

RECENT TOWNSHIP CEMETERY LEGISLATION

As it has been several years since the OTA last updated its membership on legislative activity applicable to Ohio township cemeteries, this article will address the major legislation enacted over the last half dozen years which have direct applicability to Ohio township cemeteries.

I. Right of Disposition Act

In response to many publicized disputes regarding the final disposition preferences of a deceased family member or friend, the Ohio Legislature enacted House Bill 426. The Bill became effective on October 9, 2006 and established a procedure whereby each Ohio resident may execute a declaration which grants a designated representative or group of representatives the right to make the arrangements for the funeral, burial, cremation and other aspects of the final disposition of the declarant when he or she passes away. The Act also included a “next of kin” rule which prioritizes who will have such authority over final disposition where no valid declaration of the right of final disposition exists.

Additionally, the Bill created both a mechanism for the replacement of the designated representative with a successor where the original representative refuses to act or later becomes disqualified and a code section which will act as a “gap filler” where there is either not a validly executed Declaration or no designated representative or successor available, willing and qualified to serve under the Declaration. The “gap filler” appears at ORC § 2108.81 and provides a hierarchy among “next of kin” and others who will have authority to order the final disposition in any such event.

Since October 9, 2006 township cemetery operators will necessarily have to have a working knowledge of what a declaration of right of final disposition should contain and when to follow the same (or question the same). The statute contains a “form document” at ORC § 2108.72 for use by those wishing to execute an enforceable right of final disposition. The cemetery and cemetery operator which act in accordance with a validly executed right of final disposition, in good faith, shall receive statutory immunities. Additionally, it is essential to realize that the statute specifically prohibits each cemetery operator, cemetery and their agents from acting as the designated representative for those executing a declaration of right of final disposition.

While the entire mechanics of the statute are beyond the scope of and space allocated for this article, those not familiar with the statute should review the same at Ohio Revised Code Sections 2108.70 through 2108.90 to insure compliance. The Ohio Revised Code is available at <http://codes.ohio.gov/orc> or by following the links at www.lsc.state.oh.us or www.sos.state.oh.us to the Revised Code.

II. Grieving Parents Act.

The Ohio Legislature passed Senate Bill 175 in response to concerns articulated by a support group for mothers who have experienced a fetal death. The constituents wanted a means to obtain death certificates and effectuate interment in such instances.

After many versions of the Bill were addressed and revised by the Legislature, the Act was passed to be effective on September 12, 2008 and contained provisions which provide that cemeteries **shall** inter the remains of a fetal death in either: (1) a single grave that contains or will contain the remains of a parent, sibling or grandparent; or (2) another location in the cemetery including a separate burial ground for infants, whether on a temporary or permanent basis. The Act also contained a provision that allows the cemetery to disinter and reinter the fetal remains from their original location to the family space, at a later date, without the involvement of the Probate Court or other compliance with the disinterment laws.

Although space requirements prohibit reprinting the entirety of the Grieving Parents Act in this article, the township cemetery operator should review the general, non-township specific provisions of the same at Ohio Revised Code Sections 3705.01, 3705.16, 3705.20, 3705.29, 3727.16, 4731.82 and 4765.57. However, the township specific sections of the Act are provided below as follows:

Ohio Revised Code § 517.071. **Rules governing product of fetal death.**

(A) As used in this section and section 517.072 of the Revised Code, “fetal death” has the same meaning as in section 3705.01 of the Revised Code.

(B) A board of township trustees **may adopt rules** for any township cemetery over which it has control may pass and provide for the burial, reinterment, or disinterment of the product of a fetal death.

(C) With regard to the product of a fetal death, on the request of the mother and in compliance with the cemetery rules, a township cemetery shall inter the product of a fetal death in **accordance with one** of the following:

(1) In a single grave within the cemetery that contains, or will contain, the remains of a parent, sibling, or grandparent;

(2) **In another location of the cemetery, including a separate burial ground for infants, on a temporary or permanent basis.** (emphasis added).

Ohio Revised Code § 517.072. **Reinterment or disinterment of product of fetal death.**

(A) Subject to division (B) of this section, re-interment or disinterment of the product of fetal death buried in accordance with division (C)(2) of section 517.071 of the Revised Code is not subject to section 517.24 of the Revised Code if one or both surviving parents provide written consent for the re-interment or disinterment to the township cemetery and comply with any rules adopted under division (B) of section 517.071 of the Revised Code.

(B) If two surviving parents are indicated on the township cemetery's burial documents for the product of a fetal death buried in accordance with division (C)(2) of section 517.071 of the Revised Code and only one has given consent under division (A) of this section, prior to re-interment or disinterment, the cemetery promptly shall give notice of the consent to the parent who did not give consent. The notice shall be sent by registered mail, return receipt requested, to the parent's last known address and contain a statement that the re-interment or disinterment will occur if the cemetery does not receive written objection within thirty days from the date the notice is sent. That parent may object to the re-interment or disinterment by giving notice to the cemetery by registered mail, return receipt requested, not later than thirty days after the burial ground's or the cemetery's notice is sent. If the cemetery receives timely notice of the objection, the re-interment or disinterment is subject to section 517.24 of the Revised Code.

(C) The cemetery shall re-inter or disinter the product of a fetal death if both surviving parents provide written consent for re-interment or disinterment or if one parent consents and the cemetery does not receive timely notice of an objection under division (B) of this section.

As the foregoing Code Sections make clear, each township cemetery must conduct a rule review and perhaps develop a separate burial ground for infants.

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