



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 26, 1993

Honorable John Fouts  
District Attorney  
39th Judicial District  
P.O. Box 996  
Haskell, Texas 79521

Letter Opinion No. 93-16

Re: Whether there exist any restrictions on  
the burial of non-human animals in a  
cemetery (ID# 18159)

Dear Mr. Fouts:

You have requested our opinion as to whether there exist any restrictions on the burial of non-human animals in a cemetery. You indicate your understanding that the cemetery in question is operated by a county, and that one or more dogs have been buried there. You are not aware of any deed or covenant restrictions that would preclude the interment of dogs or other non-human animals at this particular site.

With regard to relevant state regulation of cemeteries, chapter 711 of the Health and Safety Code codifies the "general provisions relating to cemeteries." "Cemetery" is defined as

a place that is dedicated to and that is used or intended to be used for interment, and includes a graveyard, burial park, or mausoleum.

Health & Safety Code § 711.001(2). Nothing in chapter 711 expressly prohibits the burial of non-humans. A number of provisions, however, are couched in language from which it might be reasonably inferred that burial is limited to humans. Section 711.002, for example, speaks in terms of "the *person's* remains" and declares, *inter alia*, that a "decendent's surviving spouse" may control "the disposition . . . of the person's remains" and is "liable for the reasonable cost of interment." Certainly, it would be unusual to apply such language to non-human animals. Nevertheless, we are loath to infer an express prohibition in such an indirect manner.

Fortunately, we need not do so. Chapter 713 of the Health and Safety Code addresses "local regulation of cemeteries." Section 713.027 thereof provides:

(a) A county with a population of 8,200 or less may own, operate, and maintain a cemetery and sell the right of burial in the cemetery.

(b) The sale of the right of burial is exempt from the requirements of Sections 263.001-263.006, Local Government Code.<sup>1</sup>

(c) Revenue received from the sale of the right of burial may be used to purchase additional land for cemetery purposes and for maintenance of county cemetery property.

(d) The commissioners court of the county may spend money in the general fund to maintain a public cemetery in the county and may dedicate not more than one-eighth of the maximum allowable tax levy for that purpose.

(e) The commissioners court of the county serves as the county cemetery board and shall manage cemetery property.

You serve as district attorney for four counties--Throckmorton, Haskell, Stonewall and Kent--each of which has a population of fewer than 8,200, according to the 1990 federal census. In our opinion, in light of those provisions of section 713.027 which authorize the commissioners court to "operate and maintain" and to "manage" the county cemetery, it is for the commissioners court to determine whether to permit the future interment of non-humans in the cemetery, and to determine the fate of any non-human cadavers buried there at the present time.

### S U M M A R Y

Section 713.027 of the Health and Safety Code authorizes a commissioners court in a county of fewer than 8,200 to determine whether non-human animals may be buried in a cemetery owned and operated by the county.

Yours very truly,



Rick Gilpin  
Deputy Chief  
Opinion Committee

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<sup>1</sup>Sections 263.001 - 263.006 of the Local Government Code regulate the sale or lease of county property by a commissioners court.