



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

September 12, 1951

Hon. J. M. Falkner
Commissioner
Department of Banking
Austin, Texas

Opinion No. V-1281

Re: Legality of placing the endowment funds of a perpetual care cemetery with a bank situated outside the home county of the cemetery association.

Dear Mr. Falkner:

Your letter requesting our opinion reads in part as follows:

"This Department several weeks ago advised the above captioned cemetery association, which is a perpetual care cemetery, that since there is no trust company within the county wherein it is situated that it would be required to place the endowment fund with a Board of Trustees composed of three or more persons, no two of the trustees of which shall be directors of the association, under Section 15 of the perpetual care cemetery act (Art. 912a-15, V.C.S.). The association has entrusted this fund to the First National Bank of Beaumont, outside the home county of the association. This Department construed the statute as requiring by necessary implication that in all events such fiduciary should be within the county of the cemetery.

". . .

". . . Please advise us as to your construction of Section 15."

The pertinent part of Article 912a-15, Vernon's Civil Statutes, which is to be construed, is as follows:

"Every cemetery association or municipality or other political subdivision which has established and is now maintaining, operating and/or conducting a perpetual care cemetery, and every association which shall hereafter establish, maintain, operate and/or conduct, a perpetual care cemetery within this State pursuant to this Act, shall establish with a trust company or a

bank with trust powers, no two (2) of the directors of which shall be directors of the cemetery association for the benefit of which such fund is established, an endowment fund of which the income only can be used for the general perpetual care of its cemetery and to place its cemetery under perpetual care; provided however, that if there is no trust company or bank with trust powers, qualified and willing to accept such trust funds at the regular fees established by the Texas Trust Act, located within the county within which such cemetery association, municipality or other political subdivision is located, then and only then, such endowment fund may be established with a Board of Trustees composed of three (3) or more persons, no two (2) of the trustees of which shall be directors of such cemetery association. . . ."

One of the primary rules governing statutory construction is that there is no room for construction when the law is expressed in plain and unambiguous language and its meaning is clear and obvious, in which case the law will be applied and enforced as it reads. Gilmore v. Waples, 108 Tex. 167, 188 S.W. 1037 (1916). Applying this rule to the foregoing statute, we find nothing in the wording of the statute which requires that perpetual care trust funds be deposited only in a trust company or bank having trust powers in the county in which the cemetery association is located.

Article 912a-15 was codified from Section 15 of House Bill 46, Acts 49th Leg., 1945, ch. 340, p. 559. This Section as originally adopted by the Legislature did not require that the trust company or bank in which perpetual care funds were deposited be located within the county in which the cemetery association is located. This Section was amended by the Fiftieth Legislature in 1947 (H.B. 98, Acts 50th Leg., ch. 210, p. 372) so as to provide "that if there is no trust company or bank with trust powers, qualified and willing to accept such trust funds at the regular fees established by the Texas Trust Act, located within the county within which such cemetery association, municipality or other political subdivision is located, then and only then, such endowment fund may be established with a Board of Trustees composed of three (3) or more persons, no two (2) of the trustees of which shall be directors of such cemetery association."

We find no expression in this Section as originally enacted or as amended indicating an intention on the part of the Legislature to require that perpetual care funds be deposited only in a trust company or bank with trust powers located within the county in which the cemetery association is located. It is

the opinion of this office that the act of the cemetery association in entrusting the endowment fund to the First National Bank of Beaumont, outside the home county of the association, is within its legal authority.

SUMMARY

Under Article 912a-15, V.C.S., a perpetual care cemetery association is authorized to deposit its trust funds with a trust company or bank having trust powers outside the county wherein such association is located.

APPROVED:

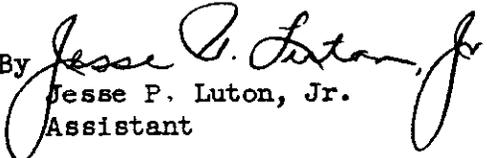
Everett Hutchinson
Executive Assistant

Charles D. Mathews
First Assistant

JPL:lg

Yours very truly,

PRICE DANIEL
Attorney General

By 
Jesse P. Luton, Jr.
Assistant