved Consumer's bill of Rights Act would allow an attorney general of any state to bring a civil action in federal district court on behalf of its state's residents for a violation of the Act, unless a civil action is already being instituted by the FTC under the Act against the same defendant(s).

Cemetery Regulation, continued

to issue cease and desist orders and exercise other remedies, extends to cemeteries, but he noted that non-profit cemeteries are excluded from coverage under the FTC Act.

Taking the opportunity to voice their concern over Burr Oak, the National Funeral Directors Association renewed their long standing call for the FTC to amend the Funeral Rule to expand coverage to include cemetery operators. In an August 6 letter to FTC Chairman Jon Liebowitz, the NFDA President reiterated the NFDA's call to expand the FTC Funeral Rule to cover cemeteries, noting that cemetery consumers continue to suffer from these reoccurring scandals.

In the months ahead there will no doubt be continued debate over whether there should be an increase in the governmental regulation of cemeteries, including a demand for more regulation of a cemetery's day-to-day operations, as Congressman Rush's bill suggests. There may even be renewed attempts to restrict or eliminate exemptions currently enjoyed by Catholic and other religious cemeteries. Right now it is just too early to tell whether the Rush bill will pass, or how far Illinois will go to implement the Task Force recommendations, or whether other states will follow Illinois.

Catholic cemeterians will continue to play an important role in this discussion, and will need to stay informed. Critical to this debate will be the need for Catholic cemeterians to continue to demonstrate their usual high standards of care and competence. In maintaining the dignity and sanctity of the cemetery grounds and human remains with which they have been entrusted, Catholic cemeterians seek to fulfill a sacred duty, which is a far more compelling motivation than the mere trepidation of a government regulator's sanction.

Fulfilling that duty and providing a positive example for all cemetery operators to follow will be key, if the expansion of governmental intervention is going to be prevented or slowed.

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