

# OFFICE OF THE ATTORNEY GENERAL



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Honorable J. David Stout  
Mayor, City of Fort Payne  
200 Gault Avenue, South  
Fort Payne, AL 35967

Municipalities - Cemeteries -  
Funds - Private Property

Municipalities wishing to provide upkeep for ancient family cemeteries or burial grounds may wish to seek a public dedication of those cemeteries or grounds under the provisions of Code of Alabama 1975, §§ 11-17-1, et seq.

Dear Mayor Stout:

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

## QUESTION

Title 10 of the Code of Alabama discusses, generally, the ownership of graveyards within the State of Alabama; however, nothing within that title appears to assist us with determining the person or persons who could enter into a valid binding contract with the City to perform any type of maintenance or protection for these ancient and, in some cases, abandoned cemeteries.

The Council and I would like help to resolve this situation; however, we are concerned about using public tax dollars to perform work on private property, and we feel that your opinion might give us some guidance as to how we can determine the proper person or persons that could sign a valid contract with us for maintenance for these ancient cemeteries.

#### FACTS AND ANALYSIS

Your request presents the following facts:

Within the corporate limits of the City of Fort Payne there are several old cemeteries which are not connected with any organized church, burial society and other similar organization. Several of these old cemeteries date back to the Fort Payne boom days which began in 1887. Other cemeteries lying within the rural areas which have been annexed into the City over the years are old family and community cemeteries which date back over 100 years.

It would appear that Section 11-47-41, Code of Alabama 1975, would authorize the City to enter into a contract with interested parties by the City to protect, maintain and properly care for these old cemeteries, and the City is considering entering into some type of agreement for limited maintenance and protection purposes. The main problem arises that in several of these old cemeteries there is no organized church, board of trustees, burial society or any other formal group that has any type of recognized authority over the cemeteries, and what little maintenance has been conducted in the past has been generally left to individuals who might have family members buried in these old

cemeteries. We have searched the records of the DeKalb County Tax Assessor in an effort to determine if any particular family might hold a deed to these properties, and this has proved to be futile in that most of the source of title on all of these cemeteries is unclear and, according to the Tax Assessor's records, all of the information obtained by field checks and aerial photos was done during our property tax reappraisal process in the late 1970s.

In addition to the provisions of Code of Alabama 1975, § 11-47-41 you should also be aware of the provisions of Code of Alabama 1975, § 11-17-1, et seq., and the provisions of Code of Alabama 1975, § 13A-7-23.1, as amended by Act 93-905 providing criminal penalties for desecration of a grave or human remains without a permit.

As noted in your request, Section 11-47-41 allows a municipality to enter into contracts to provide for the upkeep of "ancient family cemeteries or burial grounds." We are somewhat at a loss for suggestions for solving your problem as presented in your facts. However, we suggest that you review the provisions set forth in Code of Alabama 1975, § 11-17-1, et seq., regarding appointment of a commission by the probate judge to locate, mark the boundaries, plat and survey places of burial. After proceedings are recorded, the burial place is dedicated to the public. Please note that prior to such dedication the petitioners must pay damages suffered by any person by reason of a taking of that person's property. A public dedication of these sites would, of course, remove any doubts relating to ownership of the sites and the propriety of spending public funds on their upkeep.

#### CONCLUSION

Municipalities wishing to provide upkeep for ancient family cemeteries or burial grounds may wish to seek a public dedication of those cemeteries or grounds under the provisions of Code of Alabama 1975, §§ 11-17-1, et seq., 11-47-41 and 13A-7-23.1, as amended by Act 93-905.

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

Sincerely,

JIMMY EVANS  
Attorney General

By:

  
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Chief, Opinions Division

JE/CJS/jho  
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