

Town Duties - Cemeteries

Town Law § 291

- [1st class cemetery:]** The title to every lot or piece of land which shall have been used by the inhabitants of any town in this state as a cemetery or burial ground for the space of fourteen years shall be deemed to be vested in such town, and shall be subject in the same manner as other corporate property of towns, to the government and direction of the town board. In any town the town board may adopt regulations for the proper care of any such cemetery and burial ground and regulation the burial of the dead therein. It shall be the duty of the town board to remove the grass and weeds from any such cemetery or burial ground in any such town at least three times in each year, and to erect and maintain suitable fences around such cemetery or burial ground. **[2nd class cemetery:]** The town board of any town must also provide for the removal of grass and weeds at least twice in each year from any cemetery or burial ground, by whomsoever owned, in such town, where such control is not vested by other provisions of law in the town or in trustees or other corporate body, and provide for the preservation, care and fencing of any such cemetery **[3rd class cemetery:]** and the town board of any town must also provide for the removal of grass and weeds from all cemeteries, other than private burial grounds, which are abandoned or not controlled by any existing board or body and for the care of which there exists no special fund or endowment and such duties shall be performed under the supervision of the town board, or a person whom the town board may designate; provided, however, that such duties shall not be exercised in respect to any private ground or particular lot or lots therein after the true owner or owners thereof file written objections thereto with the town clerk. The cost and expenses of any officer or person in performing any duties under or pursuant to the provisions of this section shall be a town charge, and the town board shall appropriate and provide annually the moneys necessary for carrying out the provisions of this sections, and make the same available for the proper officer or persons by whom the moneys are required to be expended. The town board may also receive and execute any trust for the care of lots in any such cemetery.
- Burial grounds and cemeteries of which the title is vested in or the care or control is charged upon any town, by virtue of this section, shall not be taxed or assessed for any local improvement or other purpose whatsoever by any village, and action shall be maintained against any town to recover ownership or care of such burial grounds, the provisions of any special, local or general statute whatsoever to the contrary notwithstanding.
- Upon the adoption of a resolution therefore, the town board may construct and maintain permanent improvements in any one or more of the classes or cemeteries described herein and may acquire, by purchase or condemnation, additional lands for cemetery or burial ground purposes, whenever in the judgment of the town board it is necessary or advisable that such improvements be made or additional lands be acquired. If the expenditure for such improvements or acquisition is in excess of three hundred dollars and is to be paid by taxes levied for the fiscal year in which such expenditure is to be made, or paid from the proceeds of town obligations, the adoption of any such resolution or resolutions shall be subject to a permissive referendum in the case of towns of the first class and to a mandatory referendum in the case of towns of the second class. The improvements so made or the lands so acquired shall be used only for the purposes authorized by this article but such cemeteries or burial grounds so improved or enlarged shall not be subject to conveyance or transfer pursuant to section two hundred ninety-two of this chapter. The expense of such improvements and/or the acquiring of such lands may be financed in the manner provided in article fifteen of this chapter for the financing of general improvements.

Excerpts from Opinion 95 - 10 of the Office of the State Comptroller

... a town has the duty to erect a fence "around" a cemetery if title to the cemetery has vested in the town by virtue of its use by town residents for fourteen years [a cemetery of the first class]. The obligation to "erect and maintain suitable fences around" certain cemeteries and burial grounds was imposed in 1901 by chapter 386 of the Laws of 1901 which amended section 195 of the Town Law of 1890.

...it is our opinion that, in relation to a cemetery or burial ground within the first of the three classes described in section 291 of the Town Law, the town board would be required to erect a fence encircling the cemetery or burial ground.

As to a cemetery in the second class described in section 291(1), the statute provides only that the town board provide for the "preservation, care and fencing" of the cemetery. Since section 291 does not specify that the fencing must be "around" or encircling the cemetery, it is our opinion that the town is only required to provide such fencing as is necessary to adequately preserve the cemetery. Consequently, we believe that, in appropriate circumstances, the town board could determine that a fence be erected only in front of the cemetery.

With respect to a cemetery falling within the third class described in section 291(1), the statute contains no requirement as to the erection of fences. ... however, [it] authorizes a town board, by resolution, to construct or maintain permanent improvements in any one or more of cemeteries described in section 291 ... it is our opinion that the town board, in its discretion, could determine to construct a fence in front of or encircling a cemetery in the third class described.

Accordingly, a town is required to construct a fence encircling a cemetery in the first class described in section 291(1) of the Town Law. In the case of a cemetery in the second class described in section 291(1), a town is required to provide such fencing as is necessary to adequately preserve the cemetery, which may, in appropriate circumstances, include fencing only in front of the cemetery. A town may, in its discretion and subject to referendum requirements, construct a fence in front of or encircling a cemetery falling within the third class described in section 291(1). Whether the cemetery in question falls within class one, two or three as described in section 291(1) is question of fact to be determined, in the first instance, at the local level.

We note that the Secretary of State [Division of Cemeteries] administers a fund for the maintenance of certain abandoned cemeteries and municipalities are authorized to apply for fair and reasonable expenses required for the maintenance of those abandoned cemeteries You may wish to contact that agency for further information in this regard.

For complete opinion, see: <http://www.osc.state.ny.us/legal/1995/legalop/op95-10.htm>

Prepared by
Fire Place History Club
Brookhaven, LI, NY
October 2007