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STATE OF ALABAMA

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Honorable Albert Hall
Member, House of Representatives
District No. 22
Route 1, Box 275
Gurley, Alabama 35748

Counties - Cemeteries - Highways,
Roads, and Bridges - Private Work

1. "Active public cemetery" as used in Section 5(7) of Act No. 88-293 is a cemetery that is marked and dedicated to public use.
2. Jackson County Department of Public Works cannot construct additional roads within the boundaries of active public cemeteries. It may maintain public driveways leading to cemeteries.
3. "Driveways" as used in Section 5(7) and 7 of Act No. 88-293 means driveways through cemeteries.

Dear Representative Hall:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION 1

Does "active public cemetery" in Section 5(7) of Act No. 88-293 mean an existing cemetery that has not been abandoned and is

operated by management that does not make its use private and where the general public is invited or solicited to use the cemetery's services and facilities?

FACTS AND ANALYSIS

Act No. 88-293 of the 1988 Regular Legislative Session amended certain provisions of Act No. 79-825, Acts of Alabama 1979, p. 1557 relating to the Jackson County Department of Public Works and the county engineer. Section 5(7) of Act No. 88-293 makes it the duty of the county engineer, subject to the approval of the majority of the Jackson County Commission, "to maintain active public cemetery driveways within the county."

When construing a statute, the intent of the legislature must be ascertained and given effect. Clark v. Houston County Commission, 507 So.2d 902 (Ala. 1987).

"Active public cemetery" as used in Section 5(7) of Act No. 88-293 is a cemetery which has been dedicated to public use such as provided for in Code of Alabama 1975, Section 11-17-1, et seq. These provisions allow five or more citizens to petition the probate judge to form a commission to locate, mark the boundaries, plat and survey burial places in the county. Such burial places are dedicated to the public. Section 11-17-6. Therefore, if such a burial place is currently being used, it is an active public cemetery provided for in Section 5(7).

An active public cemetery would not include a cemetery on church property unless such cemetery has been marked and dedicated under Section 11-17-1, et seq.

CONCLUSION

An "active public cemetery" as used in Section 5(7) of Act No. 88-293 is a cemetery that is marked and dedicated to public use.

QUESTION 2

Under the authority granted both in Section 5(7) and in Section 7 of Act 88-293, does the county commission by means of the

Department of Public Works have the authority to construct additional roads within the boundaries of existing cemetery property? Likewise, does the county commission have the authority to maintain active public driveways to cemeteries?

FACTS AND ANALYSIS

As previously stated, Section 5(7) of Act No. 88-293 allows the county engineer and Department of Public Works of Jackson County to maintain active public cemetery driveways within the county. Section 7 prohibits work by the county on private property with the exception of property of schools, volunteer fire departments and cemeteries "including roads to an active public cemetery." When construing a statute, the legislative intent must be ascertained from the language of the statute; such language may be explained, but it cannot be added to. State Ex Rel. Graddick v. Jebesen S. (U.K.), 377 So.2d 940 (Ala.1979). Act No. 88-293 states that the Department of Public Works of Jackson County may maintain active public cemetery driveways. I cannot find any language that would allow the county to construct new roads or driveways in these cemeteries. If Jackson County wishes to construct roads within active public cemeteries, it should ask the legislature to amend Act No. 88-293 to allow the construction of new driveways in active public cemeteries. Of course, no additional statutory authority would be necessary for construction of roads that are, in fact, owned by the county.

As to whether the county may maintain driveways to cemeteries, it may do so if the driveways are public driveways, that is, if such driveways have been built by the county for public use, dedicated to the county for public use or acquired by the county by proscription.

CONCLUSION

The Jackson County Department of Public Works cannot construct additional roads within the boundaries of active public cemeteries. It may maintain public driveways leading to cemeteries.

QUESTION 3

Under the grants of authority in Sections 5(7) and 7 of Act No. 88-293, do driveways constitute roads through cemeteries or only entrances to cemeteries?

FACTS AND ANALYSIS

It is the opinion of the Attorney General that the maintenance of active public cemetery driveways in Section 5(7) and the performance of work on cemetery property in Section 7 of Act 88-293 is to be construed as allowing the county to work on driveways going through active public cemeteries.

CONCLUSION

"Driveways" as used in Section 5(7) and 7 of Act No. 88-293 means driveways through cemeteries.

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN
Attorney General
By:



LYNDA K. OSWALD
Assistant Attorney General

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