

CHAPTER 128. CEMETERIES

CEMETERY OR BURIAL GROUNDS

Act 215 of 1937

AN ACT to authorize municipalities to own or control cemetery or burial grounds; to provide for perpetual care and maintenance; to provide for endowment and perpetual care funds; and to permit municipalities to authorize the creation of joint cemetery associations.

History: 1937, Act 215, Imd. Eff. July 21, 1937;—Am. 1980, Act 366, Imd. Eff. Dec. 30, 1980;—Am. 2014, Act 422, Imd. Eff. Dec. 30, 2014.

The People of the State of Michigan enact:

128.1 Perpetual care and maintenance of cemetery or burial lot; resolution or ordinance; payment; investment in mutual funds; petition to transfer money to municipality.

Sec. 1. (1) The legislative body of a municipality owning or controlling a cemetery or burial grounds may by resolution or ordinance provide for the perpetual care and maintenance of the cemetery or a burial lot upon the payment by the owner of the lot or another person of the agreed upon sum, and in consideration for which the municipality may bind itself to perpetually care for and maintain the lot.

(2) Subject to subsection (3), money deposited in a perpetual care and maintenance fund for a cemetery owned or controlled by a municipality may be invested in mutual funds consisting of fixed income securities, equity securities, or both, if both of the following requirements are met:

(a) The equity position of the perpetual care and maintenance fund does not exceed 60% of the perpetual care and maintenance fund balance and the equity position does not contain more than 40% in any given asset category.

(b) Each mutual fund is rated in the top 2 of 5 or more tiers by Morningstar, Inc. or another nationally recognized mutual fund rating agency at the time of purchase.

(3) Subsection (2) does not prohibit any other investments that may be authorized by law.

(4) A testamentary trustee appointed by a probate court of a trust fund, the income from which is to be used to maintain a cemetery or burial lot, may, upon petition to the probate court that authorized the trustee's appointment, be authorized and directed by the court to transfer the money in the trustee's possession in the corpus of the trust to a municipality under an ordinance or resolution adopted under subsection (1). Upon receipt of the money filed with the probate court the testamentary trustee may be discharged from the trust.

History: 1937, Act 215, Imd. Eff. July 21, 1937;—CL 1948, 128.1;—Am. 1980, Act 366, Imd. Eff. Dec. 30, 1980;—Am. 2016, Act 13, Eff. May 16, 2016.

128.2 Joint cemetery authority; formation and purpose.

Sec. 2. The legislative body of 2 or more municipalities may authorize the formation of a nonprofit corporation as a joint cemetery authority to acquire, own, operate, maintain, and sell real and personal property used for a cemetery or burial ground.

History: Add. 1980, Act 366, Imd. Eff. Dec. 30, 1980.

128.3 "Community foundation" and "municipality" defined.

Sec. 3. As used in this act:

(a) "Community foundation" means an organization that meets all of the following requirements:

(i) Has been in existence for at least 10 years.

(ii) Has assets of at least \$10,000,000.00.

(iii) Qualifies for exemption from federal income taxation under 501(c)(3) of the internal revenue code, 26 USC 501(c)(3).

(iv) Supports a broad range of charitable activities within the specific geographic area of this state that it serves, such as a municipality.

(v) Maintains an ongoing program to attract new endowment funds by seeking gifts and bequests from a wide range of potential donors in the geographic area served.

(vi) Is publicly supported, as defined by 26 CFR 1.170A-9(f).

(vii) Meets the requirements for treatment as a single entity under 26 CFR 1.170A-9(f)(11).

(viii) Is not an organization described in section 509(a)(3) of the internal revenue code, 26 USC 509(a)(3).

(ix) Has an independent governing body representing the general public's interest and that is not appointed by a single outside entity.

(x) Maintains continually at least 1 part-time or full-time employee beginning not later than 6 months after the community foundation is incorporated or established.

(xi) Is subject to an annual independent financial audit.

(xii) For a community foundation that is incorporated or established after January 9, 2001, operates in a county of this state that was not served by a community foundation when the community foundation was incorporated or established or operates as a geographic component of an existing community foundation.

(b) "Municipality" means a city, village, township, or county.

History: Add. 1980, Act 366, Imd. Eff. Dec. 30, 1980;—Am. 2014, Act 422, Imd. Eff. Dec. 30, 2014.

128.4 Irrevocable endowment and perpetual care fund; establishment as component fund within community foundation; powers and duties of community foundation; "fund" defined.

Sec. 4. (1) Subject to this section, to lessen the burden of government, each municipality with a municipally owned cemetery may establish and maintain an irrevocable endowment and perpetual care fund as a component fund within a community foundation by entering into an irrevocable agreement with the community foundation.

(2) The amounts deposited into the fund shall be held in perpetuity by the community foundation except that the community foundation shall annually authorize 2 distributions of interest and other earnings to the municipality for care and maintenance of the cemetery. The withdrawals shall be documented. The cemetery shall maintain records showing that earnings from the fund are used exclusively for endowment and for care and maintenance of the cemetery. The community foundation is not responsible for ascertaining that money paid to the municipality is expended for the limited purposes authorized in this subsection.

(3) Subject to the terms of the agreement, the fees and costs of the community foundation for services under this section and the agreement may be paid from the principal of the fund.

(4) The community foundation shall submit to the legislative body of the municipality an annual fund statement that includes all of the following information for the reporting period:

(a) Beginning and ending fund balances.

(b) Deposits to the fund, including interest and earnings from fund investments.

(c) Documentation of distributions from the fund under subsection (2).

(d) Documentation of any expenditures under subsection (3).

(5) As used in this section, "fund" means an endowment and perpetual care fund established under subsection (1).

History: Add. 2014, Act 422, Imd. Eff. Dec. 30, 2014.

PUBLIC CEMETERIES Act 46 of 1931

AN ACT to supplement the laws providing for the establishment, control, maintenance and care of public cemeteries by cities and townships within this state; to define the powers and duties of cemetery boards and other public officials invested by law with the management thereof; to provide for the termination and forfeiture of rights in certain unused burial spaces in such cemeteries; to prescribe and regulate the procedure with reference thereto; to authorize the resale of such spaces and to direct the investment and use of the funds received therefrom; and to repeal all acts or parts of acts inconsistent with the provisions hereof.

History: 1931, Act 46, Eff. Sept. 18, 1931;—Am. 1947, Act 149, Eff. Oct. 11, 1947.

The People of the State of Michigan enact:

128.11 Definitions.

Sec. 1. The term “cemetery” as used herein shall be deemed to refer to any public cemetery owned, managed or controlled by any city, village or township within this state. “Cemetery Board” as used herein shall be construed as referring to and including any board, trustees or public official or officials invested by law with the duty of managing or controlling any public cemetery as herein defined. “Burial space” means a lot or portion thereof in any cemetery as aforesaid designed and intended for the interment of human bodies or of a human body, but not used for such purpose. “Owner” means any person or persons owning or possessing the privilege, license or right of interment in any burial space.

History: 1931, Act 46, Eff. Sept. 18, 1931;—Am. 1947, Act 149, Eff. Oct. 11, 1947;—CL 1948, 128.11;—Am. 1949, Act 107, Imd. Eff. May 17, 1949.

128.12 Failing or neglecting to care for and maintain burial space; proceedings for termination and forfeiture of owner's rights and interest; resolution; petition; service; publication of hearing notice; failure to appear and answer; default.

Sec. 2. If the owner of a burial space in a public cemetery, subject to the provisions of this act, fails and neglects for a period of 7 years or more to care for and maintain the burial space in accordance with the laws, rules, and regulations relating to the care and maintenance of burial spaces, the cemetery board may institute proceedings for the termination and forfeiture of the owner's rights and interest in the burial space. If the cemetery board determines that the owner has failed or neglected to care and maintain the burial space, the cemetery board shall adopt a resolution reciting this determination. A certified copy of the resolution shall be served on the owner personally by a competent person or shall be sent by first class mail to the owner's last known address. If within 30 days after the sending of the resolution the owner does not comply or make provisions for complying with the laws, rules, and regulations, the cemetery board may cause a petition to be filed in the circuit court for the county in which the cemetery is located. The petition shall set forth the facts relating to the sale and ownership of the burial space, the owner's failure and neglect to comply with the laws, rules, and regulations for the care and maintenance of the burial space, and shall ask for the termination and forfeiture of the owner's rights to the burial space. The petition shall be noticed for a hearing, on a date not less than 40 days from the date of filing. Within 15 days after filing, a copy of the petition with the hearing notice shall be personally served on the owner or copies of the petition shall be sent by first class mail to the last known address of the owner. Notice of the hearing shall be published once each week for 3 successive weeks in a newspaper of general circulation in the county in which the cemetery is located. The first notice shall be published not less than 30 days before the date of hearing. After the petition and notice have been served or sent, it is the owner's duty to appear and answer to the allegations of the petition. If the owner fails to appear and answer on the day noticed for hearing, the owner's default may be entered in the manner provided for by law.

History: 1931, Act 46, Eff. Sept. 18, 1931;—CL 1948, 128.12;—Am. 1989, Act 14, Imd. Eff. May 10, 1989.

128.13 Burial space; proceedings for termination of rights; forfeiture; city, village or township may re-sell; copy of order served on owner; redemption.

Sec. 3. On the day noticed for the hearing of said petition or on any subsequent day to which the hearing of the cause is adjourned, the proofs and allegations of the parties shall be presented to the court and if said court shall determine therefrom that the owner has failed and neglected for a period of 7 years preceding the filing of said petition to comply with the rules and regulations relating to the maintenance and the care of said burial space or spaces, an order shall be entered accordingly, forfeiting and terminating the rights and interest of such owner in and to said burial space or spaces, subject to the provisions of this act, and shall further provide

that the city, village or township, through and by its proper board or other officials shall have the right to re-sell such spaces and to use the proceeds derived from such sale in the manner and for the purposes hereinafter provided. A duly certified copy of such order shall, within a period of 10 days after the entering thereof, be personally served on such owner or shall be sent by registered mail to his last known place of address. Following the entering of such order aforesaid, the owner shall have a period of 60 days in which to redeem the right or interest in and to such spaces by paying the costs incurred in the proceeding, not exceeding \$15.00, and by complying with the rules and regulations provided for the care and maintenance thereof, or by making provision for such compliance. If it shall be made to appear to the court at any time before the expiration of such 60 day period that the owner has so redeemed the right or interest, an order shall be made and entered, setting aside the previous order of termination and forfeiture.

History: 1931, Act 46, Eff. Sept. 18, 1931;—Am. 1933, Act 72, Imd. Eff. May 5, 1933;—Am. 1935, Act 18, Eff. Sept. 21, 1935;—Am. 1937, Act 150, Imd. Eff. July 2, 1937;—Am. 1939, Act 257, Imd. Eff. June 15, 1939;—Am. 1941, Act 187, Imd. Eff. June 16, 1941;—CL 1948, 128.13;—Am. 1949, Act 107, Imd. Eff. May 17, 1949.

128.14 Duty of board.

Sec. 4. It shall be the duty of the cemetery board to keep an accurate account of all expenses incurred by it under the provision of this act and shall charge such expenses against the burial spaces involved. If, at the expiration of 60 days from and after the entering of the order of termination and forfeiture hereinbefore provided for, the owner shall not have redeemed his right or interest, the board is authorized and empowered to maintain and care for the burial space or spaces involved and shall keep an accurate and detailed account of all money expended for such purpose.

History: 1931, Act 46, Eff. Sept. 18, 1931;—CL 1948, 128.14.

128.15 Reconveyance; perpetual care trust fund.

Sec. 5. At any time during the period of 2 years from and after the entering of the order of termination and forfeiture, the owner of any burial space or spaces shall be entitled to a reconveyance to him by the cemetery board on the payment of the costs and expenses incurred in said proceeding, not exceeding 15 dollars, in the care and maintenance of such space or spaces. If such reconveyance is not sought and obtained during said 2 year period, then and thereupon the cemetery board shall be authorized and empowered to offer such spaces for sale in accordance with the rules and regulations of said board governing the sale of lots and spaces in the cemetery concerned. The proceeds derived therefrom shall be used to defray the expenses incurred in accordance with the provisions of this act and the balance, if any, shall be placed in a fund to be known as the "Perpetual care trust fund" of the cemetery. The income therefrom shall be used by the board for the future maintenance, care and upkeep of the cemetery.

History: 1931, Act 46, Eff. Sept. 18, 1931;—CL 1948, 128.15.

128.16 Rights not forfeited; conditions.

Sec. 6. Nothing in this act contained shall be construed to authorize the forfeiture or termination of rights or interest in and to any burial space that has been used for interment nor shall any such space be subject to resale under the provisions hereof.

History: 1931, Act 46, Eff. Sept. 18, 1931;—CL 1948, 128.16.

ESTABLISHMENT OF CEMETERIES Act 55 of 1915

128.21 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.

VACATING CEMETERY IN TOWNSHIP

Act 49 of 1895

AN ACT to provide for vacating cemeteries in townships.

History: 1895, Act 49, Eff. Aug. 30, 1895.

The People of the State of Michigan enact:

128.31 Removal of private cemetery; complaint; grounds; proceedings to vacate; power of circuit court.

Sec. 1. When a complaint is made in writing to the board of trustees of a township in this state, by 10 or more residents of the township, setting forth the fact that a private cemetery within the bounds of the township should be removed for the reason that the cemetery has become commons, has become neglected or abandoned by its owner or owners, has become a public nuisance, or shall impede the growth of a city or village in the township, or when a private cemetery endangers the health of the people living in the immediate vicinity of the private cemetery, the township board of trustees immediately shall institute proceedings to vacate the cemetery in the manner provided in this act. The circuit court for the county in which the cemetery is located may vacate the private cemetery, or a part of the private cemetery, on petition made to the court as provided in this act.

History: 1895, Act 49, Eff. Aug. 30, 1895;—CL 1897, 2387;—CL 1915, 2163;—CL 1929, 2657;—CL 1948, 128.31;—Am. 1980, Act 367, Imd. Eff. Dec. 30, 1980.

128.32 Petition; filing; contents; notice; neglect or refusal to appoint attorney or agent; proceeding by freeholder resident; security for costs.

Sec. 2. The petition shall be made by the board of trustees by an agent or attorney appointed by it for that purpose. The agent or attorney shall file a petition signed and sworn to by the agent or attorney, in the office of the register of the court for the proper county. The petition shall set forth his or her authority as attorney or agent, the particular reasons for making and filing the petition, and a distinct description of the premises on which the cemetery is located. The petition shall be filed 30 days before the first day of the term for which the petition shall be noticed for hearing. Notice of the pendency and hearing of the petition shall be given for the same space of time, by publishing the same in a newspaper, published in the proper county, once in each week for 4 successive weeks before the first day of the term when the case is noticed for hearing. If the board of trustees neglects or refuses to appoint an attorney or agent within 30 days after the complaint in writing has been filed with the board, then a freeholder resident of the township may file the petition and proceed in the same manner as though regularly appointed as an agent or attorney. The freeholder may be required, upon the order of the circuit court, to furnish security for costs should the petition be denied.

History: 1895, Act 49, Eff. Aug. 30, 1895;—CL 1897, 2388;—CL 1915, 2164;—CL 1929, 2658;—CL 1948, 128.32;—Am. 1980, Act 367, Imd. Eff. Dec. 30, 1980.

128.33 Hearing; burden of proof; order, recording.

Sec. 3. That the hearing on such petition may be continued from term to term, in the discretion of the court, without further notice; that all testimony may be taken in open court, or the taking of the same may be referred, in the discretion of the court, to a circuit court commissioner of the proper county; that, under the discretion of the court, proper issues may be made for the determination of all questions of law and fact, and all questions of compensation to any person or persons to be affected by such proceedings, and all questions touching the compensation to be paid by the person or persons to whom said premises or any part thereof shall be sold after the same shall have been vacated as such cemetery, and all issues of fact may be tried by a jury, or 3 commissioners, if the court shall so order, and any person adversely interested may cause himself to be made defendant to such petition. In all cases where reference shall be made to a jury or commissioners to determine the compensation to be paid to or by any persons as aforesaid, the proceedings upon such reference, shall, so far as practicable, be like those had in cases where a jury is impaneled or commissioners are selected, to ascertain and determine the necessity of taking lands, franchises, and other property for the construction of railroads, and to appraise the damages and compensation to be allowed therefor. If upon hearing, such petitioner shall produce satisfactory evidence to the court that the notice required by this act has been given, and that such cemetery should be vacated in whole or in part, as a place of burial, for any of the reasons given in this act for vacating cemeteries, such court shall thereupon order that such cemetery shall be vacated, in whole or in part, as a place of burial. That a copy of such order, certified by the register of such court under his seal, shall be recorded by the petitioners in the office of the register of deeds of the proper county.

History: 1895, Act 49, Eff. Aug. 30, 1895;—CL 1897, 2389;—CL 1915, 2165;—CL 1929, 2659;—CL 1948, 128.33.

128.34 Reinterment of dead bodies and remains; removal and erection of fences, tombstones, and monuments; removal during certain months prohibited; exception; costs.

Sec. 4. (1) When a cemetery is vacated as provided in this act, the township board of trustees shall cause all the dead bodies and remains buried in the cemetery to be reinterred in the cemetery of the township, if it has a cemetery, and if not, then in some suitable cemetery in an adjoining township, in a prudent, careful, and respectful manner, and shall cause to be removed and again erected over the proper remains, permanent fences around graves and lots, tombstones, and monuments, with as little injury possible. If the cemetery vacated belongs to a religious society or church, and another suitable cemetery belonging to the same church or denominational society exists within the township or an adjoining township, then the removal may be made to that cemetery instead of to the township cemetery. A removal of bodies and remains shall not be made during June, July, August, or September, except in the Upper Peninsula.

(2) The removal and the cost of the proceedings under this act shall be at the expense of, and paid by, the township in which the cemetery is situated. If the proceeding is instituted by an individual, without the consent of the township board of trustees, and the petition is denied by the court, the person instituting the proceeding shall be required to pay the costs allowed by order of the circuit court.

History: 1895, Act 49, Eff. Aug. 30, 1895;—CL 1897, 2390;—CL 1915, 2166;—CL 1929, 2660;—CL 1948, 128.34;—Am. 1980, Act 367, Imd. Eff. Dec. 30, 1980.

128.35 Reimbursement of lot owner.

Sec. 5. If the land vacated reverts to the township or to a person, the township, on demand, and upon the conveyance of the lot, if conveyance is necessary, to the township board of trustees or private person, shall repay to the owner the price the owner paid for the lot.

History: 1895, Act 49, Eff. Aug. 30, 1895;—CL 1897, 2391;—CL 1915, 2167;—CL 1929, 2661;—CL 1948, 128.35;—Am. 1980, Act 367, Imd. Eff. Dec. 30, 1980.

128.36 Reversion to original owner; conditions.

Sec. 6. In all cases where the land embraced in the cemetery so vacated shall not exceed 1 acre in area it shall revert to the original grantor or his heirs, or be so conveyed to him or them by the said township if necessary: Provided, said grantor or his heirs shall first pay to said township the value of said land based upon the market price of like land in the immediate vicinity.

History: 1895, Act 49, Eff. Aug. 30, 1895;—CL 1897, 2392;—CL 1915, 2168;—CL 1929, 2662;—CL 1948, 128.36.

VACATING CEMETERY IN CITY OR VILLAGE

Act 164 of 1871

AN ACT to provide for vacating cemetery plats and cemetery grounds in the limits of incorporated cities and villages.

History: 1871, Act 164, Eff. July 18, 1871.

The People of the State of Michigan enact:

128.41 Vacation of cemetery; jurisdiction of chancery court.

Sec. 1. That whenever the trustees of any incorporated village, or the common council of any city, shall by resolution adopted by them, determine that the dead bodies buried in any public or private cemetery located in such city or village should be removed therefrom, for the reason that such cemetery shall have become commons, or has become neglected or abandoned by its owner or owners, or has become a public nuisance, or shall impede the growth of any such city or village, or shall endanger the health of the people living in the immediate vicinity thereof, the circuit court in chancery of the county in which such cemetery is located is hereby authorized to vacate the same, or any part thereof, on petition made to such court as hereinafter provided.

History: 1871, Act 164, Eff. July 18, 1871;—CL 1871, 3423;—How. 4790;—CL 1897, 3485;—CL 1915, 3481;—CL 1929, 2663;—Am. 1941, Act 149, Eff. Jan. 10, 1942;—CL 1948, 128.41.

128.42 Petition of trustees or council to vacate; notice.

Sec. 2. That such petition shall be made in behalf of said trustees or common council by an attorney or agent appointed by them for that purpose, who shall file a petition signed and sworn to by him in the office of the register of said court for the proper county, which petition shall set forth his authority as attorney or agent, the particular reasons for making and filing such petition and a distinct description of the premises on which such cemetery is located, which petition shall be filed as aforesaid 30 days previous to the first day of the term for which such petition shall be noticed for hearing. That notice of the pendency and hearing of such petition shall be given for the same space of time by publishing the same in a newspaper published in the proper county once in each week for 4 successive weeks prior to the first day of the term when such case is noticed for hearing.

History: 1871, Act 164, Eff. July 18, 1871;—CL 1871, 3424;—How. 4791;—CL 1897, 3486;—CL 1915, 3482;—CL 1929, 2664;—CL 1948, 128.42.

128.43 Court proceedings; order to vacate; recording.

Sec. 3. That the hearing of such petition may be continued from term to term in the discretion of the court, without further notice, that all testimony may be taken in open court or the taking of the same may be referred in the discretion of the court to a circuit court commissioner of the proper county. That under direction of the court proper issues may be made for the determination of all questions of law and fact and all questions of compensation to any person or persons to be affected by such proceedings and all issues of fact may be tried by a jury if the court shall so order, and any person adversely interested may cause himself to be made defendant to such petition. In all cases where reference shall be made to a jury to determine the compensation to be paid to any person or persons as aforesaid, the proceedings upon such reference shall so far as practicable be like those had in cases where a jury is empaneled to ascertain and determine the necessity of taking lands, franchises and other property for the construction of railroads and to appraise the damages and compensation to be allowed therefor. If upon the hearing of such petition the petitioner shall produce satisfactory evidence to the court that said trustees or common council have determined as aforesaid, that the notice required by this act has been given, and that such cemetery should be vacated in whole or in part as a place of burial for any of the reasons given in this act for vacating cemeteries, such court shall thereupon order that such cemetery shall be vacated in whole or in part as a place of burial. That a copy of such order certified by the register of such court under his seal shall be recorded by the petitioner in the office of the register of deeds of the proper county.

History: 1871, Act 164, Eff. July 18, 1871;—CL 1871, 3425;—How. 4792;—CL 1897, 3487;—CL 1915, 3483;—CL 1929, 2665;—CL 1948, 128.43.

128.44 Reinterment; time of year; expenses, payment.

Sec. 4. That when any cemetery shall be vacated as provided in this act, the said trustees or common council shall cause all the dead bodies and remains buried in such cemetery to be re-interred in the cemetery

of such city or village, if they have one, and if not, then in some suitable cemetery not more than 6 miles from the nearest corporate limits of said city or village in a prudent, careful and respectful manner, and shall cause to be removed and again erected over the proper remains, all permanent fences around graves and lots, all tombstones and monuments, with as little injury as the case will admit, Provided, That no removal of said bodies and remains shall be made during the months of June, July, August or September, such removal, and the costs of the proceedings under this act, shall be at the expense of and paid by the city or village in which such cemetery is located.

History: 1871, Act 164, Eff. July 18, 1871;—CL 1871, 3426;—How. 4793;—CL 1897, 3488;—CL 1915, 3484;—CL 1929, 2666;—CL 1948, 128.44.

128.45 Price of lots repaid.

Sec. 5. In all cases where the title to the land vacated shall revert to such city or village, such city or village shall on demand and upon the conveyance of said lot (where conveyance may be necessary) to said city or village, repay to any owner the price he may have paid for his lot.

History: 1871, Act 164, Eff. July 18, 1871;—CL 1871, 3427;—How. 4794;—CL 1897, 3489;—CL 1915, 3485;—CL 1929, 2667;—CL 1948, 128.45.

VACATING CEMETERY IN CITY OR VILLAGE

Act 297 of 1929

AN ACT to provide for vacating private and public cemetery plats and cemetery grounds in the limits of incorporated cities and villages and to provide for the acquisition by said cities and villages of the cemetery grounds and plats vacated hereunder.

History: 1929, Act 297, Imd. Eff. May 23, 1929.

The People of the State of Michigan enact:

128.51 Circuit court in chancery; jurisdiction to vacate cemeteries.

Sec. 1. That, whenever the trustees of an incorporated village, or the common council of any city, shall, by a resolution adopted by them, determine that the dead bodies buried in any private or public cemetery located in such city or village should be removed therefrom for the reason that such cemetery shall impede the establishment, maintenance, development or enhancement of any public improvement by such city or village, the circuit court in chancery of the county in which such cemetery is located, upon such findings, and under the conditions hereinafter set forth, is hereby authorized to vacate the same, or any part thereof, on petition made to such court, as hereinafter provided.

History: 1929, Act 297, Imd. Eff. May 23, 1929;—CL 1929, 2668;—CL 1948, 128.51.

128.52 Contract for sale of private cemetery to city, village; contents.

Sec. 2. That, upon the adoption of such a resolution, it shall be competent for the board of directors, or board of trustees, of such cemetery association, as is the owner of such cemetery, to agree upon a contract for the sale of such cemetery to such city or village: Provided, however, That the validity and enforceability of such contract shall be conditioned upon the aforesaid circuit court authorizing the vacating of such cemetery under the terms hereof: Provided further, That such contract shall be approved by a 3/4 vote of the scrip holders or stockholders of such cemetery association, at a special meeting called for that purpose, notice of such meeting to be mailed to the last known place of residence of such scrip holders or stockholders: And provided further, That such contract shall provide that such cemetery association agrees to provide, within a reasonable distance from such city or village, a cemetery ground suitable for the reinterment of such dead bodies and remains as are ordered to be vacated: And provided further, That such contract shall provide that such cemetery association agrees to reinter such dead bodies and remains, except as to such as are interred in the lots of objecting lot owners or grave owners, as hereinafter set forth.

History: 1929, Act 297, Imd. Eff. May 23, 1929;—CL 1929, 2669;—CL 1948, 128.52.

128.53 Petition of trustees or council to vacate; filing, notice.

Sec. 3. That, upon the execution of such contract, a petition shall be made in behalf of said village trustees, or common council, by an attorney, or agent, appointed by them for that purpose, who shall file a petition, signed and sworn to by him, in the office of the clerk of said court for the proper county, which petition shall set forth his authority, as attorney, or agent, the particular reasons for making and filing such petition, a copy of the aforesaid contract with the cemetery association, and a complete legal description of the premises on which said cemetery is located, which petition shall be filed as aforesaid, at least 30 days previous to the date for which such petition shall be noticed for hearing. That notice of the pendency and hearing of such petition shall be given by publishing the same in a newspaper circulated in the proper county, once in each week, for 4 successive weeks, prior to the date of the hearing.

History: 1929, Act 297, Imd. Eff. May 23, 1929;—CL 1929, 2670;—CL 1948, 128.53.

128.54 Compensation to objecting lot owners; credit on contract; condition precedent.

Sec. 4. That, should there appear at the hearing of such petition any objecting lot owner or grave owner of such cemetery, setting forth, by special petition, that he has not come to an agreement with said cemetery association in respect to the necessity for such removal under the terms of this act and in respect to compensation for the loss of burial rights, or for the removal of dead bodies interred on their lots, compensation shall be awarded to such lot owners and grave owners in the manner hereinafter set forth, and such compensation shall be paid by said city, or village, and shall, thereafter, be deducted from the purchase price theretofore agreed to be paid to said cemetery association: Provided, however, That as a condition precedent to the payment of such compensation, such objecting lot owner and grave owner shall remove and reinter the dead bodies and remains on his lot.

History: 1929, Act 297, Imd. Eff. May 23, 1929;—CL 1929, 2671;—CL 1948, 128.54.

128.55 Court proceedings; order to vacate, contents, recording; recorded under complete bar.

Sec. 5. That the hearing of such petition may be continued from term to term, in the discretion of the court, without further notice; that all testimony may be taken in open court, or the taking of the same may be referred, in the discretion of the court, to a circuit court commissioner of the proper county; that, under direction of the court, proper issues may be made for the determination of all questions of law and fact, and all questions of compensation to any person, or persons, to be affected by such proceedings, and all issues of fact may be tried by a jury, if the court shall so order, and any person adversely interested may cause himself to be made defendant to such petition. In all cases where reference shall be made to a jury to determine the compensation to be paid to any person or persons, as aforesaid, the proceedings upon such reference shall, so far as practicable, be like those had in cases where a jury is empaneled to ascertain and determine the necessity of taking lands and other property as provided by the charter of the municipality or as provided in Act No. 149 of the Public Acts of 1911, as amended by Act No. 37 of the Public Acts of 1925, entitled "An act to provide for the condemnation by state agencies and public corporations of private property for the use or benefit of the public, and to define the terms 'public corporations,' 'state agencies' and 'private property' as used herein," being sections 353 to 373, inclusive, of the Compiled Laws of 1915, or such other appropriate provisions therefor as exist or shall be made by law, and to appraise the damages and compensation to be allowed therefor. If, upon the hearing of such petition, the petitioner shall produce satisfactory evidence to the court, that said trustees, or common council, have determined, as aforesaid, that the notice required by this act has been given; that the aforesaid contract between such city or village and said cemetery association has been executed in accordance with the terms hereof, and that such cemetery should be vacated, in whole or in part, as a place of burial, for the reasons given in this act for vacating cemeteries, such court shall thereupon order that such cemetery shall be vacated, in whole or in part, as a place of burial; upon this condition, however, that said city or village shall perform its obligations and agreements under the terms of the said contract. That a copy of such order certified by the register of such court under his seal shall be recorded by the petitioner in the office of the register of deeds of the proper county. That such order, when so recorded, shall be a complete bar to the rights of any person or persons, as lot owners and grave owners of such cemetery: Provided, however, That the rights of objecting lot owners and grave owners shall not be barred until the compensation awarded hereunder shall be paid by said city or village to the person or persons entitled to same or to the clerk of the county where such judgment was rendered.

History: 1929, Act 297, Imd. Eff. May 23, 1929;—CL 1929, 2672;—CL 1948, 128.55.

Compiler's note: For provisions of Act 149 of 1911, referred to in this section, see MCL 213.21 et seq.

128.56 Appeal; bond.

Sec. 6. Any lot owner or grave owner whose property may be taken, and any municipality or person, party to the proceedings under this act, considering himself aggrieved, may appeal from the order of the court confirming the verdict of the jury or order of the court made at the proceedings without a jury by filing in writing with the clerk of said court notice of such appeal within 5 days after the confirmation or order, and filing a bond in said court, to be approved by the judge thereof, conditioned for the prosecution of said appeal to judgment, and the payment of all costs, damages and expenses that may be awarded against him in case the judgment or confirmation shall be affirmed. Such appeal shall be perfected within the same time and prosecuted as far as practicable like an appeal in chancery.

History: 1929, Act 297, Imd. Eff. May 23, 1929;—CL 1929, 2673;—CL 1948, 128.56.

128.57 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.

Compiler's note: The repealed section pertained to removal and reinterment of dead bodies.

CARE OF CEMETERIES

Act 113 of 1915

AN ACT prescribing the powers and duties of township boards and legislative bodies of cities and villages with relation to the care of cemeteries; and to provide for perpetual care deposits, and the disbursement thereof.

History: 1915, Act 113, Eff. Aug. 24, 1915;—Am. 1951, Act 109, Eff. Sept. 28, 1951;—Am. 1952, Act 157, Eff. Sept. 18, 1952.

The People of the State of Michigan enact:

128.61 Cemeteries; joint maintenance by municipalities; money deposited in trust, limitation, expenditure.

Sec. 1. The township board of each township shall have the authority and it shall be its duty to cause all cemeteries within its township, except private cemeteries and cemeteries owned by cities and villages located in such townships, to be properly taken care of. The legislative body of any city or village may contribute to the maintenance and care of cemeteries owned by the township, and the township board may contribute to the maintenance and care of cemeteries owned by a city or village. Such contributions shall be paid from the respective contingent or general funds. The township boards of 2 or more adjoining townships, whether or not the townships are located in the same county may contribute to the maintenance and care of cemeteries owned by 1 or more of the townships. Any person or persons interested in the maintenance of a lot in any cemetery may deposit in trust with the township treasurer a sum of money not to exceed the sum of \$500.00, the interest or principal of which shall be expended to maintain the lot described in such amounts each year as shall be designated in the letter of deposit, or by agreement with the township board. Said maintenance money shall be expended under the supervision of the township board.

History: 1915, Act 113, Eff. Aug. 24, 1915;—CL 1915, 11190;—Am. 1919, Act 163, Eff. Aug. 14, 1919;—CL 1929, 2676;—CL 1948, 128.61;—Am. 1949, Act 57, Eff. Sept. 23, 1949;—Am. 1951, Act 109, Eff. Sept. 28, 1951;—Am. 1952, Act 157, Eff. Sept. 18, 1952;—Am. 1957, Act 204, Eff. Sept. 27, 1957.

128.62 Cemetery day.

Sec. 2. The third Wednesday in August of each year is hereby designated as “cemetery day” and is set aside as a day upon which the people in townships may devote a portion of their time to the improvement of their cemeteries. The township boards shall direct the manner of making such improvements.

History: 1915, Act 113, Eff. Aug. 24, 1915;—CL 1915, 11191;—CL 1929, 2677;—CL 1948, 128.62.

TRUST FUND FOR CARE OF CEMETERIES
Act 95 of 1909

AN ACT to authorize township boards of trustees to receive and hold property, real or personal, left to the board in trust for the upkeep of a cemetery or lots in a cemetery, and permitting the board to expend the funds in accordance with the trust.

History: 1909, Act 95, Eff. Sept. 1, 1909;—Am. 1980, Act 379, Eff. Mar. 31, 1981.

The People of the State of Michigan enact:

128.71 Township board of trustees; taking, receiving, and holding property in trust; purpose; expenditure of funds.

Sec. 1. The board of trustees of a township may take, receive, and hold property, real or personal, which may be granted, transferred, bequeathed, or devised to the board in trust, for the purpose of caring for or keeping in good repair a lot or lots, or a portion of a lot or lots, or the whole or a part of a township cemetery, and to expend the funds as specified in the trust.

History: 1909, Act 95, Eff. Sept. 1, 1909;—CL 1915, 5137;—CL 1929, 2678;—CL 1948, 128.71;—Am. 1980, Act 379, Eff. Mar. 31, 1981.

128.72 Trust fund; investment.

Sec. 2. All moneys and property which may be received by said board by way of gift, grant, devise or bequest, for cemetery purposes, shall be under the control of said board, and shall be held in trust by said board, subject to the terms and conditions on which the same were given, granted, devised or bequeathed, and the same shall constitute a trust fund. If left in money it shall, unless otherwise expressed by those making such gift, grant or bequest, be invested as a permanent fund in good, safe, interest bearing securities, the interest therefrom to be used as designated in said trust, under the supervision or direction of the said board; and no part of such income shall be used or appropriated for other than the purposes expressed in said trust, except the paying of the clerk of said board for his services in carrying out the provisions of said trust, which amount shall be determined by the board.

History: 1909, Act 95, Eff. Sept. 1, 1909;—CL 1915, 5138;—CL 1929, 2679;—CL 1948, 128.72.

128.73 Trust fund; not transferable.

Sec. 3. Neither the whole nor any part of the principal or income derived from said trust fund shall be either temporarily or permanently transferred to the general cemetery or other fund, or used for general cemetery purposes, or diverted in any way contrary to the provisions of the trust under which the same was received.

History: 1909, Act 95, Eff. Sept. 1, 1909;—CL 1915, 5139;—CL 1929, 2680;—CL 1948, 128.73.

128.74 Treasurer and custodian; bond.

Sec. 4. The clerk of said board shall be the treasurer of said board and custodian of such trust fund, and said board shall take into consideration this duty of the clerk in fixing the amount of his official bond, which in all cases shall be adequate to cover the moneys or property under his control for the purposes of this act.

History: 1909, Act 95, Eff. Sept. 1, 1909;—CL 1915, 5140;—CL 1929, 2681;—CL 1948, 128.74.

CARE AND PRESERVATION OF CEMETERY LOTS

Act 81 of 1903

AN ACT to provide for the care and preservation of cemetery lots.

History: 1903, Act 81, Eff. Sept. 17, 1903.

The People of the State of Michigan enact:

128.81 Cemetery lots; deposit for care with county treasurer.

Sec. 1. Any person residing in the state of Michigan, or elsewhere, may, during his lifetime, by will, or otherwise, deposit any sum of money with any county treasurer in the state of Michigan, which sum shall not be less than 50 dollars, for the care of any 1 lot, the interest only of which is to be used for the purpose of caring for such cemetery lot or lots in any cemetery within the state of Michigan, an accurate description of said lots, where and in what cemetery located, to be deposited by the person so depositing said money, giving the name of the county and township, village or city in which said cemetery is located, giving the number of the lot or lots, if said cemetery is platted, if not platted, then by giving the name of some person whose name shall be cut on a stone or monument on the lot or lots in the cemetery which he may wish to designate: Provided, This section shall not affect any municipality or association that has at this time provision for such deposit of money and laws governing the maintenance of cemetery lots.

History: 1903, Act 81, Eff. Sept. 17, 1903;—CL 1915, 2397;—CL 1929, 1278;—CL 1948, 128.81.

128.81a Deposit of money after June 30, 2018.

Sec. 1a. No money may be deposited with a county treasurer under section 1 after June 30, 2018.

History: Add. 2018, Act 8, Eff. Apr. 26, 2018.

128.82 Investment of money deposited under MCL 128.81.

Sec. 2. A county treasurer may invest money deposited with the county under section 1 in the same manner as county money under 1943 PA 20, MCL 129.91 to 129.97a.

History: 1903, Act 81, Eff. Sept. 17, 1903;—CL 1915, 2398;—Am. 1925, Act 208, Eff. Aug. 27, 1925;—CL 1929, 1279;—CL 1948, 128.82;—Am. 2018, Act 8, Eff. Apr. 26, 2018.

128.83 Transfer of earnings on investment; purpose.

Sec. 3. Each year, a county treasurer shall transfer any earnings on investments under section 2 to the cemetery owner or other operator of the cemetery in which the lot designated under section 1 is located for the purpose of caring for the lot.

History: 1903, Act 81, Eff. Sept. 17, 1903;—CL 1915, 2399;—Am. 1917, Act 324, Eff. Aug. 10, 1917;—CL 1929, 1280;—CL 1948, 128.83;—Am. 2018, Act 8, Eff. Apr. 26, 2018.

128.84 Repealed. 2018, Act 8, Eff. June 30, 2018.

Compiler's note: The repealed section pertained to delivery of receipt by county treasurer.

128.85 Treasurer's bond; increase.

Sec. 5. A bond covering a county treasurer as required by sections 35 and 36 of 1846 RS 14, MCL 48.35 and 48.36, must be for the faithful and proper discharge of duties under this act, including the holding of money deposited under this act. The bond must be increased or decreased to reflect the amount of money held by the county treasurer under this act, as determined by the county board of commissioners.

History: 1903, Act 81, Eff. Sept. 17, 1903;—CL 1915, 2401;—Am. 1917, Act 324, Eff. Aug. 10, 1917;—CL 1929, 1282;—CL 1948, 128.85;—Am. 2018, Act 8, Eff. Apr. 26, 2018.

128.86 Annual report on money deposited, invested, and expended.

Sec. 6. If a county treasurer holds money under this act, by January 31 of each year, the county treasurer shall report to the county board of commissioners on money deposited, invested, and paid under this act.

History: 1903, Act 81, Eff. Sept. 17, 1903;—CL 1915, 2402;—Am. 1925, Act 208, Eff. Aug. 27, 1925;—CL 1929, 1283;—CL 1948, 128.86;—Am. 2018, Act 8, Eff. Apr. 26, 2018.

128.87 Cemetery deposits; county liability.

Sec. 7. Every county in this state having any such cemetery fund, shall always be held accountable and liable for any and all such cemetery money in an action brought by any person having deposited such fund, or his heirs, or by any cemetery board, or township board, wherever the cemetery is located within the state of

Michigan.

History: 1903, Act 81, Eff. Sept. 17, 1903;—CL 1915, 2403;—CL 1929, 1284;—CL 1948, 128.87.

128.88 Cemetery deposits; tax exempt.

Sec. 8. All moneys set apart for the purposes specified in this act shall be exempt from taxation.

History: 1903, Act 81, Eff. Sept. 17, 1903;—CL 1915, 2404;—CL 1929, 1285;—CL 1948, 128.88.

128.89 Transfer of money after June 30, 2018; inability to identify location of cemetery or cemetery lot; certification of abandoned legal interests or rights; presumption; requirements; record of certification.

Sec. 9. (1) After June 30, 2018, a county treasurer may transfer money held for a lot under section 1 to any of the following to be held, invested, and expended for the care of the lot or the cemetery in which the lot is located:

(a) The cemetery owner or operator of the cemetery in which the lot is located.

(b) An irrevocable endowment and perpetual care trust fund or other trust fund under the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543, authorized to care for the lot or the cemetery in which the lot is located.

(c) A trust fund under 1909 PA 95, MCL 128.71 to 128.74, authorized to care for the lot or the cemetery in which the lot is located.

(d) A perpetual care and maintenance fund under 1937 PA 215, MCL 128.1 to 128.4, authorized to care for the lot or the cemetery in which the lot is located.

(e) An irrevocable endowment and perpetual care fund established under section 4 of 1937 PA 215, MCL 128.4, authorized to care for the lot or the cemetery in which the lot is located.

(2) After June 30, 2018, if a county treasurer is unable to identify the location of a cemetery or a cemetery lot for which money was deposited under section 1, and the county treasurer certifies as abandoned the legal interests or rights in money deposited under section 1 or in the use of money deposited for the purpose of caring for the cemetery lot under this act under subsections (3) to (5), the county treasurer may transfer the money deposited and any earnings from the investment of the money to the county general fund.

(3) A person or an estate possessing a legal interest or right in money deposited under section 1 or in the use of money deposited for the purpose of caring for a cemetery lot under this act, or both, is presumed to have abandoned the legal interest or right if 1 or more of the following apply:

(a) The cemetery described at the time money was deposited under section 1 does not exist or cannot be located by the county treasurer based on the information provided under section 1, or both.

(b) The lot described at the time money was deposited under section 1 does not exist or cannot be located by the county treasurer based on the description of the lot provided under section 1, or both.

(c) The description of the cemetery lot for which money was deposited under section 1 was inaccurate and as a result the cemetery lot cannot be located by the county treasurer.

(d) The number of a cemetery lot for which money was deposited under section 1 does not exist or the location of the cemetery lot cannot be identified by the county treasurer based on the number provided under section 1, or both.

(e) Money was deposited under section 1 for the purpose of caring for a cemetery lot in an unplatted cemetery containing the remains of an individual whose name was designated under section 1 and the cemetery does not contain the remains of an individual with the name provided under section 1 or the location of the remains of the named individual cannot be located within the cemetery identified, or both.

(4) If a legal interest or right is presumed to be abandoned under subsection (3), and the county treasurer seeks to certify the legal interest or right as abandoned under subsection (5), the county treasurer shall first satisfy all of the following requirements:

(a) The county treasurer shall publish a notice of intent to certify as abandoned the legal interests or rights in money deposited under section 1 or in the use of money deposited for the purpose of caring for a cemetery lot under this act. The notice under this subdivision must be published for 2 consecutive weeks in a newspaper of general circulation in the county in which the money was deposited, and, if the money was deposited for a cemetery lot located in another county, in a newspaper of general circulation in that county. A notice under this subdivision must include all of the following:

(i) The information relating to the cemetery lot provided to the county treasurer at the time money was deposited.

(ii) A statement indicating that the cemetery lot cannot be located.

(iii) Contact information for the office of the county treasurer.

(iv) A request that persons possessing a legal interest or right described in this subdivision or possessing

information regarding the location of the cemetery lot contact the office of the county treasurer.

(v) A statement indicating that the money deposited with the county treasurer will be transferred to the general fund of the county if the cemetery lot cannot be located and the legal interests and rights described in this subdivision are certified as abandoned under this section.

(b) The county treasurer shall post a copy of a notice published under subdivision (a) on the internet website of the county treasurer for at least 90 consecutive days.

(c) If the county treasurer was able to identify the location of a cemetery designated under section 1, the county treasurer shall send a written notice by first-class mail to the owner or operator of the cemetery notifying the cemetery owner or operator of the legal interest or right presumed to be abandoned under subsection (3), providing any information about the cemetery lot provided to the county treasurer at the time money was deposited with the county treasurer under section 1, and requesting that the cemetery owner or operator notify the county treasurer within 90 days after receipt of the notice if the cemetery owner or operator can identify the location of the cemetery lot. The cemetery owner or operator shall attempt to identify the location of the cemetery lot within the cemetery. If the cemetery owner or operator identifies the location of the cemetery lot within the cemetery, the cemetery owner or operator shall notify the county treasurer within 90 days after the receipt of the notice under this subdivision. If a county treasurer is notified of the location of a cemetery lot under this subdivision, the county treasurer may not certify a legal right or interest as abandoned under subsection (5).

(5) If 120 days have elapsed after the provision of notice under subsection (4) and the county treasurer is still unable to identify the location of the cemetery lot based on any information provided in response to notice under subsection (4), the county treasurer may certify as abandoned the legal interests and rights in money deposited under section 1 or in the use of money deposited for the purpose of caring for the cemetery lot under this act. The county treasurer shall retain a record of the certification under this subsection in the office of the county treasurer.

History: Add. 2018, Act 8, Eff. Apr. 26, 2018.

Compiler's note: Enacting section 3 of Act 8 of 2018 provides:

"Enacting section 3. Section 9 of 1903 PA 81, as added by this amendatory act, is intended by the legislature to advance the significant and legitimate public purpose of ensuring the availability and productive use of money deposited with a county treasurer for the purpose of maintaining cemetery lots and providing security in rights consistent with the health, safety, and welfare of the people of this state."

128.90 Definitions.

Sec. 10. As used in this act, "cemetery", "cemetery owner", and "operator" mean those terms as defined in section 2 of the cemetery regulation act, 1968 PA 251, MCL 456.522.

History: Add. 2018, Act 8, Eff. Apr. 26, 2018.

FENCING OF PRIVATE CEMETERIES Act 201 of 1911

128.91-128.93 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.

FENCING OF PRIVATE CEMETERIES

Act 211 of 1911

AN ACT to compel owners of private cemeteries in cities to keep the same enclosed with a suitable fence to prevent encroachment of live stock.

History: 1911, Act 211, Eff. Aug. 1, 1911.

The People of the State of Michigan enact:

128.101 Private cemeteries in cities; fencing.

Sec. 1. It shall be the duty of any owner or owners of private cemeteries in cities wherein lots are sold for private or family burial purposes, to keep the same at all times enclosed with a fence with self locking gates of entrance and exit. Said fence and gates to be erected under the direction of the council of the city in which such cemetery may be located and of such a character and strength as to prevent the encroachment of live stock, within the bounds of said cemetery.

History: 1911, Act 211, Eff. Aug. 1, 1911;—CL 1915, 11195;—CL 1929, 2685;—CL 1948, 128.101.

128.102 Private cemeteries in cities; notice to build or repair.

Sec. 2. It shall be the duty of the council of any city in this state wherein is located any private cemetery, or cemeteries, coming within the provisions of this act, to serve a written notice on the owner or owners of said private cemetery or cemeteries either to build or repair, as to said board seems necessary, within a certain specified period, not to exceed 90 days from the issuing of said notice such fence as in their judgment meets the requirements of the law and in lieu of the service of a written notice, publication of the notice may be made in any newspaper of general circulation in the city wherein said private cemetery or cemeteries are located, for a period of 6 successive weeks.

History: 1911, Act 211, Eff. Aug. 1, 1911;—CL 1915, 11196;—CL 1929, 2686;—CL 1948, 128.102.

128.103 Noncompliance with fencing requirement; erection by city council; expense.

Sec. 3. If at the expiration of said notice, the said owner or owners have neglected or refused to comply with the requirements of said notice and order of said council, it shall be the duty of said council to enter upon the premises of said private cemetery and erect or cause to be erected such fence as shall comply with the provisions of this act, and shall certify the costs of said construction to the city clerk, and said costs shall become a lien against the estate held in such private cemetery and shall be assessed and collected the same as other taxes against real estate in the city wherein such private cemetery is located.

History: 1911, Act 211, Eff. Aug. 1, 1911;—CL 1915, 11197;—CL 1929, 2687;—CL 1948, 128.103.

EXEMPTION OF PRIVATE BURIAL GROUNDS FROM TAXATION OR ATTACHMENT
Act 88 of 1875

AN ACT to exempt private burial grounds and places of interment for the dead from taxation and levy on execution or attachment.

History: 1875, Act 88, Eff. Aug. 3, 1875.

The People of the State of Michigan enact:

128.111 Private burial grounds; laying out; deed.

Sec. 1. That it shall be lawful for any person or persons in this state to lay out and survey any tract of land not included within the corporate limits of any city or village which may be owned by such person or persons, as a private burial ground for the use of their families or descendants for purposes of interment of members of such families and descendants, and for no other purpose, not exceeding in quantity 1 acre of land, and may make a deed of the same to some person or persons to be named therein as trustees, with such provisions for continuing such trusteeship as they shall deem necessary, which said deed shall be acknowledged by such persons making the same, in the same manner as other deeds of land, and shall be recorded in the county where such land shall lie.

History: 1875, Act 88, Eff. Aug. 3, 1875;—How. 4788;—CL 1897, 8416;—CL 1915, 11203;—CL 1929, 2688;—CL 1948, 128.111.

128.112 Private burial grounds; exemptions.

Sec. 2. Such land so laid out and described in said deed, when recorded in the register's office of the county where such land lies, shall operate as a grant forever of the land described in such deed to said trustees and their successors forever, for the purposes described in said deed, and no sale, judgment, or decree shall be made which shall have the effect to divert the same from the objects of said grant, set forth in such deed, and the same shall not be taxed for any purpose, or be subject to any sale for taxes or any execution, attachment, or other order of sale made by any court, and any deed made by said trustees or their successors, or upon any sale made for taxes, or upon any execution, or decree, or order of sale made by any court of said lands or any part thereof, or any tenements, tombs, or other structures, thereon and appurtenant thereto, shall be void and shall convey no interest or title to the grantee named in such deed.

History: 1875, Act 88, Eff. Aug. 3, 1875;—How. 4789;—CL 1897, 8417;—CL 1915, 11204;—CL 1929, 2689;—CL 1948, 128.112.

MEMORY DAYS
Act 22 of 1905

AN ACT to provide for the better care of cemeteries and of the graves therein.

History: 1905, Act 22, Imd. Eff. Mar. 20, 1905.

The People of the State of Michigan enact:

128.121 Memory days; purpose.

Sec. 1. That the twenty-fifth day of May and the thirtieth day of September in each year be and hereby are set apart and designated as “Memory Days”; said days to be used for the purpose of improving and beautifying the various cemeteries throughout the state and of the graves therein; that all may thus show forth on these days by these appropriate acts a loving and tender remembrance for the dead: Provided, however, That if either of the days herein designated shall fall on Sunday, the next Monday following shall be deemed “Memory Day” for all or any of the purposes of this act.

History: 1905, Act 22, Imd. Eff. Mar. 20, 1905;—CL 1915, 1097;—CL 1929, 2675;—CL 1948, 128.121.

ENLARGEMENT OF TOWNSHIP BURIAL GROUNDS

Act 272 of 1909

AN ACT to authorize the boards of trustees of the townships of this state to acquire and enlarge burying grounds and approaches to burying grounds in their respective townships and to provide the manner of acquiring private property for that purpose.

History: 1909, Act 272, Eff. Sept. 1, 1909;—Am. 1980, Act 380, Imd. Eff. Jan. 2, 1981.

The People of the State of Michigan enact:

128.151 Township board of trustees; providing new burying ground or enlarging limits of existing burying ground; providing suitable approaches or enlarging limits of existing approach; inability to agree; application for jury; determining just compensation and necessity for using real estate.

Sec. 1. The board of trustees of a township of this state, when it considers it desirable and necessary, may provide new burying ground in the township, or may enlarge the limits of an existing burying ground in the township, and may provide for suitable approaches to the burying ground, or may enlarge the limits of an existing approach to a burying ground in the township. If the board of trustees is unable to agree with the owner or owners of the land or a right in the land which the board desires to include within the limits of the burying ground or approaches to the burying ground, as to the compensation to be paid, the board of trustees may authorize 1 or more of its members to apply to the circuit court judge or district court judge for a jury from the vicinage. The jury shall determine the just compensation to be paid for the real estate acquired by the board of trustees for the burying ground or its approaches, or an enlargement of the burying ground, and the necessity for using the real estate. The application shall be in writing and shall describe the real estate required by the board as accurately as is required in a conveyance of real estate.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5123;—CL 1929, 3867;—CL 1948, 128.151;—Am. 1980, Act 380, Imd. Eff. Jan. 2, 1981.

128.152 Summons or venire facias commanding county sheriff or constable to summon freeholders to appear as jury; application and issuance; ascertaining just compensation and necessity for using real estate; notice to owner or occupant; service.

Sec. 2. The circuit court judge or district court judge, upon application, shall issue a summons or venire facias, directed to the sheriff or a constable of the county, commanding the sheriff or constable to summon 18 freeholders residing within the vicinity of the site, who are not related, either by blood or marriage, to the owner of the real estate, and who are not interested in the real estate, to appear before the judge, at the time and place named, not less than 20 or more than 50 days after the time of issuing the summons or venire facias, as a jury to ascertain and determine the just compensation to be made for the real estate required by the board of trustees for burying ground, the necessity for using the same, and to notify the owner or occupant of the real estate, if the owner can be found in the county, of the time when and the place where the jury is summoned to appear and the object for which the jury is summoned. The notice shall be served at least 10 days before the time specified in the summons or venire facias for the jury to appear.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5124;—CL 1929, 3868;—CL 1948, 128.152;—Am. 1980, Act 380, Imd. Eff. Jan. 2, 1981.

128.153 Notice to township board of trustees; publication; service of notice on owner.

Sec. 3. Thirty days' previous notice of the time when and the place where the jury will assemble shall be given by the board of trustees of the township, if the owner or owners of the real estate are unknown, nonresidents of the county, minors, insane, non compos mentis, or inmates of a prison by publishing the notice in a newspaper published in the county where the real estate is situated. If a newspaper is not published in the county, the notice shall be given in some newspaper published in the nearest county where a newspaper is published. The notice shall be published once each week for 4 successive weeks, shall be signed by the board of trustees or by the township clerk, shall describe the real estate required for the burying ground, and state the time when and place where the jury will assemble and the object for which they will assemble. Notice may be served on the owner personally, or by leaving a copy of the notice at the owner's last place of residence.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5125;—CL 1929, 3869;—CL 1948, 128.153;—Am. 1980, Act 380, Imd. Eff. Jan. 2, 1981.

128.154 Judge; duties; jury summons, return, contents; empaneling.

Sec. 4. It shall be the duty of such judge, commissioner, or justice, and of the persons summoned as jurors, as hereinbefore provided, and of the sheriff or constable summoning them, to attend at the time and place specified in such summons or venire; and the officer who summoned the jury shall return such summons or venire to the officer who issued the same, with the names of the persons summoned by him as jurors, and shall certify the manner of notifying the owner or owners of such real estate, if he was found; and if he could not be found in said county, he shall certify that fact. Either party may challenge any of the said jurors for the same causes as in civil action. If more than 12 of said jurors in attendance shall be found qualified to serve as jurors, the officer in attendance, and who issued the summons or venire for such jury, shall strike from the list of jurors a number sufficient to reduce the number of jurors in attendance to 12; and in case less than 12 of the number so summoned as jurors shall attend, the sheriff or constable shall summon a sufficient number of freeholders to make up the number of 12; and the officer issuing the summons or venire for such jury, may issue an attachment for any person summoned as a juror who shall fail to attend, and may enforce obedience of such summons, venire or attachment, as courts of record, or justices' courts are authorized to do in civil cases.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5126;—CL 1929, 3870;—CL 1948, 128.154.

128.155 Jury sworn by judge; subpoenas for witnesses; visiting and examining premises; jurors' certificate; signatures and indorsement; judge's certificate.

Sec. 5. (1) The 12 persons selected as the jury shall be sworn by the judge in attendance, to inquire, ascertain, and determine, faithfully and impartially, the just compensation to be made for the real estate required by the board of trustees for the burying ground, and the necessity for using the same in the manner proposed by the board of trustees.

(2) Subpoenas for witnesses may be issued, and their attendance compelled by the judge in the same manner as may be done by a circuit court or by a district court in civil cases.

(3) The jury may visit and examine the premises, and from examination and other evidence presented before it, shall ascertain and determine the necessity for using the real estate in the manner and for the purpose proposed by the board of trustees, and the just compensation to be made for the real estate. If the jury finds that it is necessary that the real estate shall be used in the manner or for the purpose proposed by the board of trustees, the jury shall sign a certificate in writing, stating that it is necessary that the real estate, describing it, should be used as a burying ground or as an addition to a burying ground already established in the township, or as an approach to the burying ground, and the sum to be paid by the township as the just compensation for the same.

(4) The judge shall sign and attach to and indorse upon the certificate thus subscribed by the jurors, a certificate stating the time when and the place where the jury assembled, that the jurors were sworn by the judge as required, and that they subscribed the certificate. The judge also shall state in the certificate who appeared for the respective parties on the hearing and inquiry and shall deliver the certificates to the township clerk, or to a member of the board of trustees of the township.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5127;—CL 1929, 3871;—CL 1948, 128.155;—Am. 1980, Act 380, Imd. Eff. Jan. 2, 1981.

128.156 Judgment; collection.

Sec. 6. Upon filing such certificates in the circuit court of the county where such real estate is situated, such court shall, if it finds all the proceedings regular, render judgment for the sum specified in the certificate signed by such jury, against such township, which judgment shall be collected and paid in the manner as other judgments against townships are collected and paid.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5128;—CL 1929, 3872;—CL 1948, 128.156.

128.157 Incompetent or unknown owner; county treasurer, duties; funds subject to court order.

Sec. 7. In case the owner of such real estate shall be unknown, insane, non compos mentis, or an infant, or cannot be found within such county, it shall be lawful for the said township to deposit the amount of such judgment with the county treasurer of such county, for the use of the person or persons entitled thereto; it shall be the duty of such county treasurer to receive such money, and at the time of receiving it, to give a receipt or certificate to the person depositing the same with him, stating the time when such deposit was made, and for what purpose; and such county treasurer and his sureties shall be liable on his bond for any money which shall come into his hands under the provisions of this act, in case he shall refuse to pay or account for the same, as herein provided: Provided, That no such money shall be drawn from such county

treasury except upon an order of the circuit court, circuit court commissioner, or judge of probate, as hereinafter provided.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5129;—CL 1929, 3873;—CL 1948, 128.157.

128.158 Vesting of fee; conditions; writ of possession.

Sec. 8. Upon satisfactory evidence being presented to the circuit court of the county where such real estate lies, that such judgment, or the sum ascertained and determined by the jury as the just compensation to be paid by such district for such burying grounds, has been paid, or that the amount thereof has been deposited according to the provisions of the preceding sections, such court shall, by an order or decree, adjudge and determine that the title in fee of such real estate shall, from the time of making such payment or deposit, forever thereafter be vested in such township and its successors and assigns, and shall, in and by such order or decree, award to such township a writ of possession for the recovery of the possession of such real estate, a copy of which order or decree, certified by the clerk of said county, shall be recorded in the office of the register of deeds of such county, and the title of such real estate shall thenceforth, from the time of making such payment or deposit, be vested forever thereafter in such township and its successors and assigns in fee.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5130;—CL 1929, 3874;—CL 1948, 128.158.

128.159 Possession by township; writ of possession.

Sec. 9. Such township may, at any time after making the payment or deposit hereinbefore required, enter upon and take possession of such real estate for the use of said township. And it shall be the duty of the county clerk of said county, on the request of said township, to issue out of and under the seal of the circuit court of said county a writ of possession as awarded in such order or decree; which writ shall be directed to the sheriff of said county, and shall be tested and made returnable, and shall be substantially, so far as may be, in the same form provided for writs of possession in actions of ejectment; and it shall be the duty of such sheriff thereupon to remove the respondent or respondents in such proceedings, and all persons holding under them, or either of them, from the real estate described in such decree and in such writ, and deliver the possession thereof, with the appurtenances, to such township.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5131;—CL 1929, 3875;—CL 1948, 128.159.

128.160 Jury disagreement; adjournment, limit.

Sec. 10. In case the jury hereinbefore provided for shall not agree, another jury may be summoned in the same manner, and the same proceedings may be had, except that no further notice of the proceedings shall be necessary; but instead of such notice, the judge, commissioner, or justice may adjourn the proceedings to such times as he shall think reasonable, not exceeding 30 days, and shall make the process to summon a jury returnable at such time and place as the said proceedings shall be adjourned to. Such proceedings may be adjourned from time to time by the said judge, or commissioner, or justice, on the application of either party, and for good cause, to be shown by the party applying for such adjournment unless the other party shall consent to such adjournment; but such adjournments shall not in all exceed 3 months.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5132;—CL 1929, 3876;—CL 1948, 128.160.

128.161 Parties to suit; proof of claims; settlement.

Sec. 11. In case the said burying grounds or addition or approach thereto, is encumbered by mortgage, levy, tax sale, or otherwise, as aforesaid, the mortgagee, or other parties claiming to be interested in said title, shall severally be made a party to the procedure as aforesaid, and shall be authorized upon filing of the certificate of the jury in the circuit court of said county, to appear before the circuit judge and make proof relative to their proportionate claims to the said burying grounds, or addition or approach thereto, or the compensation to be made therefor, as determined by said jury. And the said circuit judge shall, by decree, settle their several claims in accordance with the rights of the parties respectively, and may divide the sum awarded by said jury between the claimants as in his judgment will be equitable and right, rendering against said township a separate judgment for each of the amounts so awarded.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5133;—CL 1929, 3877;—CL 1948, 128.161.

128.162 Payment order; issuance, receipt; evidence.

Sec. 12. The circuit judge, judge of probate, or circuit court commissioner of any county where any money has been deposited with the county treasurer of such county, as hereinbefore provided, shall, upon the written application of any person or persons entitled to such money, and upon receiving satisfactory evidence of the right of such applicant to the money thus deposited, make an order directing the county treasurer to pay the money thus deposited with him to said applicant; and it shall be the duty of such county treasurer, on the

presentation of such order, with the receipt of the person named therein, endorsed on said order and duly acknowledged, in the same manner as conveyances of real estate are required to be acknowledged to pay the same; and such order, with the receipt of the applicant or person in whose favor the same shall be drawn, shall, in all courts and places, be presumptive evidence in favor of such county treasurer, to exonerate him from all liability to any person or persons for said money thus paid by him.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5134;—CL 1929, 3878;—CL 1948, 128.162.

128.163 Subsequent proceedings.

Sec. 13. In case any circuit judge, circuit court commissioner, or justice of the peace, who shall issue a summons or venire for a jury, shall be unable to attend to any of the subsequent proceedings in such case, any other circuit court commissioner or justice of the peace may attend and finish said proceedings.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5135;—CL 1929, 3879;—CL 1948, 128.163.

128.164 Fees; compensation.

Sec. 14. Circuit judges, circuit court commissioners, and justices of the peace, for any services rendered under the provisions of this act, shall be entitled to the same fees and compensation as for similar services in other special proceedings. Jurors, constables, and sheriffs shall be entitled to the same fees as for like services in civil cases in circuit court.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5136;—CL 1929, 3880;—CL 1948, 128.164.