

# NORTH CAROLINA CEMETERY COMMISSION

July 21, 2010

9:00 A.M.

The North Carolina Cemetery Commission held a meeting on Wednesday, July 21, 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., Vice-Chairperson, Linda Cotten, and Members Ralph Yates, David Brown, Michael 'Dicky' Powell, Frank Rose, Jr., William 'Bill' Gaffney, Gantt Stephens, and Glenn Cutler. 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. Commission Members then observed a brief Moment of Reflection in silence. That was followed by changes in the Agenda order. Chairman Fulcher pointed out that the meeting Agenda was set up according to Robert's Rules of Order. He proposed to move Agenda Item 7, Requests From the Public to Address the Commission to just after the Administrator's report; and for it to be moved there for subsequent meetings as well. Linda Cotten moved to have Requests From the Public to always fall after the Administrator's Report. She made a motion for 'Agenda Approval' with the noted change. Ralph Yates seconded the motion. All voted in favor. Chairman Fulcher next commented that he was pleased to hear that someone else wanted to be Chairman of the Commission. Therefore, he would not be seeking re-election as Chairman in the elections to be held later in the meeting. He also thanked everyone for their past support. Chairman Fulcher next announced the Reading and Approval of the Minutes of the April 21<sup>st</sup>, 2010 meeting. Glenn Cutler made a motion to approve the minutes as written. David Brown seconded the motion. In discussion, Linda Cotten said there were changes to be made. On page three (3), in the third paragraph, the eighth line, it should read 'Southern Cemetery Cremation and Funeral Association, instead of 'Southern States...' The second item was an insertion. On the same page, second paragraph, the fifth line, it should state the reason that Ms. Cotten and Mr. Yates were not part of that (special committee) meeting was 'due to lack of notification.' Linda Cotten amended the motion to approve the minutes with the changes. Glenn Cutler 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 the New Business Items a. and b. 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. There was \$31,650.60 at the end of the Fiscal year in June, and the balance was up to \$86,000.00 at meeting time. Since the year-end balance was less than \$50,000.00, the State would not take a portion. Mr. Miller next updated the members on sales licenses. They were issuing preneed sales licenses on a daily basis and he would have to email members with a total so far. There were 15 (fifteen) cemeteries whose licenses had not yet been renewed. Mr. Miller next gave the Audit report. There were 8 (eight)

audits completed since the last meeting. The status of the 2009 Annual Care & Maintenance reports was to follow. Mr. Miller still did not have the required reports from 3 (three) cemeteries. They were due March 15<sup>th</sup>, 2010. He followed-up on more than one occasion. He supposed the next step would be to send them a Notice of Hearing For Non-compliance, but the law reads that the cemetery has until the end of the year before he could take that action. Mr. Miller explained how he went over these reports, comparing Trustee/Bond balances with the preneed liabilities and he reviewed the Trustee's investments. He also looked closely at the Pre-construction projects. Four (4) years from the date of the first pre-construction sale is when the project needs to be started, and five (5) years later, it needs to be completed under the law. Mr. Miller checked to see if they were on schedule. There were 5 (five) cemeteries who hadn't corrected errors on these Care & Maintenance Reports yet. They were all StoneMor Partners' properties. It was in looking at the Trustees' reports that brought him to the next item. Mr. Miller drafted a letter because of errors he discovered on the Trust reports. He found that Trustees had invested regular Perpetual Care funds in stocks. This is not allowed. PC 'A' Funds can be invested in stocks, but not regular PC. He also found that there were disbursements from the corpus of the PC Trust that are not allowed by the N.C. General Statutes. These disbursements included, but not limited to, fiduciary fees, management fees, market loss, federal and/or state income taxes. The law states that if the net income is not sufficient to cover these fees they are to be paid by the cemetery. They may also be taken out of the interest earned. Mr. Miller found that these errors were 'across the board.' He was waiting to hear back from the legal team before sending out the letter to the Trustees and the licensed cemeteries. The last item on the Administrator's report was Evidence of Preneed Liability Exceeding the Trust. A Hendersonville cemetery had white-out on their Care & Maintenance report. He could see that the figures were made to match. Mr. Miller pulled the file on this cemetery and also found in the March 24, 1988 Minutes where a motion was made that said '...if there were any further problems with the cemetery, these violations be taken up again for future license revocation.' Mr. Miller asked for guidance if he should perform an audit. Frank Rose made a motion that an audit be done on Forest Lawn Memorial Park in Hendersonville and report back at the next meeting. Bill Gaffney seconded the motion. All voted in favor. There were no other questions/comments for the administrator. That ended the Administrator's report.

The next item discussed was Requests from the Public to Address the Commission. Ms. Jody Rentz addressed the Commission. She reported that the cemetery in Sylva was still in the same condition. Some letters had recently been written, to which the owner sent back a letter of apology and stated that he had implemented a new system of upkeep on the cemetery that had failed. Ms. Rentz believed that the situation would continue to be the same until the receivership took place. She next had a question about the Perpetual Care fund problems previously discussed. She wanted to know what could be done to keep cemeteries from investing inappropriately in trust funds. What penalties could be imposed? If the Commission had no authority, what could they do. How long would it take for changes to be made. She also hoped that the visit was made to Sylva and laws could be changed. She felt dismayed that things weren't happening. Mr. Miller addressed her questions. For the misapplication of investments in Perpetual Care funds the Commission can go to the courts and plead that there is a problem with a Trustee and request that they be removed. If the problem is with an entity under the Commissioner of Banks, the Cemetery Commission can petition the court to remove the Trustee. The Cemetery Commission cannot remove a bank. The cemeteries are also responsible for making sure that the Trustee who is a caretaker for funds that are invested for their customers are following the law. Mr. Miller had a letter that would be going out to all cemeteries and Trustees which spelled out the problems and stated the law. Attorney Faison Hicks advised that any party accused of wrongdoing must be given due process of law and

given the opportunity to tell their side of the story. That is what sometimes prolongs things. In addition, Ms. Rentz mentioned about her friend still not getting her headstone that she paid for. Mr. Hicks said that her friend might get some results if she showed up at one of the Superior Court hearings where the receiver gives her monthly report to the court. Ms. Rentz explained that she called the courts to get information on the hearings and receivership for the Moody cemeteries and funeral homes and Wings Aviation. She was told that they had none. Rusty Tysor of the Cemetery Association offered to give Ms. Rentz the receiver's name and telephone number. Mr. Tysor mentioned that he had offered his services to the receiver and had recent contact with her. Attorney Lucius Pullen, also from the Association, wondered if the Board of Funeral Services might be of some help since funeral homes were involved. Ms. Rentz thanked all for their input. Mr. Michael Rulison of the Funeral Consumers' Alliance of the Triangle next addressed the Commission. He thanked the Commission for setting aside time for the public to speak. He then stated that he would reserve his remarks pending meeting discussions. Mr. Doyle Bunting next addressed the Commission. He was concerned with what was Perpetual Care. If no one complains and no loved ones are alive, the cemetery does nothing to repair broker markers or fix sunken sod. He declined to name the cemetery. There was a CNN program in 2008 regarding this large corporation. Member Dicky Powell suggested writing letters to the editor. Mr. Bunting said he tried that. The newspaper wouldn't print his letter until he wrote a complaint to the Cemetery Commission. At that point Mr. Rulison interjected that the cemetery in question was Randolph Memorial Park operated by StoneMor Partners LP. In a letter he received from their vice-president he was told that the cemetery would repair what was proven to be damaged by their employees at no cost to the lot owner. Member Ralph Yates urged Mr. Bunting to go before his county commissioners at one of their meetings. He observed that they usually have members of the press at these meetings. Mr. Yates also agreed with Mr. Bunting that Perpetual Care needs to be defined in the General Statutes. There were no other members of the Public to address the Commission.

The next item on the agenda was the reports of special committees. The first committee was the Fund for Cemeteries with Financial Difficulties in Fulfilling Preneed Responsibilities. Bill Gaffney stated that in a discussion with Jimmy Miller that the Cemetery Commission needs to be removed from the process. Mr. Gaffney said that the committee had not yet met, but he asked Lucius Pullen to give some background on the Recovery Fund. Mr. Pullen said that he advised them to hire a young attorney. They were previously working on the framework with an attorney. Mr. Pullen stated that he didn't think they qualified for a 501(c)(3) organization, but should be able to establish a 501(c)(6) business association whereby a cemetery could make a donation and it would be a tax-deductible contribution. Chairman Fulcher asked Mr. Gaffney to give an update on the Committee to study the Cemetery Act and Associated Administrative Rules. He said the committee met and came up with some very good ideas to strengthen the Administrative Rules and the General Statutes along with the audit program. He felt that they had done the State's homework for them. He said they came up with some recommendation as well. Mr. Gaffney asked Linda Cotten, who acted as secretary for the meeting, to make remarks. Ms. Cotten stated that they discussed strengthening the Care & Maintenance report and giving the cemeteries better guidelines to determine maintenance costs. Ralph Yates said the process doesn't have any input from the public. Faison Hicks suggested to post the final draft on the Cemetery Commission's website for 30 (thirty) days prior to the next meeting. It was also pointed out that the report was a work in progress. The Commission Administrator was named to assist the Legislative Study Commission. Whatever the Cemetery Commission decides as a majority vote recommendation, he would take before them. Bill Gaffney made a motion that all Commission Members submit to the Commission office their recommendations and suggestions to the study committee report within 30 (thirty) days, also the Association's officers and directors submit

their comments then set up a special meeting open to the public to discuss the rules change. Dicky Powell seconded the motion. All voted in favor. Michael Rulison requested of the Chairman to make a remark. His comment was regarding the composition of respondees to the Commission's proposed Legislative Amendments

Item 4 on the agenda was the Report from the North Carolina Cemetery Association. Rusty Tysor, Executive Vice-President, reported that they had their annual meeting with South Carolina at Myrtle Beach. They met with the Southern Cemetery Cremation and Funeral Association. They had some educational seminars and everyone had a lot of fun. They also elected new officers. David Simmons was the new President; President-elect was Dana Elder; Vice-President was John Gouch; Secretary was Sherry Grubbs; Treasurer was Dyanne Matzkevich. They also gained some new members; he was happy to say. Mr. Tysor said the members would be getting together in the next few months to plan out their year with seminars and meetings. He then turned the meeting over to Attorney Lucius Pullen, Lobbyist and Counsel for the Association, for the legislative update. Mr. Pullen reported that Senate Bill 18 was ratified on July 8th, 2010. When the bill was signed by the Governor the study commission was authorized to form. It is heavily weighted with public members. Sections 1-6 of S18 take effect October 1, 2010. There is also a study of consolidation or elimination of boards and commissions to be concerned about. The next General Assembly is elected on November 2<sup>nd</sup>, 2010 and will convene on January 26, 2011. Mr. Pullen further told members that they needed some more good people on the study commissions. He reminded all to be mindful of whom they vote for. Chairman Fulcher thanked the Association for their report and called for a short break at 11:08 a.m. The meeting reconvened at 11:17 a.m.

The next item on the agenda was Old Business, With Action. The first item was the LandQuest Trustee Update. Faison Hicks recommended they go into a closed session since this item is in ongoing litigation. Ralph Yates made a motion to go into Execution Session to receive legal guidance from Attorneys General Anne Brown and Faison Hicks regarding Item 1 of Old Business, With Action. Dicky Powell seconded the motion. All voted in favor. Executive Session began at 11:18 a.m. and ended at 11:29 a.m. During Executive Session, legal advice was sought, received and discussed concerning the LQ Trustee update, and members were satisfied. Coming out of Executive Session, the next item discussed of Old Business, With Action was Senate Bill 18. Administrator Jimmy Miller gave a synopsis. First of all Mr. Miller said that Senate Bill 18 did not eliminate bonding. It did change some administrative items. Section 4 adds the requirement that the Cemetery Commission emplace rules/regulations requiring cemeteries to indicate what payments will be made with released preneed trust funds. Section 5 increases from 1 to 3 the number of years that may be granted for an extension for construction of mausoleums. In addition Senate Bill 18 created the Study Committee to study the Cemetery Act among other things. The bill had been ratified. Mr. Miller said he would notify Members of the next action.

The next item on the Agenda was Old Business, Without Action. The first item was the Administrator's visit to Sylva and Bryson City. Jimmy Miller said that it had not happened, yet. The Final item of Old Business, Without Action was the Bond Project. Chairman Fulcher stated that the item had been on the agenda since the Aegis ruling. He reported that Attorney Barry Bloch felt that all other bonds should be looked at by the Attorney General's office to determine if they would pay off in the event that someone had a bankruptcy. Attorney Faison Hicks stated that there was no bond project ongoing in the Attorney General's office; that what was needed was revised legislation that would do away with bonding. Jimmy Miller reported in October, 2009 that this item had 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 at that same meeting that this was an ongoing issue. Attorney Faison Hicks further said in the October meeting that there were other pressing matters. It was decided that the bond project would be taken off the agenda. Ralph Yates had another order of Old Business. He inquired what happened with a complaint made by Dale Floyd about a mausoleum owned by Heritage Family Services. Jimmy Miller wasn't familiar with that particular complaint. He suggested that he could let Members know via e-mail after the meeting and for future meetings he would add complaint status to the Agenda. Chairman Fulcher felt that was a good idea. Mr. Hicks had an additional point of Old Business regarding LQ. At break time Attorney Kristin Adkins for LQ told him that they would have all documents required to the Commission in 3 (three) weeks time. There was no other Old Business, Without Action.

The first item of New Business discussed was the Citadel Management Memorial Maintenance Fund. They were requesting the release of funds collected as 'Memorial Maintenance Fund.' Bill Gaffney was recused. David Drach from Citadel Management addressed the Commission. Mr. Drach had two questions that he needed guidance on from the Commission. First was getting monies released from the Merchandise Trust Fund' and secondly, where the monies should go. Back in 2002 the company noticed that markers and memorials were being damaged and no one was taking responsibility for the damage so they took a portion of their installation fee, \$ .10 per square inch, and started this fund. They initially placed the monies into the Perpetual Care Trust Fund. They put a separate line item on their contracts entitled 'Long Term Care.' Jimmy Miller argued that 'long term care' was the same as 'perpetual care as defined in NC GS 65-63. Mr. Drach said that beginning January 1, 2009, these monies had been placed into a separate Merchandise Trust Fund. It was from those monies that Mr. Drach wanted released for the serviced accounts. Gantt Stevens said that he felt they should take the word 'Care' off the fund and the contracts. Mr. Miller agreed. Ralph Yates said that they were doing a good job but having a problem with the reporting of it. Under NC GS 65-64 (f) a special endowment fund could be set up for specific items. After more discussion Dicky Powell made a motion to allow the Commission staff to release monies to Citadel Management that were collected on contracts from January 1, 2009 forward. David Brown seconded the motion. All voted in favor except Glenn Cutler. The motion passed. The second item of New Business was Citadel Management Preconstruction Extension for Devotional Gardens Cemetery. Bill Gaffney was recused from this item. Preconstruction of the mausoleum had its first sale on June 3, 2005 and should have been completed by June 3, 2010. Citadel Management was requesting a 120-day extension. David Drach said that the granite was ordered from Italy and was on the water. Jimmy Miller suggested that Mr. Drach should ask for at least 6 (six) months from the date of the meeting in the event of something unforeseen, such as a delay in the boat. Mr. Drach acquiesced. Ralph Yates made a motion to grant Citadel Management an extension of 6 (six) months from the date of the meeting for completion of the mausoleum at Devotional Gardens Cemetery in Warsaw. Frank Rose seconded the motion. All voted in favor. The third item of New Business was the Crown Memorial Park Proposed Perpetual Care Payment Plan. During the recent audit of Crown Memorial Park a shortfall of \$21,501.00 to Perpetual Care was discovered. Robert Hand, Managing Partner of Crown sent a letter of proposal to make 12 (twelve) monthly deposits of \$1,791.75 to the Pc Fund in lieu of fully funding. Jimmy Miller said that he had hoped Mr. Hand would attend the meeting. Mr. Miller described the audit as a bookkeeping mess. There were lots and lots of unreported contracts. The law states that PC must be deposited in 48

months or when the contract is paid in full. There were contracts that were 5, 6, and 7-years old. Assessments in the amount of \$7,034.00 were also owed to the Commission. Bill Gaffney stated that he spoke to Mr. Hand the previous week and agreed to represent him at the meeting. Mr. Hand told him that he had a computer system that automatically printed out lists of names when the contracts were paid or in 48 months. When they built their mausoleum apparently the computer didn't recognize the contract numbers because they were different. Mr. Hand blamed the Commission for waiting 8 (eight) years to audit the cemetery. If the audit was done in 2 (two) years, the problem wouldn't have been so bad. He did agree that he owed the money to the PC account but could not afford to pay it all at once and hoped the Commission would understand his predicament and grant his extension. Bill Gaffney made a motion on the shortage in the PC Fund for the Commission to accept the offer of Crown Memorial Park to pay \$1,791.00 in 12 monthly payments into the PC Trust Fund. Dicky Powell seconded the motion. Gantt Stevens asked if Mr. Gaffney would amend his motion to include the \$7,034.00 owed for assessments. Bill Gaffney amended his motion to accept payments of \$1,791.00 until the total of all the PC and the assessments were paid in full. David Brown seconded the motion. All voted in favor. At that time Bill Gaffney made a motion to go into Executive Session to receive legal guidance from Attorneys General Anne Brown and Faison Hicks regarding a personnel matter. Ralph Yates seconded the motion. All voted in favor. Administrator Jimmy Miller, Auditor Brenda Jeffers, and Administrative Assistant Nancy Waggoner were excused from Executive Session. Executive Session began at 12:41 p.m. and ended at 1:06 p.m. During Executive Session legal advice was sought, received and discussed concerning a personnel matter, and members were satisfied. Coming out of Executive Session Dicky Powell made a motion to give the Administrator the authority to hire additional auditor(s) as temporary help, or contractors to assist in getting audits done in arrears from available funds of \$86,000.00. Frank Rose seconded the motion. All voted in favor.

The eighth item on the agenda was the Election of the Chair and Vice-Chair. Chairman Boscoe Fulcher opened the floor for nominations. Dicky Powell made a motion to nominate Gantt Stevens for Chairman. Bill Gaffney seconded the motion. There were no other nominations. Linda Cotten made a motion that the nominations be closed. All voted in favor. Chairman Fulcher opened the floor for nominations for the Vice-Chair. Frank Rose nominated Glenn Cutler. Linda Cotten seconded the motion. There were no other nominations. All voted in favor. There was no other business.

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

Dicky Powell made a motion to adjourn. David Brown seconded the motion. All voted in favor. The meeting adjourned at 1:09 p.m.

---

CHAIRPERSON

---

DATE