

FINAL REPORT

OF

TASK FORCE ON ABANDONED AND NEGLECTED CEMETERIES

ROBERT PAPPAS,

CHAIRMAN

JANUARY 15, 1999

EXECUTIVE SUMMARY

The Cemetery Preservation and Consumer Protection Act, passed during the 1998 Legislative Session mandated and funded the formation of a Task Force on Abandoned and Neglected Cemeteries (Task Force) under the aegis of the Office of the Comptroller. The Task Force was formed on July 1, 1998; it is comprised of 12 members selected from a cross section of interested groups; who serve without compensation; whose chairman was elected by the members of the Task Force; and, all of whom will serve through the end of the 1999 Legislative Session. All Task Force matters are subject to Florida Sunshine Law and have been conducted accordingly.

An Interim Report was prescribed as due December 1, 1998, with a Final Report and any recommended legislation, due January 15, 1999. Committees were named and chairmen elected to examine the issues mandated in the Cemetery Preservation and Consumer Protection Act. Seven meetings and hearings have been held: to organize the Task Force, define the agenda, gather and analyze information, debate the issues and prepare this Interim Report and draft recommended legislation.

It is notable that support for Task Force Activities by Department of Banking and Finance staff, in particular the Bureau of Funeral and Cemetery Services, has been outstanding.

The Cemetery Preservation and Consumer Protection Act effectively requires universal identification and determination of condition of cemeteries in the State. That process is underway and progress has been made, but will necessarily extend beyond the expected life of the Task Force due to the magnitude of the assignment.

The Task Force has determined that in general, cemeteries become neglected and/or abandoned in varying degrees for reasons suggested by the enabling legislation. However, it has chosen to define abandonment as a function of burial activity in relation to time and condition rather than lack of fixed

responsibility; neglect is determined in relation to time, evident condition and appearance.

Sufficient empirical information exists for the Task Force to determine that abandoned and neglected cemeteries constitute a problem in the statutory sense. That is, there is evidence of violations of both chapters 497 and 872, however, insufficient data exists to date to provide a definitive analysis of all reported cemeteries. The problem of abandonment and neglect is sufficiently widespread to warrant government intervention. Contained within this report is proposed legislation that would provide a structure, process and sources of funding that would initiate corrective action. The Task Force believes its solution is feasible and reasonable for the foreseeable future, although it is possible that a longer term solution may be warranted at a later date.

Significant efforts on the part of the Task Force, Department of Banking and Finance, with the active support of some media sources have been made to obtain both a reaction and input from the general public. Public reaction has been primarily from those with a direct, immediate interest such as, the industry, cemetery owners, and those who have genealogical or historical interests. The sense of the Task Force is that the general public has an abiding interest in cemeteries but generally chooses to rely upon organized, institutional efforts to provide both the function and oversight of the disposal of human remains.

Cemeteries can be categorized as licensed for profit (regulated), unlicensed not for profit (unregulated), private and family.

Reasons for neglect and abandonment range from saturation of the burial grounds and economic failure, to the transient nature of the general population, migration from rural areas to cities, lack of funds, lack of interest and changes in societal norms all of which contribute to deterioration of unregulated cemeteries.

There are a number of different sources of funds for the rehabilitation and maintenance of cemeteries in certain instances. Additionally, volunteer efforts on the part of citizen groups, scouts, individuals, and communities contribute to cemetery maintenance efforts. Qualitative results vary from cemetery to cemetery and from location to location.

Problems of health, vandalism, and crime do not appear to be sufficient to warrant definitive, continuous, aggressive abatement action on the part of most local governments. Section 872, F.S., addresses the treatment of human remains, yet there is some indication that there is ignorance thereof, and cases of intentional obscuring of cemeteries (such as with a parking lot) although they do not specifically violate the statute(s) in the process.

The Task Force considered a spectrum of alternatives for dealing with abandonment and neglect, from doing nothing on the one hand, to consolidation of the human remains of all neglected and abandoned cemeteries into a central location and creation of a large-scale permanent memorial on the other hand. The Task Force forged a middle of the road approach to the issues of abandonment and neglect that is

both reasonable and workable. That approach is shown in detail in proposed legislation that is included herewith.

The Task Force recommends adding a separate section to Chapter 497, designated as Chapter 497, Part II. Among other things, Part II would:

1. Require that all new cemeteries created subsequent to enactment of the proposed legislation be licensed under the provisions of Chapter 497 Part I;
2. Prescribe that official burial records specify the exact location of decedents;
3. Contain provisions for cemetery owners to convert cemeteries;
4. Vest local governments with overall responsibility for abandoned and/or neglected cemeteries within respective jurisdictions;
5. Fix responsibility for care and maintenance in the owner of a cemetery;
6. Insure access by certain parties;
7. Provide for designation as abandoned;
8. Prescribe a minimum level of care for cemeteries;
9. Prescribe registration of all cemeteries;
10. Form not for profit, government corporation to establish a fund for, and to enhance public participation and involvement in, the identification, protection, preservation, and care and maintenance of neglected and abandoned cemeteries; and,
11. Recommend simplification and streamlining procedures for re-siting of abandoned or neglected cemeteries and/or human remains located therein.

BACKGROUND

From earliest time people have sought new ways to bury and honor their deceased loved ones. As civilization evolved new and impressive ways were devised based on the era, religion and location of the society in which one lived. We see this in the ancient pyramids of Egypt and South America, the Mausoleums of ancient Greece and the Indian Burial Mounds of North America. More recently we seem to have strayed from our traditional care of unlicensed burial grounds. In many States there are quite a number of abandoned and neglected cemeteries, Florida is no exception. Some of these overgrown and abandoned cemeteries are not even a hundred years old.

Until October 1, 1993, Florida did not require the registration of unlicensed and private cemeteries. In response to the many calls and complaints received from citizens of this State the legislature revised Florida Statue 497 to require the registration of all cemeteries in the State which are over five acres in size.

In July 1998, the Florida Legislature passed the Cemetery Preservation and Consumer Protection Act, creating a Task Force to review and report on the status of neglected and abandoned cemeteries in the State of Florida and, if necessary, to propose legislation to counter this problem. The Task Force was charged with the following tasks.

1. Examine the extent to which some cemeteries in the state are abandoned and therefore have no existing responsible person or entity in charge, or are neglected and therefore are not receiving adequate care and maintenance.
2. Examine the extent to which some cemeteries in the state, although they are owned and operated by some identifiable person or entity, are neglected due to a lack of sufficient funds to perform adequate care and maintenance or for other reasons.
3. Examine the extent to which neglected cemeteries in the state create problems for citizens and local governments due to vandalism, storm damage, dilapidation, public health concerns, public safety concerns, lack of enforceable standards, and strain on local government financial resources.
4. Examine the extent to which neglected cemeteries in the state represent a loss of significant historic or archeological resources.
5. Examine whether or not bringing presently unlicensed operating cemeteries under state regulation as to physical facilities and care and maintenance may help ameliorate the problems caused by neglected cemeteries.
6. Examine whether or not a program of grants to assist in providing adequate care and maintenance for abandoned and neglected cemeteries may help ameliorate the problems caused by neglected cemeteries and, if so, how the grant program should be structured, administered, and funded.
7. Examine current governmental and non-governmental programs that help or could help ameliorate the problems caused by neglected cemeteries, to see if some expansion or increased emphasis or support could do more to help ameliorate the problems caused by neglected cemeteries in a more cost-effective manner than a grant program.
8. Report findings and make recommendations concerning solutions to problems found by the task force, including a draft of any legislation deemed advisable to implement recommended solutions.
9. The Task Force shall produce a preliminary report by December 1, 1998, and a final report by January 15, 1999, detailing its findings and recommendations. Copies of each report shall be transmitted to the Comptroller, the President and the Minority Leader of the Senate, and the Speaker and the Minority leader of the House of Representatives. Copies shall also be furnished to the Governor, the Secretary of State, the Attorney General, and the Office of Program Policy Analysis and Government.

A broad spectrum of interests are served by the instant legislation, beginning with the legislature in its representative capacity. Additionally, Task Force members bring to bear specific institutional and public perspectives and interests. Composition of the Task Force includes citizen members who represent diverse social and economic concerns. For example, there is a salient concern among the elderly, many of whom are on fixed incomes, about the adequacy of care for the burial places of their progenitors or other relatives and friends; and, who are uncomfortable about prospects of adequate care and

maintenance of their own final resting places.

Earlier it was stated that the sense of the Task Force is that the general public has an abiding interest in cemeteries as the final resting place of its progenitors. The public generally chooses to rely upon organized, institutional efforts to provide both the function and oversight of the disposal of human remains. If the sense of the Task Force is correct, it would place that burden squarely upon the shoulders of the legislature. The May 24, 1998 remarks of Mr. Richard Mueller, Task Force member and Vice President/General Manager of The Evergreen Cemetery Association speak well to the responsibility of care for the remains of the dead. "We care just like Kemal Attaturk. He led the Turkish forces in defeating the Allies at Gallipoli, in one of the bloodiest battle of World War I. Yet soon after the end of hostilities, as president of Turkey, he consoled the grieving mothers of Allied dead with these words, 'There is no difference between the Turks and Allies where they lie side by side in Turkey. Having lost their lives here they have become our sons as well.'

If this society fails to appropriately and adequately deal with this issue through some definitive action, whether legislative or otherwise, not only will genealogical and historical resources likely be irreparably harmed, but society will potentially lose a valuable resource for charting its inexorable course into annals of human history.

The first Task Force meeting was held on September 2, 1998. Mr. Robert Pappas was elected the Chairman of the Task Force. Several committees were developed to investigate and report on the concerns of the Task Force.

Committee Chairman

Cemetery Identification and Status - Mr. Washington Sanchez, Jr.

Abandoned Cemeteries - Mr. James Miller

Maintenance of Unregulated and Neglected Cemeteries - Mr. Joseph Cone

Reports/Proposed Legislation - Mr. Robert Maxwell

Numerous committee and Task Force meetings, as well as public workshops and hearings were held. The following report is the result of the findings of this task force.

STATE REGULATION

Florida regulates licensed cemeteries by Chapter 497, setting forth the requirements for creation of new cemeteries, as well as other detailed requirements for the operation of such cemeteries. These

requirements include three trust provisions (perpetual care, preneed and pre-construction) which are overseen by the Board of Funeral and Cemetery Services and the Bureau of Funeral and Cemetery Services within the Department of Banking and Finance. This statute exempts certain categories of cemeteries, including church cemeteries, county and municipal cemeteries, community and non-profit association cemeteries, fraternal organized cemeteries and family graveyards. In addition, specific exemptions apply to certain church cemeteries, a certain columbarium and a certain mausoleum. All other cemeteries must be licensed and must abide by the regulations of Chapter 497. These licensed cemeteries number approximately 170. Under this Statute, the creation of a new licensed cemetery requires the establishment of certain financial criteria: fifteen acres of land free of obligation, a \$5,000.00 application fee, and establishment of a minimum \$50,000.00 care and maintenance trust fund.

Certain provisions of Chapter 497 apply to all cemeteries, licensed and unlicensed. They are: s. 497.309 (1), requiring burial records, s. 497.321, solicitation of goods or services, s. 497.341, burial without regard to race or color, and s. 497.345, abandoned cemeteries; immunity; actions.

METHODOLOGY

Task Force staff and members solicited comments on abandoned and neglected cemeteries from representatives of the licensed cemetery industry, the constituents of the Task Force members, public interest groups, and the general public. Task Force members researched and reviewed legislation on the subject in other States. In addition, the Task Force staff reviewed complaints received by the Department of Banking and Finance concerning unlicensed cemeteries. Additional information was obtained from the internet concerning unlicensed cemeteries and their general location. Task Force members and others took videotape pictures of neglected and abandoned cemeteries and established a database to manage unlicensed cemetery data for use in locating and describing such cemeteries. Task force members also established a web site as a link to the Comptroller's web site (<http://www.dbf.state.fl.us/cemeteries/>) to disseminate information to the public about the abandoned and neglected cemetery project, and to collect from the public information about unlicensed neglected and abandoned cemeteries. This database is growing steadily.

FINDINGS

1. Data collected to date on some 3,580 cemeteries in the State suggests that 40% to 50% are abandoned or neglected. As additional information becomes available in the future (and as abandoned and neglected cemeteries are restored), the total could increase beyond the current projection of 1,500.
2. The Task Force, in the short time of its existence, has been unable to quantify the extent to which private, unlicensed cemeteries are not able to care for the same due to lack of funds, but it clearly

appears to be a significant factor.

3. The extent that neglected cemeteries create problems for citizens and local governments has not been quantified, but the City and County representatives on the Task Force verify that such cemeteries are a burden on local governmental resources.
4. Some older cemeteries that are neglected may represent a loss of historic or archeological values, but the extent of such loss has not been quantified. More than three hundred cemeteries with some level of historical significance are recorded in the records maintained by the Department of State.
5. Legislation is needed to establish guidelines, definitions, methods of establishing care for neglected and abandoned cemeteries, agencies responsible for providing such care, the funding mechanism for such projects, as well as a permanent structure to continue the location, identification, protection, preservation and care of such cemeteries.
6. A grants-in-aid type program using matching funds would help ameliorate the problems created by abandoned and neglected cemeteries. This matter is addressed in the proposed legislation set forth in the appendix.
7. The Task Force has examined the question of funds needed to address the problems and recommends in the proposed legislation the following funding sources: (1) a one-time appropriation by the legislature, (2) a fee on death certificates, (3) enabling legislation to permit Cities and Counties to include in their budgets funds for this purpose; and (4) the establishment of a non-profit corporation within the Department to obtain donations from individuals, businesses, industries, organizations, local, state and federal grants, foundations, etc. The fund would be established in such a way that the corpus could continue to grow with only the income used for the purposes outlined herein. In this way the trust funds can be effective over the long term.
8. The Task Force has determined that it is imperative to stop the proliferation of neglected and abandoned cemeteries
9. The legislature has already established in Chapter 872 protection for all human burial sites and all human remains regardless of whether or not the site is abandoned.

RECOMMENDATIONS

1. The work of the Task Force should be allowed to continue in either of the following ways:
 - (a) The Task Force should continue in its present form for a finite time in order for the Task Force to more thoroughly examine the extent of the problems; or
 - (b) The non-profit corporation outlined in the proposed legislation should continue these functions on a permanent basis.
2. Establish that local governments are the best way to handle the problem created by abandoned

and neglected cemeteries within their respective jurisdictions, combined with a statewide approach through the designated agency and non-profit corporation.

3. Establish that owners of unlicensed cemeteries must care for those cemeteries in a proper manner so as to avoid neglect.
4. Proscribe abandonment and neglect of cemeteries.
5. Establish that a copy of all burial transit permits will be filed with the Clerk of Court in the County of burial.
6. Establish that officially designated persons other than the next of kin shall be given an easement or right of entry to enter and inspect private cemeteries.
7. Establish that unlicensed cemeteries be required to post a sign at the cemetery providing notice of the existence of a cemetery at the posted location.
8. Establish that no new cemeteries shall be allowed to be created except under the provisions of Part I of Chapter 497, thereby insuring that a care and maintenance fund is established for each new cemetery.

Respectfully submitted,

Task Force on Abandoned and Neglected Cemeteries

By: Robert Pappas, Chairman

By: Washington Sanchez, Vice-Chairman and

Chairman Cemetery Identification and

Status Committee

By: Robert G. Maxwell, Chairman Reports/Proposed Legislation Committee

By: Joseph Cone, Chairman

Maintenance of Unregulated and Neglected Cemeteries Committee

By: James J. Miller, Chairman Abandoned Cemeteries Committee

By: Roy Braksick

By: Bernard Dew

By: Warren H. Jernigan

By: Kenneth Mitchell, Sr.

By: Richard L. Mueller

By: Judith C. Ralph

By: Michael R. Tadros

BIOGRAPHICAL SKETCHES

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Roy Braksick served two combat tours in Vietnam and is active in the location, identification and protection of historic burial sites, especially those of veterans. He is active in community volunteer efforts, especially concerning military and veterans affairs. He is an alternate Ex-officio member of the Task Force.

Joseph Cone serves on the Task Force as the Florida League of Cities Representative. Mr. Cone is currently the City Manager of the City of Lake City. After a four-year enlistment in the U.S. Army

Security Agency, which included a tour of duty in Vietnam, he graduated from the University of South Florida in Tampa in 1972. He has 26 years of experience in local government in Florida, serving as a City Planner, Assistant City Manager and County Administrator.

Bernard Dew was appointed as the first County Administrator for Sumter County and County Budget Officer and has carried out those responsibilities for more than 15 years. He is a Trustee of the Bushnell Evergreen Cemetery and Chairman, Board of Trustees, St. Catherine United Methodist church. His family has lived in Sumter County since the 1850s. He represents county interests on the Task Force.

Warren H. Jernigan is a native of Pensacola, Florida, who has been associated with the U.S. Congress in Washington, D.C. for more than 15 years as an Aide to Representative Bob Sikes of Florida and as Chief Doorman for the U.S. House of Representatives. He is an advocate at the state and national levels for the disabled and has received numerous honors and awards for his leadership in advancing the cause of persons with disabilities. Mr. Jernigan has been Chairman of the Whitmire Cemetery Association in Escambia County for ten years and is dedicated to issues of perpetual care. He is a citizen representative on the Task Force.

Robert G. Maxwell has been practicing law since 1952, including Attorney for the Florida Cemetery Association for two decades beginning in 1970, and has been consulting cemeteries and cemetery-funeral establishment combinations for more than three decades. He was a municipal Judge of the City of Miami Springs and was very active in the community holding a number of board positions in civic and professional organizations. Now his civic activity is as Guardian-Ad-Litem. He represents interests of the licensed cemetery industry on the Task Force.

James J. Miller represents archeological and historical interests on the Task Force. For fifteen years he has been State Archeologist and Chief of the Florida Bureau of Archaeological Research. In this practice, Jim worked with Native Americans and others to amend the Florida law concerning dead bodies and graves and has certain statutory responsibilities when unmarked human remains are discovered.

Kenneth Mitchell, Sr. is a first generation funeral director. He has been a lifelong Florida resident, residing in Orlando. He owns and operates Mitchell Funeral. He is active in the Florida Funeral

Directors Association and the Florida Morticians Association, as well as his community. He represents consumer interests on the Task Force.

Richard L. Mueller has been involved in cemetery operations since 1963. In 1976 he accepted a position at the non-profit Evergreen Cemetery in Jacksonville, the largest cemetery in northern Florida, where he currently serves as Vice-President and General Manager. He has held many positions in professional cemetery organizations at state, national and international levels and is active in community service. He represents the interests of non-profit owned cemeteries on the Task Force.

Robert (Bob) Pappas was chosen by the Comptroller of Florida to be the first Regional Director of Banking and Finance, Northwest Florida Region in 1995. In this position he is responsible for consumer protection and industry support through a variety of government programs. He served in the U.S. Marine Corps including two combat tours in the Vietnam War. He represents the Florida Department of Banking and Finance on the Task Force, and serves as Chairman of the Task Force.

Judith C. (Johnson) Ralph is a native Floridian who was a registered nurse before helping her husband found their first funeral home in Plantation, Florida in 1965. They now own funeral homes in Plantation, Weston-Bonaventure, and Marathon. She has served in elected and appointed positions in a number of civic and professional organizations, including the Florida Funeral Directors Association, of which she was past president and director. She is now in her second term of the Florida Board of Funeral Directors and Embalmers. On the Task Force she represents the interests of pre-need certificateholders.

Washington Sanchez retired as a Colonel from the U.S. Army in 1991 following a career in Field Artillery that included two tours in Vietnam. He is a combat wounded veteran and a highly decorated combat commander. In Germany in the 1980s he commanded. He is very active in the community, volunteering as President, Gulf Coast Real Estate Investors Association and leadership positions in church, business, government and civic organizations. He represents citizen interests on the Task Force.

Michael R. Tadros is Director of Cemeteries for the Archdiocese of Miami and has been in the cemetery industry for over 12 years. He previously worked as Controller and General Manager of the Cemeteries for the Archdiocese of Toronto in Ontario, Canada. He has held elected and appointed positions in Florida, U.S. and Canadian professional cemetery associations, and was recently elected to a

three year term as a Director for Florida Cemetery Association. He has been a member of the National Catholic Cemetery Conference for thirteen years. He represents the interests of church-owned cemeteries on the Task Force.

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The Task Force on Abandoned and Neglected Cemeteries also wish to recognize the following persons for their contribution to the work of the Task Force:

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Frances Robats, Genealogical Society of Okaloosa County

Joyce Schnoor, Santa Rosa County Genealogical Society

Lee Scott, West Florida Genealogical Society

Elizabeth Smith, Vice-President, West Florida Genealogical Society

Partricia Wariner, Newsletter Editor/Recording Secretary, West Florida Genealogical Society

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Kay Stone, President, Polk County Genealogical Society

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Jackson County Cemetery Project Guide

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Lon Everett

Condition of Holmes County Cemeteries in 1997

Lon Everett

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Cemetery Survey Committee

Edith Mixon, Chairperson

A host of Volunteers

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Ray Judah, chairman, Lee County Commission

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