



February 10, 2009



Re: Cemetery Funds
Our File No.2008-228

Dear 

This is in reply to your letter raising several issues about the operation of the town of Orange cemetery department, and the handling of cemetery funds.

The department of revenue has oversight responsibilities with respect to certain aspects of municipal finance. It approves municipal tax rates, reviewing them for compliance with Proposition 2½ and to determine whether the municipalities have balanced budgets. It also prescribes accounting standards. It is not, however, an ombudsman or investigatory agency with respect to the operation of municipal departments generally. Moreover, many of the matters you raise sound more like procurement or open meeting law issues than municipal finance issues.

There is however, one aspect of your letter that does touch on issues of municipal finance law, in particular whether certain special revenue funds of the cemetery department must be appropriated by town meeting. You refer especially to GL Ch.114 §43C, and its limitation to cemeteries established on or after July 1, 1936, noting that the town's cemeteries were established before that date. It is not clear how relevant GL Ch.114 §43C of the general laws is to the operation of a municipal cemetery.

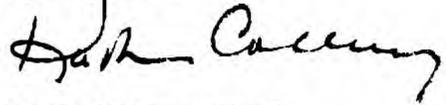
Section 43C deals with the use of proceeds from the sale of lots and other assets, and applies to cemeteries created on or after July 1, 1936. However, it is part of the "miscellaneous provisions" of Ch.114, which begin with §43A. That section prohibits the establishment of new cemeteries on or after that date by entities other than municipalities, churches and religious organizations, or by cemetery associations incorporated as non-profit organizations in accordance with §1 of Ch.114 and Ch.179. That appears to be why §43C is limited to cemeteries established after that date. Section 43C and the other "miscellaneous provisions" of Ch.114 do not deal specifically with municipally owned cemeteries, and the sections of Ch.114 that do apply specifically to municipally owned cemeteries – §10 to §27 generally, but especially §15, §19, and §25 – are not limited to cemeteries created on or after July 1, 1936.

Both §15 and §25 of Ch.114 refer to appropriations of the proceeds from the sale of cemetery lots to reimburse the town for the cost of the land, its care, improvement and embellishment, or the enlargement of the cemetery. However, §25 provides that a municipal treasurer must pay over income from so-called perpetual care funds for the maintenance of cemeteries upon the order and with the

approval of the cemetery commissioners. We have always understood that language to mean that perpetual care funds, in contrast to proceeds from the sale of cemetery lots, do not require appropriation, and cannot be used to reimburse the town for the cost of the cemetery or for enlargement or capital improvements to the cemetery. They are in effect a revolving fund that the cemetery commissioners may use to supplement their operating budget appropriation.

If you have further questions, please do not hesitate to contact me again.

Very truly yours,



Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC:CH