

*Should have been limited to outside corporate limits
See Sec 16-609 ACA 1939*

February 18, 1955

Letter Opinion
No. 55-25-

Clarence G. Salsbury, M. D.
Commissioner
Arizona State Department of Health
Phoenix, Arizona

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Re: Legal requirements necessary to move
some graves from an abandoned cemetery
on railway property to another cemetery.

Dear Dr. Salsbury:

In answer to your letter of January 21, 1955, wherein you requested an opinion of this office in regard to the legal requirements necessary to move some graves from an abandoned cemetery on railroad property to another cemetery, the following statutes and regulations are applicable:

68-603, A.C.A. 1939, as amended. BURIAL-TRANSIT PERMIT - - -

"(b) The State Board of Health may make regulations in conformity with the public health laws, relating to the disposal, transportation, interment or disinterment of the dead. Such regulations shall become effective thirty days after enactment by the board." (Emphasis supplied)

RULES AND REGULATIONS OF THE ARIZONA STATE BOARD OF HEALTH GOVERNING VITAL STATISTICS, Article 5, Regulation 7:

"After a body has been buried, it shall not be disinterred for removal or transportation until a written application for disinterment permit has been filed with the local registrar by a licensed funeral director and a permit issued by the local registrar." (Emphasis supplied)

A study of the local registration manual, Chapter D, DEATH REGISTRATION, Section 6, in regard to disinterment, indicates that the funeral director must certify on permit form VS-130 that he has obtained the permission of the next of kin.

The problem may very well arise that since this is an abandoned cemetery, which includes some unmarked graves, it may well be impossible to obtain the permission of or notify the next of kin.

Clarence G. Salsbury, M. D.
Commissioner, Arizona State Dept. of Health

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42 Am. Jur. 432, Section 102, provides as follows:

"Rules, regulations, and general orders enacted by administrative authorities, pursuant to the powers delegated to them, have the force and effect of law."

Since under the state of Arizona's requirements for disinterment, no statute or regulation of the State Board of Health would govern a case where the next of kin could not be found or is unknown, it is the opinion of this office that the Arizona State Department of Health should formulate a ruling to take care of cases of disinterment where the "next of kin" are unknown. If we may so suggest, a regulation which would provide for notice to the unknown next of kin by means of publication in a newspaper within the county where the abandoned graves are located, would be a proper means to accomplish this action.

If this office can be of further help to you in this or any other matter, please feel free to call upon us at any time.

Very truly yours,

ROBERT MORRISON
The Attorney General

NORMAN E. GREEN
Assistant to the
Attorney General

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