CHAPTER 39

Cemeteries and Cemetery Commissions

ARTICLE 1

General Provisions

**SECTION 5‑39‑10.** Acquisition and operation of cemeteries authorized; police powers outside municipality.

The city or town council of every incorporated city or town in this State may purchase or otherwise acquire, own, hold, operate, subdivide and develop cemeteries or burial grounds in or near such city or town and lands for cemeteries or burial grounds in or near such city or town and dispose of lots or portions of such cemeteries or burial grounds and lots or portions of such lands under such terms and conditions as the city or town council may prescribe. All police powers of any such municipality shall extend to any cemetery or burial ground owned, operated or controlled by the municipality which lies outside the incorporated limits thereof.

HISTORY: 1962 Code Section 47‑1401; 1952 Code Section 47‑1401; 1947 (45) 54.

ARTICLE 3

Commissions in Cities or Towns of 2,000 to 5,000

**SECTION 5‑39‑110.** Appointment and term.

Any city or town council of any city or town in this State which has a population of more than two thousand and less than five thousand according to the latest census of the United States Government may create by ordinance for such city or town a cemetery commission to be composed of three resident qualified electors of such city or town and may elect three commissioners, the term of their office to run as follows: One commissioner for two years, one commissioner for four years and one commissioner for six years. At the expiration of each of such terms such city or town council shall elect a successor whose term of office shall be six years, so that not more than one of such commissioners’ terms of office shall expire every two years.

HISTORY: 1962 Code Section 47‑1411; 1952 Code Section 47‑1411; 1942 Code Section 7452‑1; 1939 (41) 292.

**SECTION 5‑39‑120.** Removal; vacancies.

When such commissioners are elected and accept the appointment of the office, they shall not be subject to removal by the council except for cause. Should a vacancy occur then the council shall elect a successor for the unexpired term only.

HISTORY: 1962 Code Section 47‑1412; 1952 Code Section 47‑1412; 1942 Code Section 7452‑1; 1939 (41) 292.

**SECTION 5‑39‑130.** Duties and powers.

Such cemetery commission shall meet and from its number elect a chairman and secretary and shall meet thereafter as often as may be reasonably necessary. It shall receive from the custodian of such city or town any and all funds then in the hands of the officials of such city or town which may be allotted, bequeathed, devised, donated, given or otherwise acquired for cemetery purposes and shall continue to receive, accept and administer all such funds and property and shall hold, manage and invest them by loaning or depositing such funds or property under and in accordance with the statute law of this State pertaining to trust funds or fiduciaries, with full power and authority to acquire real estate by purchase and with full power and authority to sell and convey real estate upon the approval of the city or town council. It shall have charge of the upkeep and maintenance of the cemetery under the control of such city or town and shall fully discharge the duties pertaining to such cemetery from time to time.

HISTORY: 1962 Code Section 47‑1413; 1952 Code Section 47‑1413; 1942 Code Section 7452‑1; 1939 (41) 292.

ARTICLE 5

Commissions for Certain Cities of 20,000 and Above

**SECTION 5‑39‑210.** Appointment and term.

Any incorporated city in this State having a population of twenty thousand inhabitants or above and owning a cemetery or burying ground may create by ordinance a cemetery commission, to be composed of three discreet persons, residents of such city, whose terms of office shall be six years from the date of their respective appointments, except that at the creation of such commission one shall be appointed for two years, one for four and the other for six.

HISTORY: 1962 Code Section 47‑1431; 1952 Code Section 47‑1431; 1942 Code Section 7536; 1935 (39) 97.

**SECTION 5‑39‑220.** Bond and compensation.

The commissioners shall each give bond in such sum as the city or town council shall fix, the premiums therefor to be paid out of the funds left with them, each fund bearing its proportion of such expense. The commissioners shall receive no compensation except such as may be allowed the secretary and treasurer, to be paid by the city or town, and the position of commissioner shall not be such office as defined or held in this State to prevent the holding of any office or position of honor, profit or trust.

HISTORY: 1962 Code Section 47‑1432; 1952 Code Section 47‑1432; 1942 Code Section 7536; 1935 (39) 97.

**SECTION 5‑39‑230.** Officers.

Every such commission shall once in every two years elect from its number a chairman and a secretary and treasurer.

HISTORY: 1962 Code Section 47‑1433; 1952 Code Section 47‑1433; 1942 Code Section 7536; 1935 (39) 97.

**SECTION 5‑39‑240.** Receipt of gifts, devises, bequests and the like for care of graves.

Any such commission may receive by gift, devise, bequest or settlement in trust any sum of money from any person turned over to it in trust to be invested and the income used in the upkeep and care of any grave or graves as may be then or thereafter designated by the person turning such fund over to it.

HISTORY: 1962 Code Section 47‑1434; 1952 Code Section 47‑1434; 1942 Code Section 7536; 1935 (39) 97.

**SECTION 5‑39‑250.** Transfer of funds to commission.

Any commission, committee, person, city or town now having funds in its hands for the upkeep and care of graves in such cemeteries may deliver such funds to such commission contemporaneously with a statement showing the sources and the designation of graves to be cared for and amounts therefor. A receipt from the commission shall operate as a discharge of liability for the amount so delivered.

HISTORY: 1962 Code Section 47‑1435; 1952 Code Section 47‑1435; 1942 Code Section 7536; 1935 (39) 97.

**SECTION 5‑39‑260.** Investments.

The members of any such commission shall invest or handle such funds in the manner provided by law for investments or handling of funds by executors, administrators, guardians and trustees, and the income shall be collected annually and expended in such manner as, in the judgment of the commission, will meet the purpose for which such fund was delivered.

HISTORY: 1962 Code Section 47‑1436; 1952 Code Section 47‑1436; 1942 Code Section 7536; 1935 (39) 97.

**SECTION 5‑39‑270.** Disbursements and reports.

No disbursement shall be made except by check, and at the end of each calendar year the commission shall make up and file with the city council a report showing all of its acts and doings and the funds received and disbursed during such year. All checks and vouchers shall be signed by the secretary and treasurer and one other member of the commission.

HISTORY: 1962 Code Section 47‑1437; 1952 Code Section 47‑1437; 1942 Code Section 7536; 1935 (39) 97.

**SECTION 5‑39‑280.** Liability of cities.

No liability shall attach to any city or town for any funds herein referred to or by reason of the handling or expenditure of such funds.

HISTORY: 1962 Code Section 47‑1438; 1952 Code Section 47‑1438; 1942 Code Section 7536; 1935 (39) 97.

ARTICLE 7

Trusts in Cities Over 5,000

**SECTION 5‑39‑410.** Acceptance of trust for maintenance of burial lots, graves, tombs and the like.

Any incorporated city in this State having a population of more than five thousand inhabitants and owning a cemetery may receive by gift, devise, bequest or settlement in trust any sum of money from any person when such sum is turned over to it in trust to be invested and the annual income used in maintaining, caring for or keeping in repair any tomb, burial lot, grave or graves as may be then or thereafter designated by the person creating such trust fund and agreed to by such city.

HISTORY: 1962 Code Section 47‑1421; 1952 Code Section 47‑1421; 1942 Code Section 7471; 1938 (40) 1662.

**SECTION 5‑39‑420.** Transfer of funds to city.

Any person that may have funds to be used for the maintenance, care or keeping in repair of any tomb, burial lot, grave or graves in any such cemetery may with the consent of any such city deliver such funds to such city with a statement showing the source thereof and the designation of the tomb, burial lot, grave or graves to be maintained, cared for or kept in repair, and a receipt from such city shall operate as a discharge of liability for the amount so delivered in trust to any such city.

HISTORY: 1962 Code Section 47‑1422; 1952 Code Section 47‑1422; 1942 Code Section 7471; 1938 (40) 1662.

**SECTION 5‑39‑430.** Ordinance shall provide terms of acceptance.

Any such city desiring to avail itself of the provisions of Sections 5‑39‑410 and 5‑39‑420 shall by ordinance or resolution provide the terms and conditions upon which any such trust funds will be received and administered by it, and no such city shall be liable to account for any such trust funds so long as such city shall substantially comply with such terms and conditions.

HISTORY: 1962 Code Section 47‑1423; 1952 Code Section 47‑1423; 1942 Code Section 7471; 1938 (40) 1662.

**SECTION 5‑39‑440.** City empowered to contract for service.

Any such city may contract with any person for the maintenance, care and keeping in repair of any tomb, burial lot or grave in any such cemetery for such consideration and upon such terms and conditions as may be fixed by any such city.

HISTORY: 1962 Code Section 47‑1424; 1952 Code Section 47‑1424; 1942 Code Section 7471; 1938 (40) 1662.