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Prairie View Memorial Park Association

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PRAIRIE VIEW MEMORIAL PARK ASSOCIATION
Box 2666
Prairie View, Texas
May 10, 1968

President and Members of the Constitution and Bylaws Committee,
Greetings,

The attached rough draft of constitution and bylaws of the Prairie View Memorial Park Association is submitted for your further study.

Please read it carefully and critically and write in suggestions for its improvement and completeness. Feel free to offer suggestions in the next meeting to be called soon. You will note that some matters are not fully completed for lack of consensus on important items, as follows:

1. Type of cemetery - Perpetual Care or Non-Perpetual care. (Ref: American Cemetery Law and the late Judge Winfree's document, enclosed).
2. Manner of Care and Maintenance, i.e., whether altogether by the Memorial Park Association or Supervisor of Grounds Prairie View A&M College - or jointly.
3. If the cemetery is to be cared for and improved by the Supervisor, College Grounds, on what terms?
4. Who will be in charge of grave sites, issuing membership receipts and lot assignments, and entitlements, assuring benefits to be received.
5. Are we to have professional directions in final layout of cemetery grounds? If so, suggest steps and personnel.
6. Shall we spend the money we have for entrance, fence and other needed improvements or, a portion of the money on work and other means of making such improvements? (such as, small house, toilets, tool room, etc.,).
7. How shall we dispose of the matter of type of grave markers?
8. Work out a form to be issued members who pay membership fees (\$50), showing benefits to be derived.
9. Some persons have paid \$50 or more and others less than \$50, what about checking with all who have paid and collect from those who have paid a portion. If in doubt, find out status in some way.

These and other items you might be aware of need study and comments and final solutions at our next meeting.

15/10 J. Thomas
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Chairman on Constitution
and Bylaws

WALLER COUNTY
OFFICE OF THE COUNTY JUDGE
HEMPSTEAD, TEXAS

November 25, 1960

Mr. O. J. Thomas)
Dr. Brown) Prairie View, Texas

Gentlemen:

Please pardon the delay in giving you what information I find on the establishment of a cemetery.

Under Article 912a-1, I find the following definitions:

1. "The term cemetery, within the meaning of this title, cemetery, is hereby defined as a place dedicated to and used, and intended to be used, for the permanent interment of the human dead. It may be either a burial park, for earth interments; a mausoleum for vault or crypt interments, a crematory or crematory and columbarium for cinerary interments, or a combination of one or more thereof."

2. "The term perpetual care cemetery shall mean a cemetery for the benefit of which a perpetual care fund shall have been established in accordance with the provisions of this Act."

3. "The term nonperpetual care cemetery shall mean a cemetery for the benefit of which no perpetual care funds has been established in accordance with the provisions of this Act."

4. "The term perpetual care shall mean to keep the sod in repair, to keep all places where interments have been made in proper order, and to care for trees and shrubs, providing for the administration of perpetual care funds in instances wherein those administering such funds fail or refuse to act."

5. "Lot or plot or burial space means space in a cemetery owned by one or more individuals, an association, or fraternal or other organization and used, or intended to be used, for the permanent interment therein of the remains of one or more deceased persons....."

6. "The terms cemetery association and association are herein used interchangeably and shall mean any corporation now or hereafter organized, or any association not operated for a profit, which is or shall be authorized by its articles to conduct any one or more of all of the businesses of a cemetery."

WALLER COUNTY
OFFICE OF THE COUNTY JUDGE
Hempstead, Texas

7. "Directors as herein used, means the board of directors, board of trustees, or other governing body of the cemetery association."

The operation of any perpetual care cemetery within this State is unlawful unless such cemetery complies with all the applicable provisions of the act governing said cemeteries. The operation of any cemetery as a perpetual care, permanent maintenance, or free care cemetery shall be unlawful unless such cemetery shall have created and shall maintain a perpetual care fund in accordance with provisions of a cemetery Act.

Each perpetual care cemetery as defined in this act, shall file in its office as well as in the office of the Banking Commission of Texas, a statement in duplicate, which shall contain the following information:

1. Amount of principal of the perpetual care funds.
2. Total amount invested in bonds, and other securities, the total amount of cash on hand not invested, and such other items which shall actually show the financial condition of the trust.
3. Number of square feet of gravel space, etc., disposed of under perpetual care, prior to and subsequent to March 15, 1934, each separately set forth.
4. Number of square feet of grave space, etc., disposed of subsequent to March 15, 1934, for which the minimum amounts of perpetual care as provided by this Act have not been paid into the perpetual care fund.

All of the information appearing on said statements shall be verified by the President and Secretary, or two (2) principal officers of the cemetery corporation. All the information appearing on said statements shall be revised and so posted and filed annually on or before March 1st, of each year.

Within 30 days after the filing of the aforesaid statement in the office of the Banking Commission a true copy thereof shall be published in at least one (1) newspaper of general circulation in the county in which said cemetery is located.

Upon the failure of any perpetual care cemetery to file with the Banking Commissioner on or before March 1st of each year the statements of its perpetual care funds as required hereby, or to pay the filing fee required by this Act, its corporate charter shall be subject to forfeiture, and such failure to report shall be prima-facie evidence that the cemetery's perpetual care fund does not conform to the requirements of the law; the Banking Commissioner of Texas shall notify the Attorney General of Texas, who shall proceed to institute suit as required by the provisions of this Act.

WALLER COUNTY
OFFICE OF THE COUNTY JUDGE
HEMPSTEAD, TEXAS

It is provided however, that the provisions of this Article shall not apply to any family, fraternal or community cemetery, or any association of lot owners not operated for profit, or any religious corporation, church, religious society or denomination or corporation solely administering the temporalities of any religious denomination, society or church, now existing or hereafter organized.....Acts 1951, 52nd Leg.

Art. 912a-7

When it is desired to create a nonprofit corporation organized by cemetery lot owners to receive title to lands theretofore dedicated to cemetery purposes, notices of the time and place of meeting shall be published in a newspaper in the county, if there be one, for thirty (30) days prior thereto; and written notices shall be posted at and upon such cemetery for thirty (30) days prior to the time fixed for said meeting. When the lot owners uniting in the formation of said nonprofit corporation shall assemble, the majority of those present and voting shall decide on the question of incorporation, and the conveyance of the land to such nonprofit corporation. Such meeting shall select the board of directors to be named in the charter, which must consist of cemetery lot owners alone.

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Art. 912a-9.

Cemetery associations, whether incorporated or unincorporated, may take by purchase, donation or devise, property, consisting of lands, mausoleums, crematories and columbariums and/or other property within which the permanent interment of the dead shall be authorized by law. Such cemetery association may execute a declaration acknowledged by the president and secretary or other authorized officer or officers, so as to entitle it to be recorded describing said property and declaring its intention to use said property or any part thereof for interment purposes, which declaration it may file for record in the office of the County Clerk of the county wherein the property is situated, and from the date of such filing the same shall be constructive notice of the use for which such property is intended. Such property may also be acquired by condemnation proceedings and the acquisition of such property is hereby declared to be for a public purpose.

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Art. 912a-16. Requirements of perpetual care cemeteries.

Each perpetual care cemetery as defined in this title shall post in a conspicuous place in the office and/or offices where sales are conducted or if there be no offices, in a conspicuous place at or near

the entrance of the cemetery or administration building, and readily accessible to the public, a sign which shall contain the following information in the order and manner set forth below:

a. "Perpetual Care Cemetery"--which shall appear in a minimum of forty-eight (48) point black type.

b. Names of officers and directors of the cemetery and the name of the bank or trust company entrusted with care of perpetual care funds.

Each perpetual care cemetery shall include in each conveyance of the exclusive right of sepulture, certificate of ownership, or sales contract executed by it, the following statement: "This cemetery is operated as a perpetual care cemetery, which means that a perpetual care fund for its maintenance has been established in conformity with the laws of the State of Texas. Perpetual care means to keep the sod in repair and all places where interments have been made in order and to care for trees and shrubs planted by the cemetery.

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Art. 912a-17.

Perpetual care funds shall not be used for any other purpose than to provide through the income only therefrom the perpetual care stipulated in the resolution, bylaw, or other action or instrument by which the fund was created or established, and it shall be the duty of the duly appointed trustee to invest, reinvest and keep such funds invested in such securities or assets as are or shall hereafter comply with the provisions of the Texas Trust Act in so far as the same may govern the investment of trust funds by the trustees thereof. No such investment shall be made without the written approval of either an active officer of the cemetery association or of a majority of its directors, and no such investment shall be made except at the prevailing market value of the securities at the time of the acquisition thereof.

You can see that to correctly operate a perpetual care cemetery constitutes quite a problem. The Hempstead Cemetery is not a perpetual care cemetery, though it does accept donations offered to the cemetery which is referred to as endowments.

On November 21, 1947, the State Department of Banking, advised the local cemetery association that the association, a non-perpetual care cemetery, could continue to accept gifts, grants or donations from lot owners in the cemetery for the purpose of special care of the lots of such grantees and donees without converting into a perpetual care cemetery--so long as the cemetery is not represented as a perpetual care cemetery. It is my understanding that at the present time the charge for caring for a lot is \$6. per year; the same lot may be "endowed" for \$300.

WALLER COUNTY
OFFICE OF THE COUNTY JUDGE
HEMPSTEAD, TEXAS

Certainly the success of the operating of a cemetery can be no greater than any dedication of the directors in the day to day operation of the cemetery and their wisdom in investing their funds. At the present time the cemetery employs a sexton and his pay comes from earnings from funds invested. The capital stock is not used for current operating expenses.

The Hempstead Cemetery Association was granted on November 14, 1893, and a record of it may be found in Volume 66, at page 118, of the Deed Records of Waller County Texas, and the term for which the association was chartered was 50 years, with five (5) directors. Appointments were made for the first year and elections held thereafter. The capital stock of assets was nothing. The only assets of the association was a small tract of land valued at \$200. and its working capital realized from monthly dues of members and donations to the association as well as monies realized from the sale of cemetery lots.

From the foregoing you may decide whether you want to organize a perpetual care or non-perpetual care cemetery association. In any event, I suggest that you see one of the lawyers in Hempstead when you are ready to make application for your charter.

Sincerely,

John C. Winfree
County Judge

JCW/et:or