

# NORTH CAROLINA CEMETERY COMMISSION

October 21, 2009

9:00 A.M.

The North Carolina Cemetery Commission held a meeting on Wednesday, October 21, 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, Linda Cotten, Ralph Yates, Michael 'Dicky' Powell, Frank Rose, Jr., David Brown, William 'Bill' Gaffney, and Gantt Stephens. 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. Numerous interested parties also attended the meeting.

The meeting was called to order by Chairman Boscoe Fulcher. Ralph Yates gave the invocation. Chairman Fulcher recognized two new members on the Cemetery Commission. Bill Gaffney and Gantt Stephens were both nominated by The North Carolina Cemetery Association and appointed by the Governor.

Chairman Fulcher called for 'Agenda Approval'. Administrator Jimmy Miller suggested that Item 5)a. be moved to after Item 4)a.1., since both items dealt with SCI and their representatives would be able to leave after both were addressed. Ralph Yates asked for Item 6.), the Public's Request to Address the Commission to be moved to after Item 2.), so that Public observers could make any comments and leave if they so desired. Frank Rose 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 August 5, 2009 meeting. Linda Cotten had a change at the bottom of the first page. Marge Connolly was not on the Board of N.C. Funds Management, she was a member. There were no other changes. Ralph Yates made a motion to approve the minutes with the correction. Linda Cotten 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. There were no known conflicts.

The second item on the agenda was the Administrator's Report. Administrator Jimmy Miller began the report by further welcoming the two (2) new Commission members. Their terms expire June 30<sup>th</sup>, 2013. Mr. Miller stated that there was still a vacant position. He next furnished members with copies of the most recent budget. The budget showed that the Commission was keeping its head above water. Mr. Miller updated the members on sales licenses. He stated that 448 preneed sales licenses had been issued in the current year and all, except five (5) cemetery licenses were issued for the current fiscal year which began in July. Mr. Miller announced that all five (5) audits that were mandated to be done in six months from the last meeting were completed. He said Auditor Brenda Jeffers could answer any questions if there were any. Lastly, Jimmy Miller spoke about a CD he compiled with all of the minutes from 1995 to current date along with his synopsis of each meeting. He passed out copies to members who had not yet received their copy. That ended the Administrator's report. Ralph

Yates requested to hear a synopsis of the mandated audits. Brenda Jeffers began by stating two basic findings of concern during these audits for all cemeteries. First was a failure to make PC deposits to the Trustee and secondly, there was late and delinquent reporting to the Commission. Mr. Yates asked further to hear the dollar amounts for each cemetery. Ms. Jeffers continued with the audit results. Pisgah Gardens, Pisgah Forest was required to remit \$11,774.00 to the Trustee and the same amount to the Commission for late deposit fees not made to the Perpetual Care Trust Fund. They owed \$626.00 to the Commission for assessment shortages and \$4,850.00 for fees for late reports as mandated by the Commission. Gardens of Gethsemane, Rocky Mount had requested to offset excess Perpetual Care funds to future deposits. The amount remaining was \$31,104.50 to offset future deposits, but in shortages they needed to remit \$186.00 to the Commission for assessment shortages and \$33,812.50 for late fees for violations of late PC deposits and 48 month accounts. Hills of the Neuse Memory Gardens, Smithfield owed \$3,428.00 to the Trustee and the same amount to the Commission for late PC deposits. They also owed \$43.00 to the Commission for assessments and \$9,250.00 for fees for late reports as mandated by the Commission. Memory Gardens Cemetery of Elizabeth City was required to remit \$2,000.00 to the Trustee, \$8,600.00 to the Commission for fees for deposits not made to the PC fund, \$78.00 for assessment shortages, and \$28,075.00 to the Commission for fees for late reports as mandated by the Commission. The fifth and last cemetery, Yadkin Memorial Gardens was required to remit \$500.00 to the Trustee for Perpetual Care. Ms. Jeffers stated that the total amount due the Commission was not complete at that time because she was waiting for more complete information from the Trustee, regarding the dates of their deposits for years 2007, 2008, and 2009 to determine what fees were owed. Known fees were \$12.00 owed in assessment shortages and \$13,125.00 to the Commission for fees for late reports as mandated by the Commission. That completed Brenda Jeffers portion of the report. Jimmy Miller wrapped up by saying that when the reports are not filed neither are the fees submitted to the Trustee. Ralph Yates asked what the next step was. Mr. Miller said that 20-day letters were already sent to each of the audited cemeteries along with the official audit report,. He mentioned, too, that prior to leaving the cemetery, Brenda Jeffers gives them the audit findings and they have a very good understanding of what any shortages or inefficiencies may be. Mr. Yates wanted to know what happens if the 20-day letter is not complied with. Mr. Miller stated the he would, with the authority vested in him in January, 2008 pursue a Notice to Show Cause, why the Cemetery License Should not be Revoked, with the assistance of the Attorney General's office. Chairman Boscoe Fulcher asked if there were any other questions. Frank Rose asked if Members could have a copy of Ms. Jeffers synopsis report. Mr. Miller said they would send it to them via email. Chairman Fulcher went over the budget figures, noting that it looked as if there would be \$100,000.00 surplus. Mr. Miller explained that the Commission was bound by the \$252,000.00 budget they were assigned by the Governor. Frank Rose interjected that the Commission needed another Auditor. Mr. Miller said that he and the Chairman talked about that earlier that week, but unfortunately, it was out of their hands. Chairman Fulcher further stated that they also needed a fulltime Attorney with the amount of pending legal issues, but they have no funding for one. There were no other questions of the Administrator.

The next Item was the sixth one on the Agenda, Requests from the Public to Address the Commission. Michael Rulison introduced himself from the N.C. Funeral Consumers Alliance. Chairman Fulcher thanked him for being there. No one else addressed the Commission.

The third item on the agenda was a report from the North Carolina Cemetery Association. Rusty Tysor, Executive Vice-President introduced some of the Association members in attendance: Bob Case, President, John Gouch, Treasurer, David Simmons, Vice-

President, Rob Ysidron, Past-President, and John Parham, Supplier. Mr. Tysor next announced that the Association had their annual Sales and Marketing Seminar coming up in January or February, 2010. He would let them know specifics at a later date. Mr. Tysor then pre-advertised their Convention with South Carolina in Myrtle Beach for next July 11-13, 2010. Lucius Pullen, Lobbyist and Counsel for the Association spoke next. Mr. Pullen began his report by speaking about the budget. He said that the big issue in the General Assembly was Money! Money! Money! The State budget deficit is \$4 Billion. A 1% temporary tax was put into place. Mr. Pullen said that a study commission would study the budget bill pertaining to the State's income tax laws, broadening the tax base, and lowering tax rates. They were among some of the highest in the United States. He further stated that they were looking into the taxing of services the same as real property, given that the revenue on sales and property tax fluctuates too much. The objective would be to have a more level and constant source of revenue. He reported that there was a list of 75 (seventy-five) services to consider taxing, but no one seemed to have a copy of it. He asked Attorney Faison Hicks if he had seen the listing. He hadn't. Chairman Fulcher inquired if other states taxed death care services. Mr. Pullen said that he thought not. There were no other questions. Chairman Fulcher thanked the Association for their report.

The fourth item on the agenda was Old Business. Old Business with action commenced with Service Corporation International, Incorporated (SCI, Inc.). They were requesting change of their name to SCI, LLC for tax purposes. This item was tabled from the last 2 (two) meetings. Chris Mullens was in attendance for SCI. At issue were the bond riders with the name change. Attorney Anne Brown suggested they go into Executive Session. Ralph Yates made a motion to go into Executive Session to receive legal guidance from Attorneys General Anne Brown and Faison Hicks regarding the matter. Dicky Powell seconded the motion. All voted in favor. Executive Session began at 9:42 a.m. and ended at 9:46 a.m. During Executive Session, legal advice was sought, received and discussed concerning the bond riders and their effect on cemetery licenses. Upon conclusion of Executive Session, Frank Rose made a motion to approve the conversion as requested as long as they have the green light from Department of Justice attorneys. Gantt Stephens seconded the motion. Frank Rose amended the motion to include giving Jimmy Miller authority to issue approval letter pending final legal review. Linda Cotten seconded the amended motion. All voted in favor. Next item discussed was the New Business of SCI's request to change Trustees from Wachovia to SunTrust Bank. Jim Atwood was there to represent SunTrust. David Brown made a motion to accept the change in Trustees as long as the Department of Justice Attorneys approve it. Ralph Yates seconded the motion. All voted in favor.

The second item of Old Business with Action was an Allocation of Payments Committee update. Linda Cotten reported that the Committee still recommended no change. Ralph Yates said that he met with Jerry Stephens and stated that no major changes were needed in his opinion. He did recognize that it probably wasn't the best solution for the Administrator and the Auditor. Jimmy Miller said that he spoke his piece in a previous meeting. Linda Cotten moved to accept the recommendation of the Committee. Gantt Stephens seconded the motion. All voted in favor.

The last item of Old Business with Action was the LandQuest Trustee update. Attorney Faison Hicks advised them to go into Executive Session. Linda Cotten made a motion to go into Executive Session for an update on current litigation and to receive legal guidance from Attorneys General Anne Brown and Faison Hicks pertaining to the LandQuest Trustee. Ralph Yates seconded the motion. All voted in favor. Executive Session began at 9:57 a.m. and ended at 10:32 a.m. During Executive Session updated legal advice was sought, received and

discussed regarding ongoing litigation. Upon return from Executive Session and after a short break, the Commission resumed regular session at 10:40 a.m.

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. Chairman Boscoe Fulcher had visited the cemetery in Sylva prior to the last meeting and found some knee-high weeds. He also stopped by the Cemetery in Bryson City. It had been mowed and a new flag was up. A discussion ensued regarding the maintenance and upkeep of the cemeteries. Jimmy Miller reminded members of their previous motion to have him go there to observe and seek help from public officials. They discussed expanding their previous motion. Frank Rose made a motion to follow through with NC GS 65-53 (8) to seek to have the cemeteries declared a public nuisance. Dicky Powell seconded the motion. All voted in favor.

The second item of Old Business without Action was the Bond Project. Jimmy Miller reported that this item has been on the agenda for several meetings. He detailed how he reviewed the Annual Reports as they came in for each cemetery and compared the holder's name on the bonds with the actual corporate names filed with the Secretary of State's office and found some anomalies. He did this in an effort to avoid any problems such as existed with AEGIS. He sent all of his findings to the Attorney General's office. Attorney Anne Brown told the Commission that this was an ongoing issue. Attorney Faison Hicks said that there were other pressing matters. There was no further discussion on the matter.

The third item of Old Business without Action was the Sandunes Bankruptcy assets. The Commission recommended contacting the bankruptcy Trustee for guidance at its April 15, 2009 meeting. Jimmy Miller forwarded a letter to the Department of Justice Attorneys and hadn't received a response from them. Attorney Anne Brown stated that Mr. Miller's letter was fine to send 'as is'. Faison Hicks said that Mr. Miller could send the letter to Charles Ivey, then call him a few days later.

The final item of Old Business without Action was the Collection of Fees for P. E. Moody Memorial Gardens and Bill Moody Memorial Park. Jimmy Miller informed Members that owner, Reg Moody was given a 20-day letter prior to the last meeting for late reports. He did not appear at that meeting, instead, he wrote a letter admitting his wrongdoing, but asking for reduced fees and a payment schedule. The Commission decided to file an action to collect the fees owed in the Superior Court of Jackson and Swain Counties. Jimmy Miller sought assistance from the Department of Justice attorneys. Anne Brown recommended to send one more letter, then her office (DOJ) would send a demand letter.

The fifth item on the agenda was New Business. First item to be considered was a Pre-Need Sales License Request for Jennifer Rikard at Hillcrest Gardens Cemetery. This matter was rescheduled from the August 5, 2009 meeting. Ms. Rikard was present with her sponsor, Joanne Anderson, Sales Manager for SCI. After a brief discussion, Gantt Stephens made a motion to grant a pre-need sales license to Jennifer Rikard. Dicky Powell seconded the motion. All voted in favor, except Linda Cotten.

The next item of New Business was a request for a Pre-Need Sales License for Tina Wallace at Rowan Memorial Park, a StoneMor Partners property. Tina Wallace was in attendance along with her supervisor Rick Gunter. David Brown made a motion to grant Tina Wallace a pre-need sales license. Dicky Powell seconded the motion. All voted in favor.

The fourth item of New Business was Azalea Memorial Gardens' late reports. John Mauney was present for Riverwood Funeral Services. He thought his only reporting obligation was the Annual reports. Mr. Mauney said he did not willfully disobey the law and begged for forgiveness. Chairman Fulcher called for a motion to go into Executive Session on the matter. Ralph Yates made a motion to go into Executive Session to receive legal guidance from Assistants Attorney General Anne Brown and Faison Hicks. David Brown seconded the motion. All voted in favor. Executive Session began at 11:28 a.m. and ended at 11:31 a.m. During Executive Session, legal advice was sought, received and discussed concerning the merits of the request for fee remission. Upon return to open session, Dicky Powell made a motion to audit Azalea Memorial Gardens and collect any fees due as well as any other funds due. David Brown seconded the motion. All voted in favor.

The final item of New Business was Temple of Israel Request for Amendment to Declaratory Ruling. Jimmy Miller spoke to the matter. The New Jewish Cemetery asked for a declaratory ruling in July, 2008 and the Commission found the proposed cemetery not to be within the scope of the Cemetery Act. The Temple desires to allow its members to transfer Certificates of Burial Rights with unused burial rights at death by will or by intestate succession. After discussion it was decided that no ruling was necessary since it was already determined that they were exempt from the Cemetery Act since the cemetery was owned and operated by churches. Mr. Miller would write them a letter stating that the declaratory ruling was unchanged.

Chairman Fulcher had another item of New Business. He stated that he had met with Lars Nance in the Attorney General's office and other attorneys and they have told him that they do not have time to represent the Commission in the manner that they need to be represented. They feel that the Commission needs an attorney assigned to it fulltime. Faison Hicks said that the need may only be for about a year and a half on a fulltime basis. He said the cost would probably be \$92,000.00 to \$120,000.00. Frank Rose made a motion to hire an attorney. He amended his motion to include hiring an additional auditor, too and to do it ASAP. Ralph Yates seconded the motion. All voted in favor.

Chairman Fulcher reminded Members that the next meeting date was Wednesday, January 20, 2010 at 9:00 a.m.

Dicky Powell made a motion to adjourn. Gantt Stephens seconded the motion. The meeting adjourned at 11:47 a.m.

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CHAIRPERSON

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DATE