



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

August 3, 1967

Honorable Henry Wade
District Attorney, Dallas County
Dallas County Government Center
Dallas, Texas

Opinion No. M-115

Re: Would Article 4582b, V.C.S., be violated by a "de-dedication" of the two acre tract in question from its prior dedication for cemetery purposes and its subsequent sale to a certain bank, as trustee of a certain Perpetual Care Endowment Fund, and subsequently thereafter being leased to a duly licensed funeral establishment?

Dear Mr. Wade:

By recent letter you have requested an opinion of this office with regard to the above stated matter.

The only portion of Article 4582b, Vernon's Civil Statutes, which is relevant to a determination of your request is Section 4, Subsection C, Paragraph 8, which is as follows:

"C. Each funeral establishment shall be required to have a physical plant, equipment and personnel consisting of the following, . . .

8. A physical plant located at a fixed place and not located on any tax exempt property or cemetery;" (Emphasis added).

A determination of the validity of the proposed procedure is a matter of ascertaining whether the two acre tract will be tax exempt property or a cemetery; if it were neither, there could be no violation of Article 4582b, (4) (C) (8). If, as you indicated in your letter, the dedication is removed by court order obtained pursuant to proceedings initiated under

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Article 912a-11, Vernon's Civil Statutes, the property would lose its status as being tax exempt according to this Article, and thereby eliminate that question from our consideration.

We must next consider whether or not such property would then be a cemetery. Article 912a-1 defines cemetery as "a place dedicated to and used and intended to be used for the permanent interment of the human dead". Thus, the two acre tract in question, no longer being so dedicated, would no longer be a cemetery.

The subsequent sale of such tract to a bank as trustee of a perpetual care fund is not prohibited by Article 4582b; thus it would not be in violation thereof.

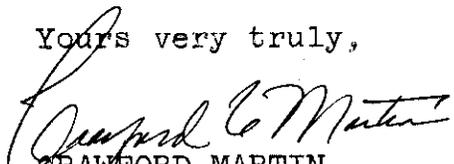
It is the opinion of this office that Article 4582b, would not be violated by a "de-dedication" of the two acre tract in question from its prior dedication for cemetery purposes and its subsequent sale to a certain bank, as trustee of a certain Perpetual Care Endowment Fund, and subsequent lease thereafter to a duly licensed funeral establishment.

This opinion must of necessity be limited to the fact situation herein presented.

S U M M A R Y

Article 4582b, Vernon's Civil Statutes, is not violated by a "de-dedication of the two acre tract in question from its prior dedication for cemetery purposes and its subsequent sale to a certain bank, as trustee of a certain Perpetual Care Endowment Fund, and subsequent lease thereafter to a duly licensed funeral establishment.

Yours very truly,


CRAWFORD MARTIN
Attorney General of Texas

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APPROVED:
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