

Cemetery Trustees' Responsibilities Defined

Commentary

Submitted by Andy Rowe:

A quite a bit has been written about what the Amherst Cemetery Trustees do, however little has been said of their actual responsibilities. According to the Trustees' Handbook published by the Attorney General's office, the duties of the Cemetery Trustees are straightforward, they are to act as stewards for the care and maintenance of "public" cemetery space.

According to the Handbook, the Cemetery Trustees' fiduciary obligations should be focused on maintenance and care rather than any financial responsibility of the trust. In fact, the Handbook specifically forbids the Cemetery Trustees from having any financial access/management of the trust fund because this would present a fiduciary conflict of interest.

When it comes to the Trust Fund, the Cemetery Trustees are specifically charged with requesting a "voucher" for maintenance and care costs directly to the Trustee of the Trust Fund. This hasn't happened since 2005 or 2006 leaving the Taxpayers to cover these costs. The total cost incurred by the Taxpayers hasn't been calculated yet, but in 2012 the cost was \$42,000. A conservative total estimate would be \$250,000+.

The actual fiduciary responsibility of the perpetual trust lies with the "Trustees of Trust Funds", not the Cemetery Trustees. This is specifically delineated in the duties outlined in the Trustees' Handbook. Not using trust fund monies to pay for maintenance is the exception not the rule. If you look at the town reports for our neighboring town, Merrimack, you will see that their cemetery trustees submit a voucher to cover cemetery maintenance costs annually. Yet in Amherst, the taxpayers have been paying for maintenance for years while the trustees sit on the funds.

The 2012 Town Report shows the Perpetual Care Trust Fund has a principal balance of \$835,227.12. The fund earned \$22,948.59 in interest over the past 12 months and has \$119,537.28 in available interest income. The Town Report shows no expenditures from the fund for the year.

Finally, it is important to remember that cemeteries are public and considered public open space. So, the Cemetery Trustees DO have to consider the town and it's citizens' interests as part of their responsibility.

Peter Bergin, Amherst Cemetery Trustee, Chairman Responds:

To clear up what the responsibilities of the Amherst Cemetery Trustees are:

FYI: NH RSAs: The New Hampshire Revised Statutes Annotated (RSA) forms the codified law of the state subordinate to the New Hampshire State Constitution

Andy Rowe: A quite a bit has been written about what the Amherst Cemetery Trustees do, however little has been said of their actual responsibilities.

According to the Trustee's Handbook published by the Attorney General's office, the duties of the Cemetery Trustees are straightforward, they are to act as stewards for the care and maintenance of "public" cemetery space.

CT Chair Bergin's Response: According to the Trustees' Handbook published by the Attorney General's office, the duties of the Cemetery Trustees are taken from RSA 289:7 Powers and Duties can be viewed here: <http://www.genecourt.state.nh.us/rsa/html/XXVI/289/289-7.htm> and are as follows:

289:7 Powers and Duties. –

I. Except in those municipalities in which other provisions have been made by a general or special act of the legislature, all cemetery trustees in the state shall:

(a) Adopt bylaws and regulations for their transaction of business and for the establishment and management of all municipal cemeteries within their responsibility.

(b) Prepare an annual budget indicating what support and maintenance of the municipal public cemeteries will be required out of public funds for submission to the appropriate agency of the municipality. A separate budget request shall be submitted for planning and establishment of a new public cemetery and for capital improvements or expansion of an existing public cemetery.

(c) Expend all moneys raised and appropriated by the municipality for cemetery purposes. Such funds shall be maintained in the general fund and paid in the same manner that funds of other municipal departments are paid.

(d) Expend income from all trust funds for cemetery purposes in accordance with the conditions of each donation or bequest accepted by the municipality. Such trust funds shall be held in the custody and under the management of the trustees of trust funds.

(e) Prepare deeds of cemetery lots for the governing body to sign.

II. Cemetery trustees may appoint a cemetery custodian or sexton who shall not be a trustee and who shall be responsible to the cemetery trustees for supervising work done in the cemeteries.

SOURCE. 1994, 318:2. 1995, 62:3. EFF. JULY 8, 1995.

Andy Rowe: According to the Handbook, the Cemetery Trustees' fiduciary obligations should be focused on maintenance and care rather than any financial responsibility of the trust.

CT Chair Bergin's Response: According to the Handbook, the Cemetery Trustees' fiduciary obligations should be focused on the powers and duties as stated above in RSA 289:7, in particular, sections b, c, and d which are restated below:

(b) Prepare an annual budget indicating what support and maintenance of the municipal public cemeteries will be required out of public funds for submission to the appropriate agency of the municipality. A separate budget request shall be submitted for planning and establishment of a new public cemetery and for capital improvements or expansion of an existing public cemetery.

(c) Expend all moneys raised and appropriated by the municipality for cemetery purposes. Such funds shall be maintained in the general fund and paid in the same manner that funds of other municipal departments are paid.

(d) Expend income from all trust funds for cemetery purposes in accordance with the conditions of each donation or bequest accepted by the municipality. Such trust funds shall be held in the custody and under the management of the trustees of trust funds. The trust income shall be transferred to the cemetery trustees by the trustees of trust funds in response to vouchers executed by the cemetery trustees, if the requested funds are available. Such trust fund income shall not be commingled with the moneys raised and appropriated by the municipality.

Andy Rowe: In fact, the Handbook specifically forbids the Cemetery Trustees from having any financial access/management of the trust fund because this would present a fiduciary conflict of interest.

CT Chair Bergin's Response: In fact, the Handbook specifically states in RSA 289:9 which can be viewed here: <http://www.genecourt.state.nh.us/rsa/html/XXVI/289/289-9.htm>

Use of Trust Funds. – Cemetery corporations and the trust fund trustees of municipalities may take and hold funds in trust, and may apply the income of the trust to the improvement, watering, or embellishment of the cemetery, or to the care, preservation, or embellishment of any lot or its appurtenances.

Andy Rowe: When it comes to the Trust Fund, the Cemetery Trustees are specifically charged with requesting a "voucher" for maintenance and care costs directly to the Trustee of the Trust Fund.

CT Chair Bergin's Response: Further, see RSA 289:7 Powers and Duties. – (d) "The trust income shall be transferred to the cemetery trustees by the trustees of trust funds in response to vouchers executed by the cemetery trustees, if the requested funds are available. Such trust fund income shall not be commingled with the moneys raised and ap-

propriated by the municipality.

Moreover, since 1987 the Cemetery Trustees have been in compliance with RSA 289:7 (d); the records may be viewed at the Amherst Dept. Public Works.

Andy Rowe: This hasn't happened since 2005 or 2006 leaving the Taxpayers to cover these costs. The total cost incurred by the Taxpayers hasn't been calculated yet, but in 2012 the cost was \$42,000. A conservative total estimate would be \$250,000+.

CT Chair Bergin's Response: What did happen was that from 1987 to 2006 the Amherst Cemetery Trust Funds spent over \$500,000.00 to maintain the cemeteries with Perpetual Care Trust Fund monies, not taxpayer monies.

In 2007, the Selectmen and the Trustees were notified by the Attorney General's office that 100% of cemetery maintenance costs could not be taken out of the Perpetual Care Trust Fund. As a result of the AG notification, the Cemetery Trustees and Selectmen had to comply, so that over the next several years the Perpetual Care Trust Fund's financial responsibility would be lessened year by year to comply with the AG's office's rules regarding use of Perpetual Care Funds for maintenance.

Further, A study of the number of graves over the 200 year history showed that there are 5,149 graves in the four cemeteries (Meadowview, Old Burial Ground behind Town Hall, Cricket Corner and Chestnut Hill) but only 545 have Perpetual Care. Therefore, in a budget of \$42,000.00 the Cemetery Perpetual Care Trust Fund could only contribute \$4,200.00 according to the Attorney General Rules.

In addition, when a cemetery lot is sold, the Town of Amherst receives 50 % of the sale. For example, in the budget year ending June 30, 2013; the town received \$5,500.00 which goes towards maintenance.

Andy Rowe: The actual fiduciary responsibility of the perpetual trust lies with the "Trustees of Trust Funds", not the Cemetery Trustees.

CT Chair Bergin's Response: The actual fiduciary responsibility of the perpetual trust lies BOTH with the "Trustees of Trust Funds" and the Cemetery Trustees.

Andy Rowe: This is specifically delineated in the duties outlined in the Trustees' Handbook. Not using trust fund monies to pay for maintenance is the exception not the rule.

CT Chair Bergin's Response: See RSA 289:7 (d) Expend income from all trust funds for cemetery purposes in accordance with the conditions of each donation or bequest accepted by the municipality. Such trust funds shall be held in the custody and under the management of the trustees of trust funds. The trust income shall be transferred to the cemetery trustees by the trustees of trust funds in response to vouchers executed by the cemetery trustees, if the requested funds are

available. Such trust fund income shall not be commingled with the moneys raised and appropriated by the municipality.

Andy Rowe: If you look at the town reports for our neighboring town, Merrimack, you will see that their cemetery trustees submit a voucher to cover cemetery maintenance costs annually.

CT Chair Bergin's Response: The Town of Merrimack cemeteries are PRIVATELY OWNED cemeteries similar to the St. Patrick Cemetery located on Merrimack Road in Amherst, over which the Amherst Cemetery Trustees have no authority or control. Merrimack cemeteries are maintained by the private funds, not town tax monies and will not show up on a Merrimack Town report or town website. See <http://www.lastrestcemetery.org/default.html>

Andy Rowe: Yet in Amherst, the taxpayers have been paying for maintenance for years while the trustees sit on the funds.

CT Chair Bergin's Response: Actually In Amherst, the taxpayers paid nothing from 1987 to 2006, saving the taxpayers \$500,00.00 because Cemetery Perpetual Care Trust Funds paid 100% of maintenance saving the taxpayers \$500,000.

As stated above, only in 2007, did that change because the Selectmen and the Trustees were notified by the Attorney General's office that 100% of cemetery maintenance could not be taken out of the Perpetual Care Trust Fund. As a result of the AG's notification, the Cemetery Trustees and Selectmen had to comply, so that over the next several years, the Cemetery Perpetual Care Trust Funds' financial responsibility would be lessened year by year to comply with the AG's office's regulations regarding use of perpetual care funds for maintenance.

Andy Rowe: The 2012 Town Report shows the Perpetual Care Trust Fund has a principal balance of \$835,227.12. The fund earned \$22,948.59 in interest over the past 12 months and has \$119,537.28 in available interest income. The Town Report shows no expenditures from the fund for the year.

CT Chair Bergin's Response: Additionally, the town benefitted as the town received \$3,750.00 via sale of cemetery plots.

Andy Rowe: Finally, it is important to remember that cemeteries are public and considered public open space. So, the Cemetery Trustees DO have to consider the town and it's citizens' interests as part of their responsibility.

CT Chair Bergin's Response: As always, the Amherst Cemetery Trustees are committed to an open process and have always demonstrated a willingness to work, to faithfully carry out their duties.

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