

# NORTH CAROLINA CEMETERY COMMISSION

January 20, 2010

9:00 A.M.

The North Carolina Cemetery Commission held a meeting on Wednesday, January 20, 2010 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., Ralph Yates, David Brown, and William 'Bill' Gaffney. Participating via teleconference were Frank Rose, Jr. and Gantt Stephens, thus making a quorum. Vice Chairperson, Linda Cotten and Michael 'Dicky' Powell were 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. Numerous interested parties also attended the meeting.

The meeting was called to order by Chairman Boscoe Fulcher. He then called for a brief Moment of Reflection in silence. That was followed by the 'Agenda Approval'. David Brown made a motion to approve the Agenda as submitted. Ralph Yates seconded the motion. All voted in favor.

Then, Chairman Fulcher announced the reading and approval of the minutes of the October 21st, 2009 meeting. Ralph Yates made a motion to accept the minutes as presented. 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. Bill Gaffney recused himself from New Business Item 5.b. on the Agenda because of his relationship with the new Trustee, Pinehurst Funds. 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 budget. They were keeping their heads above water, with \$40,000.00 in the bank to hold them to the end of the Fiscal year in June, 2010. Expenses now had to be offset by collections, since they started the Fiscal year with a zero cash balance. Chairman Fulcher asked Mr. Miller what was meant by the 'intra-governmental transfer' and the 'legislative mandated transfer' listed on the budget. Jimmy Miller explained that back in August, 2009 when the NC State Legislature passed the Budget, it took all of the cash balance on hand in the account that usually would have been carried over to the next fiscal year. That amount was \$259,000+. The majority of that was collected in May and June as license fees. That would normally hold the Commission over during the lean months of September, October, and November when there aren't very many collections. Mr. Miller further explained that on June 30<sup>th</sup> of 2010 the Legislature will take 20% (twenty) percent of whatever cash balance is on hand. The Commission then has to justify keeping the remaining 80%. So, what's going to happen when the license fees come in May and June; 20% will disappear and go to the State of North Carolina. Chairman Fulcher said, so we're being taxed at a rate of 20%. There were no other questions on the budget. Mr. Miller next updated the members on sales licenses. There were 504 preneed sales licenses issued so far and 175 of 176 cemetery licenses were issued. Lee Memory Gardens of Sanford had not paid for their

cemetery license. Mr. Miller asked for direction in dealing with the cemetery. Chairman Fulcher asked if a twenty day letter was sent to them. Mr. Miller said that they have sent several letters, with no response from the cemetery. He stated that the owner owns two cemeteries. He licensed one, but not the other. Mr. Fulcher asked if both cemeteries were operated under one corporate entity. Mr. Miller said he thought it was so. Bill Gaffney asked if they had separate Trust funds. Mr. Miller said that they each had separate Cemetery companies and Trust funds, but that he believed and asked if both cemeteries could be sanctioned reprimanded. He pointed out that at that moment the Commission could sanction the cemetery because they are not licensed which is in violation of the law. A discussion ensued regarding a whether a multiple cemetery owner can have the licenses taken from all of his cemeteries. Bill Gaffney said that he would recommend sending the owner a 20-day letter. Chairman Fulcher asked if he wanted to make a motion. Mr. Gaffney so moved. Attorney Faison Hicks told members that they would not get any more rights by sending out a 20-day letter, when they could take the owner to court then and shut him down. Mr. Gaffney said that he doesn't want to shut him down, he wanted to give him another chance. Chairman Fulcher, then, asked for a second on the motion. Ralph Yates seconded the motion. Chairman Fulcher asked for additional discussion. Ralph Yates wanted to bring up what Jimmy Miller mentioned earlier in his report about both cemeteries being in jeopardy. He asked if legal action could be brought against the corporation or what? Chairman Fulcher interjected with a question about whether an owner can pick and choose which cemetery to license if one of them is not profitable. Attorney Hicks stated that each cemetery is licensed and any action would be against the individual cemetery. He further added that if this individual were to come before this Commission to seek a license to operate another cemetery, this background should be taken into consideration. Mr. Fulcher said that was in the statute. There was no further discussion. All voted in favor. Mr. Miller, lastly, gave a brief Audit report. Since the last meeting they had completed only four audits because of the holidays and other unforeseen circumstances. A year prior they were in the 9 and 10-year timeframe and now, were in the 7-year timeframe. They were slowly, but surely whittling away at them. That ended the Administrator report.

The next item discussed was Old Business, With Action. The first item was the LQ Trustee update. Chairman Fulcher suggested they go into Executive Session. David Brown made a motion to go into Executive Session to receive legal guidance from Attorneys General Anne Brown and Faison Hicks regarding the matter. Ralph Yates seconded the motion. All voted in favor. Executive Session began at 9:11 a.m. and ended at 9:48 a.m. During Executive Session, legal advice was sought, received and discussed concerning the LQ Trustee update and the OAH appeal filed by Azalea Memorial Gardens and members were satisfied. The matter of the Collection Fees for the Moody cemeteries was under review.

Next item discussed of Old Business, With Action was SCI's Request to Change Trustees from USBank to SunTrust Bank. It was contingent upon Department of Justice Attorneys' approval. Jimmy Miller said that he received the green light for approval from DOJ so he issued a letter of authorization. The change had already occurred. The last item of Old Business, With Action was the Sandunes Letter to the Bankruptcy Trustee. As far as the Trustee was concerned the assets belong to the cemetery and current owner. Mr. Miller said that matter was in process.

Subsequent to Old Business, With Action was Old Business, Without Action. That first item was the Administrator's visit to Sylva and Bryson City. Jimmy Miller said that it was on his agenda, but has not happened, yet. The Final item of Old Business, Without Action was the Bond Project. Mr. Miller said that it was ongoing and involved DOJ and a lot of legal issues.

Chairman Fulcher announced that New Business was next on the Agenda, however, he had skipped Item 3 (Three), the Report from the North Carolina Cemetery Association. Rusty Tysor, Executive Vice-President, recognized Association members John Gouch, Treasurer, and John Parham, Supplier and thanked them for attending. He then asked for prayers for Association President Bob Case and his family since his wife needed a kidney transplant. They were at the hospital checking to see if their daughter might be a match. Mr. Tysor next announced that the Association is planning a Spring Seminar. It will be a two-day affair. The first day will be a Maintenance Seminar and the second day will be a Sales and Admin Seminar. The time and date would be announced later. Mr. Tysor was very excited to put a plug in for their Annual Convention with South Carolina at the Myrtle Beach Embassy Suites Hotel on July 11-13, 2010. It will be held with the Southern States Cremation and Funeral Association, involving many of the southern states. Lucius Pullen, Lobbyist and Counsel for the Association spoke next. Mr. Pullen reported on several study commissions he was following 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 fluctuated too much. He reported that at the moment there was nothing for cemeteries to be worried about. There were no other questions. Chairman Fulcher thanked the Association for their report.

The next item on the Agenda was New Business. The first item was Carriage Services Request for Trustee Change from US Bank to Regions Bank. Jimmy Miller spoke to the issue saying that it was a straight forward trustee change. US Bank was getting out of the Trustee business. Bill Gaffney asked if everything was administratively correct. Mr. Miller said that it was. Bill Gaffney made a motion to approve the change. David Brown seconded the motion. All voted in favor. The next item of New Business was Gethsemane Memorial Gardens Request for Trustee Change from USBank to Pinehurst Funds. Bill Gaffney was recused from this item. Mr. Miller explained that this was the same as the previous request and all the documents were administratively correct. David Brown moved to approve the change. Ralph Yates seconded the motion. All voted in favor. The last item of New Business was Laurel Memorial Gardens Late Reports. Mr. David Twiford was present for the cemetery. Mr. Twiford said that he believed that all of his reports were sent in on time based on his records. All of the reports that were not received were 'no sale' reports. He questioned our bookkeeping system for checking in the 'no sale' reports and thought he should have been notified sooner. He acknowledged that there were 13 (thirteen) separate offenses of late reporting. He did send in the reports as soon as he received his 20-day letter. Bill Gaffney said that he felt that the Commission should look into the matter further and made a motion to table the issue. David Brown seconded the motion. All voted in favor. Chairman Fulcher thanked Mr. Twiford and told him that he would be notified.

Chairman Boscoe Fulcher said that he had two items of New Business. He had received several requests. One was about forming a fund to help with cemeteries that may go in the direction of Lee Memory Gardens, Sanford and Mount Lawn Memorial Park in Boone. He appointed a committee with Commission Members Ralph Yates, Bill Gaffney and Linda Cotten, and asked Rusty Tysor to give him the names of Association Members to be on the committee. The second item Chairman Fulcher brought up was appointing another committee to study the Cemetery Act. He wants to work with the Association so that they don't end up at odds as what happened last year over the Bonding issue. He appointed Bill Gaffney, David Brown, Jimmy Miller, himself (Chairman Fulcher), and whoever the Association deems

appropriate to be on the Committee. He said that it would be helpful for Lucius Pullen to be involved. He asked Mr. Tysor to get him the names as soon as possible.

The next Item was the sixth one on the Agenda, Requests from the Public to Address the Commission. There were no more.

Chairman Fulcher reminded Members that the next meeting date was Wednesday, April 21, 2010 at 9:00 a.m. There was a discussion then about there being too much traffic as a result of the 9:00 a.m. start time. David Brown made a motion to move the meeting start time back to 10:00 a.m. Bill Gaffney seconded the motion. All voted in favor, except Ralph Yates. So, the next meeting would be at 10:00 a.m. instead of 9:00 a.m.

David Brown made a motion to adjourn. Bill Gaffney seconded the motion. All voted in favor. The meeting adjourned at 10:33 a.m.

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CHAIRPERSON

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DATE