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SPRINGFIELD

August 1, 1978

FILE NO. S-1379

CONSUMER PROTECTION:
Invasion of Cemetery Care
Fund Principal

Honorable Michael J. Bakalis
Comptroller
State of Illinois
201 Capitol Building
Springfield, Illinois 62706

Dear Mr. Bakalis:

I have your letter wherein you inquire whether cemetery care fund principal may be invaded for the payment of certain expenses arising in connection with the management thereof. Your question arises out of the apparent conflict between section 3 of the Cemetery Care Act (Ill. Rev. Stat. 1977, ch. 21, par. 54.3), which requires that cemetery care funds be held intact, and section 14 of the Principal and Income Act (Ill. Rev. Stat. 1977, ch. 30, par. 172), which

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permits the invasion of trust fund principal for the payment of specified expenses. For the reasons hereinafter stated, it is my opinion that section 14 of the Principal and Income Act does not permit the invasion of cemetery care fund principal for the payment of expenses therein named.

Section 3 of the Cemetery Care Act provides in pertinent part as follows:

"Any cemetery authority is hereby authorized and empowered to accept any gift, grant, contribution, payment, devise or bequest, or pursuant to contract, any sum of money, funds, securities or property of any kind, or the income or avails thereof, and to hold the same in trust in perpetuity for the care of its cemetery, or for the care of any lot, grave, crypt or niche in its cemetery; or for the special care of any lot, grave, crypt or niche or of any family mausoleum or memorial, marker, or monument in its cemetery. * * *

The carefunds authorized by this Section and provided for in Section 4 of this Act shall be held intact * * * . The net income only from the investment of such care funds shall be allocated and used for the purposes specified in the transaction by which the principal was established in the proportion that each contribution bears to the entire sum invested. (Emphasis added.)

Section 14 of the Principal and Income Act provides in pertinent part as follows:

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* * *

(2) One-half of the trustee's regular compensation shall be paid out of principal * * * .

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(3) All other expenses including estate taxes, special compensation to which the trustee is entitled for work done in connection with the principal of the trust estate, expenses reasonably incurred in connection with principal, other than those incurred in current management of principal, attorneys' fees and other costs incurred in maintaining or defending any action to protect the trust or the property or assure the title thereof, and compensation of the trustee charged as an acceptance, distribution or termination fee and the costs of and assessments for improvements to property forming part of the principal, shall be paid out of principal. * * *

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"

The Cemetery Care Act (Ill. Rev. Stat. 1977, ch. 21, par. 64.1 et seq.) governs specific trust funds while the Principal and Income Act governs trust funds generally. Because it is a well established principle of statutory construction that specific statutory provisions prevail over general ones (People ex rel. Myers v. Pennsylvania R.R. Co. (1960), 19 Ill. 2d 122, 129; Bowes v. City of Chicago (1954), 3 Ill. 2d 175, 205), the Cemetery Care Act, where it is in conflict with the Principal and Income Act, prevails.

The language of section 3 of the Cemetery Care Act specifically provides that care funds are to be kept "intact". The Supreme Court of Illinois has defined the word "intact" as "left complete, entire or whole" (Bowman v. Austin (1946), 393 Ill. 593, 596), and this office has consistently advised

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that the language of the section means what it plainly says - care funds are to be held in perpetuity and are not to be invaded. See, 1961 Ill. Att'y. Gen. Op. 13; 1962 Ill. Att'y. Gen. Op. 523; Opinion No. UP-1444, issued September 16, 1965.

I note that cemetery care funds differ from ordinary trust funds in that they are exempt from taxation and from the rule against perpetuities. (Ill. Rev. Stat. 1977, ch. 21, par. 64.6.) The fact that the General Assembly has made it possible for cemetery care funds to be held, as such, in perpetuity is further evidence of a legislative intent that the integrity of such funds be maintained.

One must also look to the intent of the authorization for invasion of principal given by the Principal and Income Act. It is clear from the long title of the Act that the Act is intended to provide for an equitable distribution of receipts and expenditures among trust fund tenants and remaindermen. Thus, principal may be invaded to pay expenditures which the General Assembly has determined are properly borne by remaindermen. There is, however, no remainderman concerned with cemetery care fund principal, and there is no tenant, as such, interested in the transfer of the burden of administering the fund. The

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fund is simply one which is to exist in perpetuity to maintain cemetery lots and appurtenant structures or memorials. Only by maintaining the integrity of the fund can it be assured that the fund will serve its purpose effectively for the longest practicable amount of time.

The fair treatment of two parties is not at issue when one is dealing with cemetery care funds. Therefore, the provisions of the Principal and Income Act which were enacted to provide for the equitable treatment of tenants and remaindermen do not affect such funds.

Very truly yours,

A T T O R N E Y G E N E R A L