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Fields of the Forgotten: Abandoned Cemetery Law in Kentucky

By: Christopher Bailey¹

The law tends to focus on the living. This makes sense for a number of reasons, be they social, economical or cultural. Only those who are living can feel the injury of wrongs that have been committed against them, as those dearly departed have no capacity to feel pain or economic loss. The dead do not get married or divorced, nor do they engage in long contractual disputes. The dead do not own property², nor do they often get arrested. They certainly do not hire attorneys to defend their interests, and as such have few real champions. Their existence is largely a passive one, and the laws regarding the final dispositions of their remains in Kentucky reflect this surreal reality. The dead are, buried and, eventually, forgotten. Grass grows on their graves, and without any maintenance, will eventually consume every trace of them.

This note will discuss the various legal and environmental issues that are connected to old cemeteries in Kentucky, with the primary focus being the lack of a legal framework for addressing the increasing number of “abandoned” or neglected grave sites across the state. These hallowed places exist in a bizarre nexus, one where the legal owners and their financial resources have long ago vanished, but the overgrown headstones and human remains they were to care for still linger on. Absent any future reforms, the problem will only continue to grow in size and scale, as more and more small cemeteries become neglected across the state.

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² As a practical matter, the dead cannot purchase or sell property. Property issues are generally addressed by the decedent’s estate.

A near total lack of regulation allows the responsible parties to simply walk away from their obligations, leaving behind score of graveyards across urban and rural landscapes. Likewise, a lack of formal record keeping at a state or county level keeps the true extent of the problem hidden from view, permitting it to grow unchecked. Worse yet, it has created a blind spot where bad actors can (and do) destroy and repurpose grave sites for personal gain, tossing aside human remains in the process. These hidden crimes go unpunished and the families of the dead are left with nothing but their memories of the departed.

Such distressed cemeteries also pose a number of problems for the communities that they are located in. Aside from creating eyesores, efforts to address these distressed properties drain both public and private resources. A city, community or neighborhood must choose between spending precious resources to maintain these sites, or simply turn a blind eye and ignore the problem. The absence of a legal mandate has created an environment where most parties choose the latter path, allowing these sites to become nuisances, overgrown fields of headstones that will always be “tomorrow’s” problem.

This note will examine failed legislative reforms that could have addressed these various problems. These assorted previous efforts will be examined in detail in an effort to come up with a model for future legislative reforms. A brief study will also be done, in which the author looks for ways to bring together the stakeholders in this issue together. If a real bill is to be passed, it will need the cooperation of a number of parties, each of which will be examined, along with various strategies for uniting them together behind an effective cause.

Eastern Cemetery: A case study in failure

Eastern Cemetery, located near the intersection of Broadway and Baxter Avenue in Louisville, Kentucky, was incorporated by the Kentucky General Assembly on March 3, 1854.³ Despite not being officially formed until this act, there are recorded burials dating back to 1843, and there are stories claiming that graves existed on the site as early as 1835, though it seems probable that these early graves were actually moved to Eastern at later time.⁴ Even at this early date, a lack of any formal record keeping means that the complete history of Eastern Cemetery is not known to researchers at this time, although future efforts will of course expand on the current base of knowledge.

As the years went on, the cemetery expanded in size, shifting too from a rural setting to an urban one. What was at first a 15 acre tract in the rural fringes of Louisville soon became a nearly thirty acre cemetery, one that is today resting squarely in the middle of the Highlands neighborhood.⁵ As the cemetery and surrounding area changed, so too did the organizations that ran it. Despite being founded for the benefit of the Fourth Street Methodist Episcopal Church, the site was further developed by the Brook Street & Walnut Street Methodist Episcopal Churches South, with the daily business of the site apparently being run by the Eastern Cemetery Company.⁶

Actual legal title to the land is most charitably described as “muddy.” While some early deeds list the grantee as being “Eastern Cemetery Company,” others simply list individuals who

³Philip J. DiBlasi, *Summary History of Eastern, Greenwood and Shardein Cemeteries*, <http://louisville.edu/anthropology/faculty-staff/diblasi-site/summary-history-of-eastern-greenwood-and-shardein-cemeteries> (last visited Mar. 23, 2015).

⁴*Id.*

⁵*Id.* See also, *History – Friends of Eastern Cemetery*, FRIENDS OF EASTERN CEMETERY, <http://friendsofeasterncemetery.com/history/> (last visited Mar. 23, 2015).

⁶*Id.* Both of these churches have changed names several times, and are no longer active or recognized by these titles.

were presumably involved with the cemetery and its administration.⁷ The Jefferson County Property Valuation Administrator lists the current owner as the “Louisville Crematory & Cemeteries Co,” though it is unclear where this information came from.⁸ The Jefferson County Sheriff’s Office, the local agency responsible for tax collection, has no records of the tract at all, and nothing comes up when the cemetery address is searched for in their system.⁹ It is as if the cemetery doesn’t exist in the eyes of the government, despite the fact that there is a massive and neglected tract of land in the city core.

While the lack of government and public records is baffling at first, it makes sense because most cemeteries are considered tax exempt entities by the state of Kentucky.¹⁰ Thus, unlike other types of real property that exist in their domain, state and local governments simply have no incentive to make sure that there is good record of title. There is no revenue stream to be gained by making sure that the owners are known, and given that land disputes are civil matters in Kentucky, there is no chance of a governmental entity initiating litigation to determine ownership of the property. Once a piece of land becomes a cemetery, it is removed from the county property register by either deleting it from a computer index or manually erasing it from a giant ledger book.¹¹ This sort of obliteration leads to other complications years down the road, ones that are not always apparent to today’s observers.

⁷Records of the Clerk of Jefferson County, Kentucky, Deed Book 124, Page 30; Deed Book 277, Page 236; Deed Book 69, Page 679; and Deed Book 162, Page 428.

⁸Records of the Jefferson County PVA. <https://jeffersonpva.ky.gov/property-search/>. Tract No. 068L00010000

⁹Records of the Jefferson County Sheriff, http://www.jcsoky.org/ptax_search_addr.asp. (no Records for “641 Baxter Ave.”)

¹⁰KY. CONST., § 107.

¹¹Interview with Philip DiBlasi, M.S., Staff Archaeologist, Univ. of Louisville. (Oct. 29, 2014). Mr DiBlasi, a member of the faculty at the University of Louisville, described personally seeing a clerk use “white-out” fluid in a county record book. Quite literally, the property no longer existed in the eyes of the government.

What happened next at this cemetery is the stuff of horror stories. From the detailed corporate records of the Eastern Cemetery Company, it is clear that graves were being reused as early as 1858.¹² Notes in the daily records began describing certain burials as taking place in “OGs.”¹³ Other log book entries are so blunt as to actually spell out the meaning of “OG:” Old graves. Eastern Cemetery was reusing graves, re-selling old plots and destroying human remains. Every few decades, starting in 1880, the cemetery maps would “re plot” large sections of the property, renaming sections of property, and reselling all of the graves located within them.¹⁴ In some cases, sections of the cemetery were reused without even changing their names on the map.¹⁵ To add to the confusion, it also appears the roads within the cemetery may have been moved at various points, also obliterating this point of reference for finding old graves. Eventually, a cemetery that had space for only 16,000 graves ended up with at least 48,000 people buried in it.¹⁶ Some estimates place the total number of graves as high as 130,000, though the true number seems unknowable at this point.¹⁷

This situation proceeded onwards for 140 years, nearly two lifetimes, until 1989 when stories of the mismanagement and abuse became national news.¹⁸ In May of that year, a gravedigger made a report to the State Attorney General’s office, claiming that he had seen many

¹²DiBlasi, *supra* note 3.

¹³*Id.*

¹⁴*Id.*

¹⁵*Id.*

¹⁶Laura Valentine, *Louisville’s Crumbling Eastern Cemetery Desperate for Attention*, WFPL (July 14, 2013), <http://wfpl.org/commentary-louisvilles-crumbling-eastern-cemetery-desperate-attention-care/>.

¹⁷*Nearly 130,000 bodies buried in cemetery that’s supposed to hold only 30,000*, CBS CLEVELAND (Dec. 19, 2014, 9:30 PM), <http://cleveland.cbslocal.com/2014/12/19/nearly-130000-bodies-buried-in-cemetery-thats-only-supposed-to-hold-30000/>.

¹⁸*Thousands buried in old graves, investigators in Kentucky report*, NEW YORK TIMES (Nov. 28, 1989), available at <http://www.nytimes.com/1989/11/28/us/thousands-buried-in-old-graves-investigators-in-kentucky-report.html>.

instances of grave reuse during his eight years of employment at Eastern Cemetery.¹⁹ When investigators showed up and searched the property, the scenes they found defied explanation. Human remains were found tucked into the glove box of the company truck, hidden in a storage shed, and even stuffed into an old fast-food bag.²⁰ There were nearly seventy graves in total in the 'infant' section of the cemetery, that in some cases, were found to be as shallow as ten inches.²¹ Unidentified cremated remains were found stacked on shelves in the on-site crematory.²² One investigator took a file cabinet of records to his office, only to find human remains tucked back behind the paper records.²³ The stories go on and on, but they will be abridged here for brevity.

The people involved with running the cemetery were soon brought up on criminal charges and the corporation itself was administratively dissolved by the state in 1992.²⁴ With no corporation to run it, the cemetery was effectively abandoned, sitting neglected in the core of a major city. A perpetual care fund that was established to take care of the property provides very little revenue and is administered by the State Attorney Generals' office.²⁵ Additional funds are sourced through donations, although these have not been enough to maintain the massive property.²⁶ Still more funds are needed to protect and preserve the boxes of human remains that

¹⁹*Id.*

²⁰*Id.*

²¹*Id.*

²²Charles Wolfe, *2 Cemeteries accused of reusing graves*, LA TIMES (Dec. 10, 1989) http://articles.latimes.com/1989-12-10/news/mn-169_1_eastern-cemetery.

²³*Nearly 130,000 bodies buried in cemetery that's supposed to hold only 30,000*, CBS CLEVELAND (Dec. 19, 2014, 9:30 PM), <http://cleveland.cbslocal.com/2014/12/19/nearly-130000-bodies-buried-in-cemetery-thats-only-supposed-to-hold-30000/>.

²⁴*Thousands buried in old graves, investigators in Kentucky report*, NEW YORK TIMES (Nov. 28, 1989), <http://www.nytimes.com/1989/11/28/us/thousands-buried-in-old-graves-investigators-in-kentucky-report.html>; Records of the Kentucky Secretary of State.

²⁵*History – Friends of Eastern Cemetery*, FRIENDS OF EASTERN CEMETERY, <http://friendsofeasterncemetery.com/history/> (last visited Mar. 23, 2015).

²⁶*Make a Donation – Friends of Eastern Cemetery*, FRIENDS OF EASTERN CEMETERY, <http://friendsofeasterncemetery.com/history/> (last visited Mar. 23, 2015).

are stored at the University of Louisville, a situation that seems unlikely to change given the current state of affairs at the property.²⁷

In the absence of any governing body, the cemetery has turned into a massive eyesore. Graves have been covered up by tall grass and burly shrubs.²⁸ Headstones have been willfully broken by vandals, and the property is covered with trash and debris.²⁹ Some individuals have gone so far as to steal valuable scrap metal from headstones, while others have turned the various buildings on the property into spray-painted wrecks.³⁰ The cemetery became the center of legends and ghost stories, and has gained some regional fame for its ruinous condition, and even today visitors will stop by to ponder over its horrid condition. Sightseers could find a pile of uninstalled headstones lying in a pile in the back of the property, while in the meantime, the deceased rest in unmarked graves. Few, it seems, cared enough to do anything to make the property better.

Today, the groups that take care of the property are largely volunteer-based. Dismas Charities, a local Catholic affiliate, regularly mows cemetery, while a non-profit group called The Friends of Eastern Cemetery makes regular efforts to straighten headstones and otherwise undo years of neglect.³¹ It's an uphill battle though. The cemetery is full of sinkholes, and in addition to the broken and neglected graves to take care of, the property is literally a sea of bones, some of which can be found on the surface.³² Any efforts to conserve and improve the property must take into account the legal and moral importance of handling the remains, something which does raise

²⁷Laura Valentine, *Louisville's Crumbling Eastern Cemetery Desperate for Attention*, WFPL (July 14, 2013), <http://wfpl.org/commentary-louisvilles-crumbling-eastern-cemetery-desperate-attention-care/>.

²⁸*Id.*

²⁹*Id.*

³⁰*Id.*

³¹ Friends of Eastern Cemetery, *supra* note 25.

³² Valentine, *supra* note 27.

unusual questions when volunteers need to do basic work at the site. While things are improving, there is still a long way to go.

To make matters worse, Eastern Cemetery was but one of three cemeteries owned by the now defunct Louisville Crematory & Cemeteries Co, the parent company that oversaw the final decades of operations.³³ These other cemeteries, Greenwood in Louisville's west end, and Schardein in the southern end, both suffered from the same criminal management as Eastern.³⁴ There are hundreds or thousands of destroyed graves in each, and when maintenance ended at these properties, those affected by them were left to pick up the pieces. Even today, some people still own "at-need" grave plots that they purchased from the now-defunct cemetery, plots that they hope to use. Philip DiBlasi, the researcher currently charged with watching over the cemeteries, has indicated that there is a nearly 100% chance that any plot in Eastern is already occupied, while the number for Greenwood appears to be a paltry 50%.³⁵ There isn't enough documentation to indicate what one would expect to encounter at Schardein Cemetery, although the author of this note does not have high hopes.

An absence of meaningful laws.

Eastern Cemetery is truly the stuff of horror stories, and brings to mind old movies like *Poltergeist*³⁶, as well as modern shows like *Ghost Hunters*³⁷. Sadly though, it's neither fiction nor TV. Its real life, and it has consequences for the people that affected by it. Thousands of human remains have been churned into the soil like gravel, and tens of thousands of family members must

³³ Friends of Eastern Cemetery, *supra* note 25.

³⁴ DiBlasi, *supra* note 3.

³⁵ *Id.*

³⁶ *Poltergeist*, Motion Picture (MGM 1982).

³⁷ *Ghost Hunters*, TV Series (SyFy 2004-).

accept the fact that their loved ones' graves no longer exist. The Highlands neighborhood, as well as the City of Louisville, has thirty acres of land that generate no tax revenue, while at the same time consuming scarce community resources.

How did a city let this occur in its boundaries? It happened, in part, because there is currently no statute or regulation in Kentucky that requires any formal record keeping for cemeteries³⁸. There is nothing at a state or county level that would have triggered a formal investigation into over-burial at the property, nor is there a mechanism for currently implementing one.³⁹ This absence of oversight permitted the company to dig up old graves, rebury the bones in random places, and then destroy the headstones that had once marked the final resting place of a human being. Had there been even a basic registry that compared the available space at Eastern Cemetery to the number of plots that had been sold, evidence of the crimes taking place would have been discovered decades, perhaps a century earlier. Instead, it took the phone call of one gravedigger to a state official to bring attention to the issue, along with the cascade of legal issues that followed.⁴⁰

While Eastern Cemetery is of course an extreme example of cemetery mismanagement followed by abandonment, the same absence of laws that permitted it to enter its current state also provide the legal framework for thousands of other properties across the state. Jefferson County Kentucky is the site of 315 cemeteries of various sizes⁴¹, while the state has perhaps several

³⁸ A thorough of Kentucky statutes and regulations turned up no governing material.

³⁹ A thorough of Louisville, Kentucky, statutes and regulations turned up no governing material.

⁴⁰ *Friends of Eastern Cemetery seek caretakers for past generations' crumbling home*, WDRB (Dec. 18, 2014), available at <http://www.wdrb.com/story/27664179/friends-of-eastern-cemetery-seek-caretakers-for-past-generations-crumbling-home>.

⁴¹ Find A Grave, <http://www.findagrave.com/cgi-bin/fg.cgi?page=csr&CSnty=1044> (Accessed Dec. 21, 2015).

thousand known burial grounds.⁴² How many of these graveyards are abandoned and neglected? Who owns them and should be taking care of them? How many have been accidentally or intentionally developed over? We simply don't know. Is there another Eastern Cemetery, waiting in the wings?

Once a cemetery has become abandoned, perhaps the biggest bar to solving the problem is a complete lack of legislation that mandates any governmental protective action. Rather, a city is only obligated to prevent a cemetery from being destroyed.⁴³ The governing statute, titled "Protection of Burial Grounds by Cities," states that:

"Whenever any burial grounds lie within the corporate limits of a city the governing authorities of the city shall protect the burial grounds from being used for dumping grounds, building sites, playgrounds, places of entertainment and amusement, public parks, athletic fields or parking grounds."⁴⁴

While this statute has some value on its face, in that it mandates that cities prevent a cemetery from being abused, it is also full of holes. Notably, it doesn't address cemeteries that are in rural locations, ones that don't fall into the control of a city government. It also does not mandate that a government take any proactive steps in their efforts. A city "shall protect" a burial ground from abuse or development, but a city is not required to actively conserve and maintain the abandoned facility. Thus, as long as the City of Louisville keeps Eastern Cemetery from being turned into a dumping site or playground, it has met its statutory obligation. That the land is overgrown and the headstones are broken is of no relevance in the analysis.

⁴² Find A Grave. search results, state of Kentucky, <http://www.findagrave.com/cgi-bin/fg.cgi?page=csb&CSst=19> (Accessed Dec. 21, 2015).

⁴³ Ky. Rev. Stat. §381.690 (2011).

⁴⁴ *Id.*

In theory, the responsibility for maintenance rests with the legal owner of the cemetery, pursuant to KRS § 381.697.⁴⁵ This statute demands that:

“Every cemetery in Kentucky except private family cemeteries shall be maintained by its legal owner or owners, without respect to the individual owners of burial plots in the cemetery, in such a manner so as to keep the burial grounds or cemetery free of growth of weeds, free from accumulated debris, displaced tombstones, or other signs and indication of vandalism or gross neglect.”⁴⁶

However, as shown with land records of Eastern Cemetery, legal title to these places is often a mess.⁴⁷ If the property has not changed hands in more than a century, and the County government does not keep records on land ownership, how is ownership established and the violations punished? Absent any undiscovered deeds, it seems likely that portions of Eastern Cemetery are still owned by the descendants of the individuals who acquired the land in the 1840s.⁴⁸ Should the City of Louisville pursue these unknown heirs for their fractional interest in an over-buried cemetery?

The solution that has been implemented by the city is a puzzling one. Despite having been dissolved in more than twenty years ago, the City of Louisville is still issuing nuisance citations to the Louisville Crematory & Cemeteries Co for perceived violations that are taking place at the now abandoned Eastern Cemetery.⁴⁹ It is unclear how the city expects to collect these fines and penalties, nevermind who they expect would pay them. Absent any releases, these liens will remain attached to the property for the near future, regardless of who really owns the land.

⁴⁵ Ky. Rev. Stat. §381.697 (2013).

⁴⁶ *Id.*

⁴⁷ *Supra*, Note 7.

⁴⁸ One of the earlier deeds for the property, of record in Deed Book 69, Page 679, dated March 8, 1848 is in the name of an individual, and predates the legal formation of the Eastern Cemetery Company in 1854. Additional tracts were added to the cemetery over the years, some in its name, some to the other individuals.

⁴⁹ There are a large number of these violations of record in the Office of the Clerk of Jefferson County, Kentucky.

Should the City of Louisville decide to take over the abandoned cemetery, only one statute provides any statutory authority for such actions. KRS § 381.720 provides that:

“Whenever in the opinion of the legislative body of a city...[it is determined that] a cemetery located within the boundaries of such city has been abandoned and the land comprising the said cemetery is needed for a public purpose, an ordinance may be enacted declaring such cemetery...to be abandoned and authorizing the city attorney to institute suit for the city...to declare the said cemetery abandoned and to vest title thereto in the said city...”

Although this statute appears to provide a city with the power to condemn and take over an abandoned cemetery, the law is somewhat measured in its approach to the problem. Of note is the clause that says that the abandoned cemetery can be taken if the land “is needed for a public purpose.”⁵⁰ This would seem to block any the possibility that a cemetery could be taken for reasons of nuisance. In order for such a taking then to occur, courts would first need to develop case law that classifies the preservation of abandoned cemeteries as a public purpose. While the courts will probably give some latitude to a city in making this argument, it is ultimately a “taking” of private property by the government, and this will need to be explained in some depth by the public actors involved, as it raises constitutional implications for those that are affected by it.⁵¹

Even more troublesome will be the finding of political will to follow through with the process. In an era of declining government spending, it seems unlikely that many cities will voluntarily incur the additional expense and efforts of protecting abandoned cemeteries. Thus, all legislation that plans on solving this problem will need to have binding language, so that cities and communities are bound to act and solve the problems that lie in their midst. This will require

⁵⁰ *Id.*

⁵¹ U.S. Const. amend. V.

legislative will, as it is probable that the affected communities will create a stir, thereby watering down the proposed bill.

Failed attempts at a legislative solution

Since 2002, there have been at least six attempts in the Kentucky legislature to solve these various problems, all introduced by the same person, State Representative Reginald Meeks of House District 42.⁵² While each of these bills has featured different language aimed at protecting neglected cemeteries, none have managed to become law. Perhaps bowing to these previous failures, each successive bill has gotten shorter in length, and smaller in scope.⁵³ The 2014 bill is barely related to the earlier pieces of legislation, and the more recent efforts no longer feature the same title as those earlier bills. Instead of being called “An act relating to cemeteries,” most of the later bills are titled “an act relating to historic preservation,” reflecting the changing scopes of their legislative effects.⁵⁴

The first bill, from 2002, would have created a “Kentucky Historic Cemetery Preservation Program.”⁵⁵ Run by the Kentucky Historical Society, in Frankfort, this program would have provided grants and other technical assistance to local governments and civic groups that wanted to help preserve and maintain neglected cemeteries in the state.⁵⁶ The funds to administer this program would have been obtained through donations made on state income-tax forms, as well as

⁵² See, H.R. 572, Reg. Sess. (Ky. 2002); H.R. 332, Reg. Sess. (Ky. 2005); H.R. 118, Reg. Sess. (Ky. 2007); H.R. 92, Reg. Sess. (Ky. 2010); H.R. 76, Reg. Sess. (Ky. 2011); and H.R. 152, Reg. Sess. (Ky. 2014).

⁵³ H.R. 572, from 2002 was twenty-three pages in length, while H.R. 152 from 2014 was merely two pages long.

⁵⁴ *Id.*

⁵⁵ H.R. 572, Reg. Sess. (Ky. 2002).

⁵⁶ *Id.*

through various grants or donations that the Program would have received or applied for.⁵⁷ Perhaps most interesting, is Section 7 of the bill, which states that:

“The General Assembly declares that it is the public policy of the Commonwealth of Kentucky to recognize and preserve the cultural, historical, and genealogical heritage of the state's cemeteries for present and future generations.”⁵⁸

This language would appear on its face to solve the “Public Policy” issue of KRS § 381.720, and could have permitted courts to condemn neglected or misused cemeteries under the older statute.⁵⁹

While this bill failed to become law, the Kentucky Historical Society has created a Cemetery Preservation Program, one that offers educational and professional assistance, but nothing in the way of funds.⁶⁰ Volunteers may adopt a cemetery, but they do so at their own expense and liability, as the program’s paperwork makes clear.⁶¹ Despite these shortcomings, the Historical Society does maintain a searchable database of some historical cemeteries in the state, although it is limited in functionality and scope. Additional funding would solve these problems, but absent a statutory grant, it is unclear where this money will come from.

Also of interest in the 2002 bill is language that would have amended KRS § 382.110. This statute, which covers the covers the recording of deeds and mortgages, currently contains nothing about the location of cemeteries. The modified statute would have had an added a section that mandated in the inclusion of known cemetery locations in recorded deeds.⁶² Such language

⁵⁷ *Id.* § 8.

⁵⁸ *Id.* § 7.

⁵⁹ *Id.*

⁶⁰ *Cemetery Preservation*, KENTUCKY HISTORICAL SOCIETY (July 11, 2014), <http://history.ky.gov/portfolio/cemetery-preservation/>.

⁶¹ *Adopt a Cemetery Program*, KENTUCKY HISTORICAL SOCIETY, http://history.ky.gov/pdf/CommunityServices/KHS_Adopt-a-Cemetery_Program.pdf (last visited Mar. 23, 2015).

⁶² H.R. 572 § 12, Reg. Sess. (Ky. 2002).

could prevent the “laundering” of deeds, where the location of a cemetery becomes lost through successive real estate transactions, each one containing less and less information about the land and the known easements thereon.⁶³ It would also help innocent future owners become aware of the liabilities and limitations they may have in developing their tract of land, and no one wants to see their construction project stopped by the surprising discovery of human remains.⁶⁴

A clause contained in both the 2002 and 2005 house bills would have mandated that all Kentucky death certificates contain a section on the deceased that notes “the specific location of the grave, vault, tomb, crypt, or niche within a cemetery” that contains their remains.⁶⁵ Current death certificates lack this clear information, as they require only the name of the cemetery, and the city where it is located.⁶⁶ This makes it nearly impossible to find a grave in any large cemetery, assuming that the information provided on the document is actually correct. Requiring the recording of an accurate plot or tract number in some sort of searchable database would help prevent double burials, while also allowing a family member to find a grave. Both of the bills would have also mandated that a cemetery keep and make available to the public records of all graves that are located in it.⁶⁷ Any cemetery or owner who failed to follow this simple rule would have been punished with a fine that ranged from \$100.00 to \$500.00, per offense.⁶⁸ Such a public and accessible roster would have made it very difficult for those running Eastern Cemetery to be so flagrant in their abusive reburial practices. It is notable that later bills introduced into the House

⁶³ Presumably, a title search or physical examination of the property would be done before the deed was prepared and recorded, although the exact mechanisms here are unclear. This would probably be addressed by regulation.

⁶⁴ The language of KRS § 525.105 and 525.115 both note that for felony charges to apply, damage or injury to a burial ground must be “intentional,” thus shielding those who accidentally discover and damage human remains or grave markers.

⁶⁵ H.B. 572, Reg. Sess. (Ky. 2002), § 28. H.B. 332, Reg. Sess. (Ky. 2005), § 18.

⁶⁶ Form VS-1A (Revised 12/2013), Kentucky Certificate of Death. Sections 25 and 26.

⁶⁷ H.B. 572, Reg. Sess. (Ky. 2002), § 29. H.B. 332, Reg. Sess. (Ky. 2005), § 19.

⁶⁸ *Id.*

lack either of these measures, and the author of this note can state from personal experience that locating a person's gravesite can be a complicated process, often involving a search through old obituaries, followed by a series of phone calls to locate the cemetery's dusty and incomplete records.

After the failures of the 2002 and 2005 bills, Representative Meeks introduced a much narrower bill in 2007, one titled "An act relating to historic preservation."⁶⁹ As evident in the preamble, this piece of legislature was had a different focus, and much smaller goals.

"The General Assembly declares that it is the public policy of the Commonwealth to preserve historic or prehistoric human remains, graves, or cemeteries and Native American sites that contain burials. Every reasonable effort should be made to ensure that these sites are not intentionally or inadvertently disturbed, and any existing human remains shall be either preserved or relocated."⁷⁰

Although the bill again notes the "public policy" focus on the bill, the scope is changed, from modern graves to "historic" ones. Oddly, the word "historic" is defined nowhere in the text of the bill, nor is there any sort of criteria by which a grave or cemetery could be declared historic. These holes would almost certainly lead to implementation problems down the road, as attorneys and judges sought to hammer out what exactly qualifies as a "historic" grave or cemetery for purposes of the statute. While the rest of the bill speaks of pioneer and Native American burials, there is clearly much history that exists between the founding of the commonwealth in 1792 and the present day.

Unlike the earlier 2002 bill, no effort is made to change the laws regarding the recording of deeds in the state. Instead, the bill takes the reverse approach, and mandates that building

⁶⁹ H.R. 118, Reg. Sess. (Ky. 2007).

⁷⁰ *Id.* § 1.

permits not be issued until “a property confirmation has verified that the property contains no known human remains,” or that any remains on the property have been properly reviewed by a “state historic preservation officer.”⁷¹ While this seems like a reasonable compromise on its face, this clause is laden with problems as well. Absent a mandatory title exam or physical search of the property, how is an innocent owner to know what lies beneath the grass on their land? Worse yet, what mechanism will exist to catch a malevolent property owner who seeks to build a carwash over the mostly forgotten remains below?⁷² Implementation of this law would be left entirely to city and county officials, who would no doubt be aware that their negative zoning decisions could result in costly and time consuming litigation that would only sap government resources. This section of the bill reflects compromise, and was unlikely to yield workable and cohesive statewide results. Even so, it was modified to only apply to tracts of land that were larger than fifty acres, making its effectiveness in the rural regions of the state quite minimal.

The 2007 bill failed, and it never even reached a floor vote in the house.⁷³ Two subsequent bills, introduced in 2010 and 2011, met with even worse results, as both look to have never even left the judiciary committee.⁷⁴ Both bills contained the same weak building permit language, and neither contained any efforts to create a statewide registry of graves. The only pieces of the bills that served to protect modern graves were copied from the failed 2007 bill, and simply added one-thousand to two-thousand dollar fines for willful grave desecration, and declared that subsequent

⁷¹ *Id.* § 4.

⁷² It can be assumed that some sort of regulation will be drafted by the state, but its hypothetical strength is entirely unknown. A “weak” law that must be “corrected” with strong regulations is unlikely to yield positive and quantifiable results.

⁷³ *07RS HB118*, KENTUCKY LEGISLATURE, <http://www.lrc.ky.gov/record/07rs/HB118.htm>.(last visited Mar. 23, 2015).

⁷⁴ H.B. 92, Reg. Sess. (Ky. 2010). H.B. 76, Reg. Sess. (Ky. 2011).

offences would be treated as felonies.⁷⁵ While this would in theory discourage the reburial habits practiced at Eastern Cemetery, the effect would probably be minimal, as the corporation and individuals involved do not appear to have been wealthy, and they would have been unable to pay the fines associated with their criminal actions. Such a fine is simply a paper tiger to the impoverished. This sort of after-the-fact legislation also fails to address the underlying problem, a total lack of accountability in burials throughout the state. Were there a broader statute that mandated the recording of burials, it would catch bad actors before their deeds became effectively unfixable, as became the case at Eastern Cemetery.

At the time of drafting this note, the most recent piece of cemetery legislation in Kentucky was filed in the house in 2014.⁷⁶ Also proposed by Representative Meeks, this bill was incredibly narrow in scope, and only addressed county cemetery boards. The act would have permitted a county cemetery board to set up a fund for restoring and maintaining cemeteries, and would have created mechanisms for them to receive gifts, endowments and grants for those purposes.⁷⁷ Unlike earlier efforts, this bill did not die in the house, but actually moved forward into the senate, ultimately dying there instead.⁷⁸ No bills have been filed or pre-filed in the 2015 legislative session, making it appear as though the issue is currently dead. Based on the results of previous years, any efforts to move the issue forward will require a massive retooling of efforts if it is to succeed. How does this get accomplished in a way that draws support from all of the parties, while also creating a strong bill that addresses all of the issues?

⁷⁵ H.B. 92, Reg. Sess. (Ky. 2010), §12. H.B. 118, Reg. Sess. (Ky. 2007), § 12.

⁷⁶ H.B. 152, Reg. Sess. (Ky. 2014).

⁷⁷ *Id.*

⁷⁸ *14RS HB152*, KY. LEG. (last visited Mar. 23, 2015), <http://www.lrc.ky.gov/record/14RS/hb152.htm>.

Where do we go from here? Future efforts at a legislative solution

It seems clear that there is a need for real reform in Kentucky's cemetery laws. Likewise, there has been some political will in years past to achieve this reform. While Representative Meeks' recent bills have not performed well, his original 2002 bill had a total of twenty sponsors, and came fairly close to becoming law. This early and popular bill featured strong language that would have created real change in this arena, but it failed. Later bills received virtually no support, and did not advance far in the legislature. What can we learn from these successes and failures, and how can these lessons be applied moving forward?

First, any future drafters will need to be aware of the political environment they are wading in to. The funeral service industry in America is, generally speaking, a for profit enterprise. Like all industries, it has a political, and monetary donations are made. In 2008 election season, the National Funeral Directions Association, which represents 19,000 individuals, made \$237,000.00 in political donations, while the International Cemetery and Funeral Association donated another \$50,000.00 in funds.⁷⁹ Lobbying by the funeral service industry in 2009 totaled nearly \$900,000.00, representing a growth of almost 350% in a just a handful of years.⁸⁰ While much of these lobbying efforts were aimed at certain discrete issues, it is clear that the industry has clout, and is able to affect the legislative debate if it desires to do so. Thus, if a law is going to get passed, the funeral industry will need to be included in the conversation, as their disapproval of a proposed bill could doom it to failure.

⁷⁹ Cassandra LaRussa, *Funeral Services: Background*, OPENSECRETS, (Apr. 2010), <https://www.opensecrets.org/industries/background.php?ind=G5400>.

⁸⁰ *Id.*

Like all industries, the funeral industry is almost certainly opposed to incurring additional expenses on their business interests. Requiring industry participants to fill out additional forms, and maintain extra records databases is unlikely to incur support as well. In order to draw in their support for such measures, there will need to be an open and ongoing discussion process, and that may mean adjusting the fee structure associated with any scheme to protect cemeteries. It is also possible that the process would go smoother if a third party or agency was set up in order to maintain the burial records of the deceased. While this may incur additional administrative costs somewhere, removing this task from the hands of the industry could promote their support of the issue. Cemeteries and funeral homes may be willing to pay a few dollars into the state coffers if it means that they do not have to deal with the “headache” of dealing with locating old graves for customers, and providing maps of where they are specifically located. If this fee schedule was set up so that the costs were shifted to the consumer, the deceased or their family, this too may alleviate some potential discord with the industry.

However, one of the most important things that any piece of legislation will need is public support. While the topic of cemeteries and the dead can seem rather morbid, it is an important issue, and one that will affect all of us at some point or another. By drawing public interest to places like Eastern Cemetery and the ongoing restoration efforts there, the public can be made aware of the very real problem that exists. The point must be made to the community at large that Eastern Cemetery and places like it are not isolated occurrences, and that for every well maintained and cared for cemetery in the Commonwealth of Kentucky, there are unknown graves scattered about that are neglected and criminally abused. Once made aware of the issue, the public may be

willing to incur additional burial expenses, if it means preventing future problems like this from happening again.

Regardless, getting the media involved is central to building this public awareness and interest. While major media companies may not want to be involved with scenes and stories such as these, small independent outlets certainly are.⁸¹ Local interest bloggers can also spread the message well, and their websites can be used to graphically illustrate show the current condition of some gravesites. Resources like Facebook and Twitter can also draw casual observers into the debate. Caution must be taken, of course, to avoid vulgarity in this arena, but it seems clear that historically speaking, public concern most readily grows when the true reality of a situation is placed in the sunlight for all to see. Absent this exposure, it is hard to imagine a scenario where the public will be stirred to action. After all, Eastern Cemetery has been abandoned on one of the busier streets in Louisville for more than two decades, with very little civic interest or renewal efforts. If this giant symbol for neglect isn't enough to keep the issue in the public's mind, something else will need to be done.

Perhaps most important to the cause is getting major political actors involved in proposed legislation. Legislation will need to be drafted, and sponsored, and then willed into law. This means that a group of motivated legislators will need to act in concert, by drafting and sponsoring the law. It will take skill to piece together a law that addresses all of the major changes, while also avoiding the creation of new problems. This will take participation from those that are well versed in the arena of law, as well as those who have firsthand experience addressing the issues that have

⁸¹ The LEO's cover story on Eastern Cemetery is proof of this point. A small local alternative press was willing to cover the story. See, Laura Valentine, *Here Lies the Dearly Forgotten*, LEO Weekly, (Oct. 30, 2013), available at <http://www.leoweekly.com/2013/10/here-lies-the-dearly-forgotten/> (Accessed Dec. 21, 2015).

come up on the ground level. While there are obviously pretty egregious problems in the current legislative scheme, there are countless smaller ones that can be tweaked. This may take the passage of several smaller bills that address discrete issues, rather than one omnibus bill that tackles every problem, while also creating lots of industry and legislative friction. However, this smaller piecemeal effort runs the risk of collapsing in to pieces, must like the later bills that were introduced in the House.

Hearings will have to be held wherein the interested groups can be melded together, and this too will take strong leadership in Frankfort. There will almost certainly be disagreement between industry groups and some of the more vocal activists, and it will require a strong political will to bring these sides together. It may even require telling one side that they will not be getting what they are after, an act that requires true political courage. There will need to be a core leader that can tackle these issues head on, one who also has the broader support of other people within the House or Senate. Voters will probably have to write and call their legislators to get them on board, and regular contact will need to be made in order to keep the issue moving forward.

Even so, there is the possibility the bill will fail. Perhaps it will need to be introduced several times in order for it to become law, meaning that its sponsors will need to accept that a lack of success on the first try isn't synonymous with total failure. Progress may be slow, but it must be made if this issue is to be solved.

Conclusion

It is my hope that this note shines some light on the problems of cemetery law in Kentucky, while also creating a guide for the steps that need to be taken. The road ahead will not be easy. To solve the problems of Kentucky's neglected and abandoned cemeteries will take the concerted

efforts of a number of parties. Likewise, implementing the eventual legislative solutions will require the additional efforts of all concerned parties, along with the diligent enforcement efforts of the state government. Absent this effective enforcement, it will be like the law does not exist, and all efforts spent passing it will have been in vain.

While the problem seems massive in scale, as this note illustrates, it can be addressed in bits and pieces. By building a coalition of concerned citizens and legislators, and teaming them with industry actors, real and binding laws can be passed by the House in Frankfort. Any legislation that is passed will need to be vetted carefully, lest today's haste create tomorrow's problems. However the process is carried out, it must be done, otherwise these brown and neglected sites will continue to grow in our midst.