

## **NORTH CAROLINA CEMETERY COMMISSION**

**August 5, 2009**

**10:00 A.M.**

**The North Carolina Cemetery Commission held a meeting on Wednesday, August 5, 2009 in the Wood Oak Building, Suite 242, at 1100 Navaho Drive, Raleigh, North Carolina. The Commission members in attendance were Chairman, Leonard J. ‘Boscoe’ Fulcher, Jr., Vice-Chairman, Andrew (Rusty) Tysor, Ralph Yates, Linda Cotten, Michael (Dicky) Powell, Frank Rose, Jr., and David Brown. Robin Lancaster was absent. The Commission’s Administrator, Jimmy Miller, Auditor, Brenda Jeffers, and Administrative Assistant Nancy Waggoner were present. Attorney Anne Brown and Attorney Faison Hicks from the Department of Justice provided legal representation via telephone. Numerous interested parties also attended the meeting.**

**The meeting was called to order by Chairman Boscoe Fulcher. Ralph Yates gave the invocation.**

**Chairman Fulcher called for ‘Agenda Approval’ with changes that he needed to make to the agenda. He moved updates on the Aegis, HTCC, and LQ Legacy Trustee cases to the end of Old Business with action since Faison Hicks was to give the updates and he was late in arriving on the telephone with Anne Brown. He also mentioned that Hillcrest Gardens Sales License was moved to the October 21<sup>st</sup> meeting. Ralph Yates moved to make the changes. David Brown seconded the motion. All voted in favor.**

**Then Chairman Fulcher announced the reading and approval of the minutes of the April 15, 2009 meeting. Rusty Tysor made a motion to approve the minutes as written. Dicky Powell seconded the motion. All voted in favor. A motion was then made by Dicky Powell to approve the minutes from the April 24, 2009 Teleconference. Ralph Yates seconded the motion. All voted in favor. Next Frank Rose moved to approve the June 4, 2009 Special Teleconference minutes as written. Linda Cotten seconded the motion. All voted in favor. After that David Brown made a motion to approve the June 5, 2009 Emergency Teleconference minutes. Ralph Yates seconded the motion. All voted in favor. Subsequently, Linda Cotten made a motion to approve the June 24, 2009 Emergency Teleconference minutes. David Brown seconded the motion. All voted in favor.**

**The first item on the agenda was a reminder from Chairman Fulcher to the Commission members that if there were any known conflicts of interest or appearance of conflicts in regards to the matters being brought before them to let it be known in accordance with the Governor’s Executive Order. Rusty Tysor had a conflict with New Business (g.) of the Agenda regarding Holly Hills Trustee change because he was on the Cemetery Funds of NC Board of Trustees. Linda Cotten had a conflict with item (e.) of New Business concerning Pisgah Gardens since owner Marge Connolly was a member of NC Funds Management and Ms. Cotten was on that Board. There were no other known conflicts.**

The second item on the agenda was the Administrator's Report. Administrator Jimmy Miller began the report by talking about the six (6) Commissioner reappointments. No information had been received to date. According to N.C. G.S. 65-50 (b.), the current members, less Howard Huff, who resigned, remain until reappointed or replaced. Mr. Miller next furnished members with copies of the most recent budget. Governor Beverly Perdue was expected to sign the State's Appropriations Bill later that same day. The current version indicated a budget reduction of \$20,000.00 for the Commission and moved the FY 2009-10 Budget from receipt-based to the general fund. The prior year ending balance of \$259,036.44 would revert to the general fund. There was a freeze, again, on expenditures. Audits were allowed, along with investigations, Commission meetings, and minimum office supplies. All expenses were to be approved by the Office of State Budget Management. Mr. Miller updated the members on sales licenses. He stated that 400 preneed sales licenses had been issued in the current year and 169 cemetery licenses were issued for the current fiscal year which began in July. Auditor Brenda Jeffers had completed six (6) audits since the April 15, 2009 meeting. All audits were based on time interval since last audit. She was working on 8- to 9 1/2-year intervals. Several audits were already prepared for on-site time interval audits. Finally, Mr. Miller told members about a possible item of New Business for the next meeting. It was regarding PC/PC-A investment by a commercial bank, not previously separate Trust accounts. This was discovered during the audit of Annual Care & Maintenance reports in conjunction with Trust accounts. That ended the Administrator's report. Frank Rose commented that we need another auditor and some more help in the office. He felt that our budget needed to be increased. Jimmy Miller said that he would not get a chance to make any changes until the 2011 budget. Mr. Rose stated that even if they wanted to give you (the staff) a raise, they could not. Mr. Miller confirmed his statement, saying that all wages were frozen. The Governor had taken a portion of all salaries in May and June to help balance the budget. Chairman Fulcher asked about the Stewart Enterprises administrative change in Trustee from the last meeting. Mr. Miller confirmed that it was done. Mr. Fulcher also inquired whether the bankruptcy court was contacted on the Sandunes vaults issue. Mr. Miller said it had not. There were no other questions of the Administrator.

The third item on the agenda was a report from the North Carolina Cemetery Association. Rusty Tysor told members about the annual meeting with South Carolina in June at Myrtle Beach. He introduced their newly elected President, Bob Case, and recognized Association members in attendance, Bill Gaffney and Gantt Stephens. Bob Case pledged to continue to work with the Cemetery Commission to keep the lines of communication open to work together to better serve the citizens of North Carolina. Lucius Pullen, lobbyist and counsel for the Association began his report by speaking about the budget. He said he reviewed the budget and felt that everyone was treated equally. He informed all that since the General Assembly was to make their final vote of the Session that day, it would be a good day to see your representatives before they went home. He next talked about Senate Bill 18 and its included study commission on cemeteries. He anticipates that this Study Commission will be included in the overall Studies Bill being formed and hoped that cemetery managers and owners would be included. The study would incorporate the bonding issue. Chairman Fulcher thanked Mr. Pullen for the Association report at each meeting since 2005 and stated that he looked forward to a continued joint effort by the Association and the Commission to keep each other informed.

The fourth item on the agenda was Old Business. Service Corporation International, Incorporated, (SCI, Inc.) requested to change their name to SCI, LLC for tax purposes. This

item was tabled from the last meeting. No one was in attendance for SCI. At issue were the bond riders with the name change. Linda Cotten questioned some of the verbiage on the actual bond riders. The last paragraph states, *“Provided, however, that the attached bond shall be subject to all its agreements, limitations and conditions except as herein expressly modified, and further that the liability of the Surety under the attached bond and the attached is amended by this rider shall not be cumulative.”* Neither Anne Brown nor Faison Hicks were able to explain it without first examining the bond instruments and correspondence. Mr. Hicks asked Jimmy Miller (*“or someone”*) to contact the Surety Company and SCI to let them know that they weren’t disallowing their request, but they needed to look at everything and make sure that the Cemetery Commission is covered and all the laws were being obeyed. So, Ralph Yates made a motion to table the request until the next meeting so the Attorney General’s office could look it over. David Brown seconded the motion. All voted in favor. Linda Cotten then presented a report from the Allocation of Payments Committee. The Committee met via teleconference on Monday, August 2, 2009. Participating in the meeting Chaired by Linda Cotten, were David Brown, Jerry Stephens, Boscoe Fulcher, and Jimmy Miller. The Committee was to study Allocation of Payments on NC perpetual care cemetery contracts. They studied various contracts of cemeteries owned by independents and conglomerates in an effort to reach consensus on standardizing the allocation of payments in the state of North Carolina. The Committee found that no changes are necessary in the current schedule of allocation of payments; i.e.: Sales Tax, Accrued late charges, Finance Charges, Interment rights, Perpetual Care, Price of crypts, vaults, then memorials and other merchandise and services. Ralph Yates questioned their ‘no change’ response in light of the position paper previously prepared by Jimmy Miller which showed how the Statute wasn’t being followed. Mr. Miller stated that his position hadn’t changed and Attorney Barry Bloch had concurred that the paper reflected the Law. After much discussion about sales tax and handicap on audits, Chairman Fulcher suggested that the Committee meet with Attorney Faison Hicks to consider the matter and possibly a new Rule.

The next item of Old Business was an update on the AEGIS settlement. Faison Hicks filed for dismissal of the appeal in exchange for AEGIS’s agreement not to bill the Cemetery Commission \$100,000.00 in legal fees. AEGIS filed for dismissal of their action as well. Next was an update on the HTCC matter. Judge Paul Ridgeway ruled in HTCC’s favor and ordered the Commission to release funds covered by the performance bond. Faison Hicks went over the lawsuit and the Law. He felt that in order to avoid problems like this and AEGIS that standard practices and procedures needed to be formulated for companies that have performance bonds, including regular certification checks on name changes or changes in partners. The long term goal according to Mr. Hicks was to make a concerted effort to go before the General Assembly and get new legislation. He suggested that Lobbyist, Bruce Thompson, or someone else who knows the law, would be someone to ask for help in changing N.C. G.S. 65-66 (g) regarding performance bonds use.

The last item of Old Business With Action was an update on the LandQuest Legacy Trustee issue, including the lawsuit, counterclaim, and audit of Trust funds. The annual audit report from the Trustee, that was required per the Statute, was late, so the Commission sent out a 20-day letter. Chairman Fulcher brought up the matter that LandQuest came before the Commission in October, 2008 to request monies be withdrawn from the Trust account since they had secured a performance bond in September, 2008. The request was denied by the Commission. However, LandQuest had already started withdrawing funds from the Trust

account in June, 2008. Faison Hicks gave some additional background information and requested to go into Executive Session to provide legal advice on ongoing litigation. Ralph Yates made a motion to go into Executive Session. Linda Cotten seconded the motion. Executive Session began at 11:29 a.m. Executive Session ended at 11:57 a.m. After a short break, regular session commenced again at 12:05 p.m. Linda Cotten made a motion that Administrator Jimmy Miller call in LandQuest Legacy Trustee auditors Stancil & Company along with a LandQuest financial person and perform a complete audit of every transaction. Dicky Powell seconded the motion. All voted in favor. Attorney Don Hunt excused himself since there was no further LQ business.

Next discussed was the Old Business Without Action. The Administrator's visit to Sylva and Bryson City was still on the calendar without a projected date. However Chairman Boscoe stopped by the cemetery in Sylva while in the neighborhood and found some weeds that were knee-high. It looked very poor. He stopped by the Cemetery in Bryson City. It had been mowed and a new flag was up. Consumer Jody Rentz asked permission to pass around some photos from July 4<sup>th</sup>, 2009 showing some maintenance had been done, but still had a way to go. Final Old Business was the Bond project that Jimmy Miller had been working on since March, 2009. All documents were turned over to DOJ and in their hands at that point. Anne Brown and Jimmy Miller needed to re-confer on that issue.

The fifth item on the agenda was New Business. The Hillcrest Gardens Sales License was moved to the October 21<sup>st</sup>, 2009 meeting. The Hills of the Neuse Memory Gardens Cemetery of Smithfield was the first item discussed of New Business concerning late reports. Anthony Minsheiw was there to represent the cemetery which was owned by his father Othal Minsheiw. Mr. Minsheiw said that he wasn't aware that some of these reports were late until he received the 20-day letter. He stated that he had called the office several times and was told that all reports were not yet checked in and he would be notified if he owed anything. After receiving the 20-day letter he called Mr. Miller and both faxed and mailed the missing reports to the office. Mr. Miller explained to him the office policy of sending out monthly notices to keep on top of things. Mr. Minsheiw said that their small cemetery has no preneed sales and begged for mercy from Commission members. He also stated that he now has controls in place to ensure that reports are sent on time from now on. After more discussion, Ralph Yates made a motion that the Commission do a complete audit of the cemetery within six months and all monies owed the Commission, including late fees be paid at that time. Dicky Powell seconded the motion. All voted in favor. Next New Business was P.E. Moody Memorial Gardens of Sylva and Bill Moody Memorial Park late fees. Reginald Moody, Jr. sent in a letter to be considered by members and was not in attendance. Dicky Powell made a motion to file the necessary actions to collect the fees owed in the Superior Court of Jackson County and Swain County. Frank Rose seconded the motion. All voted in favor. The fourth item of New Business was the Memory Gardens Cemetery late reports. Mrs. Marian Stallings was present. Her husband Dennis Stallings passed away on December 25<sup>th</sup>, 2008. The cemetery was left to her. Mrs. Stallings said that she knew nothing about the management of the cemetery. It currently was being run through their family funeral home. Ralph Yates made a motion that a complete audit be done on Memory Gardens Cemetery of Elizabeth City within six (6) months and all funds due the Cemetery Commission be paid at that time. Frank Rose seconded the motion. Mr. Yates discussed that Mrs. Stallings was being given a six (6) months grace period or whatever time it takes to get the audit done. He further stated that normally, in the past when situations like this have occurred that she would be required to leave a check that day to bring the cemetery into compliance. Dicky Powell recommended to Mrs. Stallings that it would

be beneficial for her to obtain a preneed sales counselor to help with sales. There was no further discussion. All voted in favor.

The fifth item of New Business was the Pisgah Gardens Cemetery late reports. Linda Cotten was recused from voting on this issue. Ron Nelson, General Manager wrote a letter to be considered by the Commission members. Mr. Nelson explained that the cemetery previously had an employee who was found embezzling funds from the cemetery. Ralph Yates made a motion to proceed with the scheduled audit on Pisgah Gardens Cemetery of Pisgah Forest and based upon that audit whatever funds are due be paid to the Cemetery Commission at that time. David Brown seconded the motion. All voted in favor. The sixth (6) item of New Business was Yadkin Memorial Gardens, Yadkinville, late reports. Mrs. Cynthia Scott's husband, A.W. Scott was running the cemetery until his health failed, so she has been trying to run it on a part-time basis. She sent a letter to the Commission. Jimmy Miller told members that most of the reports missing were negative ones. They are now caught up. Dicky Powell made a motion that the Commission get an audit done in six (6) months and all monies due be paid at that time. David Brown seconded the motion. All voted in favor. The seventh item of New Business was the Holly Hills Memorial Park, Thomasville request to change Trustees from Cemetery Funds of NC to Pinehurst Funds. Julia Mickey, owner was not in attendance. Rusty Tysor recused himself from voting. Jimmy Miller said that all paperwork was in order. Ralph Yates moved to grant the change in Trustee. Dicky Powell seconded the motion. All voted in favor. The final item of New Business was Gardens of Gethsemane Cemetery PC withdrawal request. Jimmy Miller gave a synopsis. When the Law changed and the rate for Perpetual Care for contracts written on or after December 1<sup>st</sup>, 2004 took effect, this cemetery began depositing \$100.00 for PC on all contracts regardless of the contract date. Prior to that time they deposited \$40.00 per grave space. Erroneously, they deposited that difference. After much discussion, Rusty Tysor made a motion that an audit be done of Gardens of Gethsemane Cemetery. If after the audit excess funds are found in the Perpetual Care Fund that they be allowed a credit on future deposits. Linda Cotton seconded the motion. There was no additional discussion. Rusty Tysor, Linda Cotten, Dicky Powell, and Frank Rose voted in favor of the motion. Ralph Yates and David Brown voted against the motion. The motion passed 4 to 2.

Ralph Yates wanted to make another motion under New Business. He first verified the amount in the budget at the end of the fiscal year. Jimmy Miller confirmed that it was \$259,036.44. Mr. Miller stated that the balance was sequestered by the General Assembly. Mr. Yates moved that the Commission issue a voucher to the Commerce Department in the amount of \$60,000.00 and transfer that amount over to Mount Lawn Memorial Park and Gardens, Boone, PC account. He said that would help that cemetery more than the Commission could ever do. Frank Rose seconded the motion. Jimmy Miller pointed out that there were specific items per Executive Order of the Governor that the office could spend money on and they must be related to the core operations of the agency and only one month of office supplies at a time. Before he submits any bills, he has to notify the Office of State Budget and Management for approval. Ralph Yates felt that it would be better to give the money to Mount Lawn than give the money to the State's General Fund. All voted in favor.

Item six of the agenda was Requests from the Public to address the Commission. Charlie Dye, owner of Lee Memory Gardens addressed the Commission. He asked the Commission for \$25,000.00 to replace funds withdrawn from his PC account during the receivership process. Rusty Tysor stated that those funds had already been replaced by Charles Ivey. Mr. Dye spoke next to the AEGIS Bond litigation regarding Lee Memory

Gardens. He asked why the State Insurance Commission wasn't consulted in on the case. Mr. Dye continued to inform the members that he would be having meetings in Sanford. He wanted them to know that he made good on 135 Opening & Closings, sold over 50 memorials at cost, less 30% from the manufacturers, sold vaults at cost for \$240.00 to help these people, and he is still losing money. He's done all he can to help these people. He further stated that these people possibly want to file a class-action lawsuit and asked Anne Brown who the suit would be against--the insurance company, only, or the insurance company and the Cemetery Commission. Ms. Brown wasn't able to answer his questions stating that she could only give advice to the Cemetery Commission agency to which she was assigned. Mr. Dye expressed his dismay due to the non-appeal of the case. He was very upset because these people deserve more. He'll continue to do what he can. Chairman Fulcher thanked him. Klee Liles, owner of Mount Lawn Memorial Park, Boone, next addressed the Commission. He began by thanking Ralph Yates for his motion to repay funds to the PC account. He made a formal request for a copy of the minutes from the meeting. Then he said he would entertain any questions the Commission or anyone has or comments concerning him or his involvement with Mount Lawn in Boone. There were none. He said that he and Charlie Dye were in the same boat (AEGIS). He felt that he could speak for Mr. Dye in stating that they both were sold a bill of goods that was not fair and true. They were both assured before the sale that the bond would pay. After five (5) years there was nothing. He was mainly disappointed because there was no appeal. He said that they need to find a way to move forward together. He wanted to know what the Commission would like him to tell his clients. Ralph Yates said there was some consensus across the state that other cemeteries would like to help the people at Lee Memory and Mount Lawn. Mr. Liles hopes that building the mausoleum will help public perception of Mount Lawn. Michael Rulison, consumer advocate, was last to address the Commission. Mr. Rulison said that he always comes to the Commission meetings with interest and leaves with more questions than answers. He then expressed interest in details of the budget for the Commission.

The seventh item on the agenda was the election of officers. Ralph Yates made a motion to nominate Boscoe Fulcher for Chairman. Dicky Powell seconded the motion. All voted in favor. Boscoe Fulcher thanked the members. Next Frank Rose made a motion to nominate Linda Cotten for Vice-Chairperson. David Brown seconded the motion. All voted in favor.

The next meeting date was Wednesday, October 21, 2009. Frank Rose made a motion to begin future meetings at 9:00 a.m. Dicky Powell seconded the motion. All voted in favor, except Rusty Tysor. The motion passed.

Dicky Powell made a motion to adjourn. Ralph Yates seconded the motion. The meeting adjourned at 1:45 p.m.

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CHAIRPERSON

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DATE