

Municipal Trustees Training Workshop

Duties and Responsibilities of Cemetery Trustees

Stephen Buckley, Legal Services Counsel
New Hampshire Municipal Association



THANKS TO OUR SPONSORS



America's Most Convenient Bank®



RSA Chapter 289: Overview

- ▶ Requires municipalities to have either a public cemetery, or contract with another municipality or a nonprofit entity to provide a suitable cemetery. RSA 289:2
- ▶ Establishes standards on where cemeteries may be located in relation to other land uses and highways. RSA 289:3
- ▶ Requires that municipalities provide sufficient funds for the suitable care and maintenance of the municipal public cemeteries within its boundaries. RSA 289:4
- ▶ Designates an elected board of cemetery trustees, or other elected or appointed officials to manage municipal cemeteries. RSA 289:6
- ▶ Provides for the management of historic, neglected and abandoned burial grounds. RSA 289:14-a - :14-b; RSA 289:19 - :21.

RSA 289:2

“Municipality to Provide”

- ▶ Every municipality shall provide or may enter into agreements with adjacent municipalities or nonprofit entities to provide, one or more suitable cemeteries for the interment of deceased persons, which shall be subject to such regulations as the municipality may establish.
- ▶ In the absence of regulations established by vote of the legislative body, the cemetery trustees may establish such regulations pursuant to RSA 289:7, I(a).
- ▶ The operation and maintenance of all cemeteries owned and maintained by the municipality shall be in the charge of the cemetery trustees.

Who Controls Cemeteries?

- ▶ Default is elected board of cemetery trustees pursuant to RSA 289:6.
- ▶ Town Manager towns may vote by separate warrant article to designate Cemetery Trustee duties to the Town Manager:
 - ▶ “Shall we discontinue the board of cemetery trustees by delegating their duties and responsibilities to the town manager?” If the majority votes in the affirmative, then the discontinuance shall take effect 90 days after adoption.
- ▶ Traditional Town Meeting towns may vote by separate warrant article to designate the Select Board as the Cemetery Trustees.
 - ▶ “Shall we delegate the duties and responsibilities of the cemetery trustees to the board of selectmen?” If the majority vote in the affirmative then the delegation shall take effect 90 days after adoption and shall continue until rescinded by vote of the town meeting.
- ▶ In cities the trustees shall be chosen and hold their office for such term as shall be provided by city ordinance.

How are Cemetery Trustees Selected?

Elected – Mostly. RSA 289:6.

- Default: 3 Trustees.
 - Each elected for staggered 3-year term.
- May choose to have 5 Trustees.
 - First 3 elected for staggered 3-year terms.
 - Other 2 appointed by the Select Board for staggered 2-year terms.
 - Subsequently, elected to staggered 3-year terms.

Vacancies are filled by appointment by the Select Board.

The Trustees may recommend up-to 2 alternates.

- Alternates appointed by the Select Board.

Organization of Cemetery Trustees

- ▶ RSA 289:6: Requires Trustees to appoint Chairperson and Bookkeeper.
 - ▶ May be the same member.
- ▶ Bookkeeper “shall keep the records and books of the trustees and shall issue vouchers as necessary for funds to be expended.”
- ▶ RSA 289:5: Requires a record of every burial in the town showing the date of burial and name of the person buried, when these particulars can be obtained, and the lot, plot, or part of such plot or lot, in which the burial was made, to be supplied and maintained by the cemetery trustees.

Cemetery Trustees: Powers & Duties

- ▶ RSA 289:7 -
 - ▶ Adopt bylaws (regulations) for management of cemeteries;
 - ▶ Prepare annual budget for cemeteries;
 - ▶ Expend monies raised by municipality;
 - ▶ Expend income from trust funds held by Trustees;
 - ▶ Prepare deeds of cemetery lots;
 - ▶ Appoint custodian or sexton (if needed).

Cemetery Lot Transactions

- ▶ 289:2-a Funds Received From Sale of Cemetery Lots: Town Meeting may vote to either deposit cemetery lot sale proceeds in the general, or be deposited with the trustees of trust fund for the maintenance of cemeteries under RSA 31:19-a.
- ▶ Deeds should specify the terms that apply when a deed is to be returned to the cemetery.
- ▶ Deeds should also require that any transfer go through the cemetery to be valid.

Cemetery Rules & Regulations

- ▶ Good Examples of Rules & Regulations at the NH Cemetery Association Website:
<https://www.nhcemetery.org/extras>
- ▶ Suggested content to include:
 - Transfer of cemetery lot deed/rights
 - How and who supervises internment and disinterment
 - Size and placement of headstones & markers
 - Manner of permitted plantings and decorations
 - Operations of vehicles; pedestrian access; whether dog walking is permitted or prohibited.

Cemetery Trustees: Consulting on Rights of Way



If **NO** public right-of-way to private burial ground, a person may apply to the select board (or mayor, if a city) for a temporary right-of-way.



Right-of-way may be for maintenance, repair, or preservation of burial ground.



Select board (or mayor) must consult with Cemetery Trustees when deciding whether to issue a permit.

Knick v. Township of Scott

- ▶ U.S. Supreme Court. 2019 Decision.
- ▶ Township of Scott, Pennsylvania, passed an ordinance requiring that “[a]ll cemeteries . . . be kept open and accessible to the general public during daylight hours.” Subsequently, the Township sought to enforce the ordinance against the owner of a property containing a private burial ground.
- ▶ Owner of private cemetery sued the Township in federal court alleging that it had committed a taking without just compensation in violation of the Fifth Amendment by forcing her to hold open her private property to the public.
- ▶ U.S. Supreme Court decided that the ordinance was a “taking.”
- ▶ *Lesson: Municipalities should be extraordinarily concerned if they currently issue or are asked to issue right of way permits to pass over private property, e.g. to a private burial ground.*

Other Relevant Statutes

RSA chapter 290 - Pertaining to Burials and Disinterments



Also, be aware of two other statutes:

RSA chapter 291 - Bodies for Scientific Study

RSA chapter 291-A - Uniform Anatomical Gift Act

*THANK YOU for attending NHMA's
Municipal Trustees Training Workshops!*



NHMA's Mission

Through the collective power of cities and towns, NHMA promotes effective municipal government by providing education, training, advocacy and legal services.

25 Triangle Park Drive, Concord, NH 03301

www.nhmunicipal.org
legalinquiries@nhmunicipal.org
603.224.7447