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**CEMETERIES:
Authority of the Comptroller
to Audit the Use of Income
From Cemetery Care Funds**

Honorable George W. Lindberg
Comptroller
State of Illinois
Springfield, Illinois 62706

Dear Mr. Lindberg:

This responds to your request for an opinion as to whether under the Cemetery Care Act (Ill. Rev. Stat. 1973, ch. 21, par. 64.1 through 64.24) you have the authority to audit the use of income from cemetery care funds and whether you may require a regular reporting of the expenditures of such income. Presently you require the reporting of the net change in the balance of a fund and a limited reporting of the expenditures of the income of a fund. Expenditures are now itemized only

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by three categories: expenses of the trustees, payment of taxes and transfers to the cemetery operating account. You now propose to require the reporting of the expenditure of income transferred to a cemetery operating account, which would show the ultimate use of the income.

Cemetery care funds are the realty and personalty which are impressed with a trust in perpetuity for the care of a cemetery. No cemetery authority within the purview of the Cemetery Care Fund Act, supra, may accept care funds without first obtaining a license from the Comptroller authorizing it to do so.

Section 12 of the Act (Ill. Rev. Stat. 1973, ch. 21, par. 64.12) provides that every licensee shall prepare a report which shows the income received from care funds during the preceding year and the expenditures made from such income during that year. This section provides in part as follows:

"§ 12. Every licensee shall prepare a report in writing as of the end of the preceding calendar year or fiscal year, as the case may be, showing:

* * *

(c) The income received from such care funds during the preceding calendar year, or fiscal year, as the case may be;

(d) The expenditures made from said income during the preceding calendar year, or fiscal year, as the case may be; and

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Section 13 (Ill. Rev. Stat. 1973, ch. 21, par. 64.13) provides that every licensee shall use in its business such books, accounts and records as will enable the Comptroller to determine whether such licensee is complying with the provisions of the Act. In section 19 (Ill. Rev. Stat. 1973, ch. 21, par. 64.19) the Comptroller is authorized to prescribe the items to be reported and the detail in which they are to be reported. It provides in part as follows:

"§ 19. The Comptroller may make, amend, rescind and enforce such rules and regulations and amendments thereto, as may be necessary for the purpose of carrying out this Act. * * * Among other things, the Comptroller may, for the purposes of this Act, prescribe the form or forms in which required information shall be set forth, the items or details to be shown in any statement or report, and the methods to be followed in the preparation of accounts and in the appraisal or evaluation of assets and liabilities. * * * "

Furthermore, under section 14 (Ill. Rev. Stat. 1973, ch. 21, par. 64.14) the Comptroller has the authority to investigate the cemetery business of every licensee with respect to its care funds. This section provides in part as follows:

"§ 14. The Comptroller may at any time investigate the cemetery business of every licensee with respect to its care funds. The Comptroller shall examine at least annually every licensee who holds \$250,000 or more in its care funds. For that purpose, the Comptroller shall have free

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access to the office and places of business and to such records of all licensees and of all trustees of the care funds of all licensees as shall relate to the acceptance, use and investment of care funds. * * * Any licensee which is not required to be examined annually shall submit an annual report to the Comptroller containing such information as the Comptroller reasonably may request."

On the basis of these clear statutory provisions I am of the opinion that you have the authority to audit the use of income from care funds and to require reporting of ultimate use of the income of a cemetery care fund.

Such authority is necessary to fulfill the purpose of the Act, supra. One of the principal evils sought to be remedied by the Act was the possibility of fraud or mismanagement in the handling of care funds. (Union Cemetery Ass'n v. Cooper, 414 Ill. 23.) If you were not authorized to audit the actual use of the funds, the Act would do little to prevent the possibility of fraud. The net income of a fund must be expended in accordance with section 3 (Ill. Rev. Stat. 1973, ch. 21, par. 64.3), which provides in part:

"§ 3. Gifts and contributions — Trust funds.)
* * * 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."

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In order for you to determine whether the care funds are being spent in a proper manner you must know more than that they were transferred to a cemetery operating fund. You must know how they were ultimately expended.

In answer to your second question, licensees are required by section 12 of the Act, supra, to report the expenditure of the income annually. However, under section 14, supra, you may investigate licensees at any time.

Very truly yours,

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