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THE WHITE HOUSE

WASHINGTON

March 11, 1985

MEMORANDUM FOR MICHAEL K. DEEVER
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Disposition of Cremated Remains
Over Land in California

California law makes it a misdemeanor to dispose of human remains within the corporate limits of any city or county, except in a cemetery, unless the remains are cremated and disposed of pursuant to a permit obtained from the local registrar. Cal. Code HS § 7054. The "next of kin" must apply for the permit, and the permit must describe the place where the ashes will be scattered. The person applying for the permit must also sign an acknowledgment that trespass and nuisance laws apply to disposition of the ashes, and that the permit itself gives no right of access to property. The permit must indicate the date of final disposition of the remains, and must be returned, endorsed, to the registrar within ten days of that date. Cal. Code HS 10376.5.

Once a permit has been obtained by the deceased's next of kin, there appears to be no obstacle to scattering the ashes at the ranch, assuming the President grants permission to do so.

FFF:JGR:aea 3/11/85
cc: FFFielding
JGRoberts
Subj
Chron

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March 11, 1985

TO: John Roberts
FROM: Roger Clegg

Per our conversation.

and crematories are now so common in many of the larger cities that the courts may take judicial notice of the usual method of operation. Cremation is a lawful act unless done in such a manner as to amount to a legal nuisance. If a crematory is, or may be, operated in a manner that may cause injury to the public health, comfort, or convenience, the local legislative authority may regulate the manner of conducting it so as to decrease or prevent such injury.⁷

§ 14. Place and time of interment

A decedent, prior to his death, may direct or determine the place of his burial, but if he fails to do so, the right to select and determine the place falls to those who have the right and duty to inter the remains.⁸ Thus, where the decedent leaves a surviving spouse, the latter, in the absence of specific direction, is entitled to select the place of interment and the place of reinterment in case the remains are removed after burial.⁹ If the decedent is buried at public expense, the public officials charged with the duty of burial may select the burial place, pursuant to their statutory authority.¹⁰

The location of burial grounds is subject to regulation under the police power of the state, and such power has been exercised extensively in this respect. Thus, any person who deposits or disposes of any human remains in any place within the corporate limits of any city, except in a cemetery, is guilty of a misdemeanor.¹¹

7. *Abbey Land & Improv. Co. v San Mateo County*, 167 C 434, 139 P 1068 (ovrld on other grounds *Carney v Simmonds* 49 C2d 84, 315 P2d 305).

Crematories are prohibited from making or enforcing rules requiring that human remains be placed in a casket before cremation or that human remains be cremated in a casket or from refusing to exempt human remains for cremation for the reason that they are not in a casket. *Deering's H & S C* § 8342.

In matters relating to communicable diseases, the state department of health

may make and enforce regulations for the embalming, cremation, interment, disinterment, and transportation of the dead. *Deering's H & S C* § 10002.

8. § 10, supra.

9. *Henderson Estate*, 13 CA2d 449, 57 P2d 212.

As to designation of place of interment by court, see § 8, supra.

10. § 5, supra.

11. *Deering's H & S C* § 7054 (cremated remains may be disposed of in

Cremated remains may be buried at sea¹² or may be disposed of elsewhere pursuant to the authority of a permit for disposition granted according to statute.¹³ However, no cremated remains may be removed from the place of cremation, nor can there be any charge for the cremation, unless the cremated remains have been processed so that they are suitable for inurnment. A contract for cremation services may include specific written authorization for such processing by the person having the right to control disposition of the remains.¹⁴

Interment or other disposition must occur within a reasonable time after the death of the decedent.¹⁵ Failure to act with reasonable promptness may result in both criminal and civil proceedings.¹⁶

§ 15. Permits for disposition of human remains

No one may dispose of human remains unless a death certificate has been obtained and filed with the local registrar as provided by statute and unless a permit for disposition has been obtained from a local registrar.¹⁷ The local registrar of births and deaths must issue a permit for disposition if the certificate of death is properly executed. The permit for disposition must specify the name of a cemetery where the remains will be interred or buried at sea as provided by statute, or a description of the final place of disposi-

other areas pursuant to *H & S C §§ 7117 and 10376.5* or *§§ 7054.6 and 10376.5*).

The statutory duty of a health officer to issue burial permits upon certain conditions does not require the issuance of a permit to bury in a cemetery the use of which has been forbidden. *La Societa Italiana Di Mutua Beneficienza v San Francisco*, 131 C 169, 63 P 174.

12. *Deering's H & S C § 7117* (remains may be taken by boat or by air).

13. *Deering's H & S C § 7054.6*.

As to permit for disposition, see § 15, *infra*.

14. *Deering's H & S C § 7054.1* (no one may dispose of human remains unless a death certificate has been obtained and filed with the local registrar, pursuant to statute, and unless a permit for disposition has been obtained).

15. *Deering's H & S C §§ 7103, 7105, 8341*.

16. § 9, *supra*.

17. *Deering's H & S C § 10375*.

As to obtaining death certificate, see RECORDS AND RECORDING LAWS (2d ed., VITAL STATISTICS §§ 7, 8).

tion of cremated remains which are to be removed from the place of cremation or interment.¹⁸

The body of any person whose death occurs in this state, or whose body is found in this state or is brought in from outside the state, may not be temporarily held pending disposition more than 5 days after death, unless a permit for disposition is issued by the local registrar of the registration district in which the death occurred or the body was found.¹⁹ The permit must accompany the body to its destination, where, if within the state, it must be delivered to the person in charge of the place of interment.²⁰ A funeral director is not prevented by the statutes requiring a permit for disposition from removing a body from the registration district where death occurred, or the body was found, to another registration district in a funeral director's conveyance for the purpose of preparing the body for interment or shipment.²¹ Each fetal death in which the fetus has advanced to or beyond the 20th week of uterogestation must be registered with the local registrar of births and deaths within 5 days of death and prior to any disposition of the fetus.²²

A burial permit issued in one county or city is valid or sufficient in any county it specifies as a place of interment.²³ Likewise, if any cemetery is located partly in one registration district and partly in another, only one permit is required for interment and a permit authorizing interment in such cemetery entitles interment to be made within or without the district to which such permit is directed. The permit must be returned to the

18. *Deering's H & S C § 10376.*

As to contents and issuance of permit for disposition for the purpose of removing cremated remains from the place of cremation or interment, see *Deering's H & S C § 10376.5.*

19. *Deering's H & S C § 10377.*

As to local registrar and administration of registration districts, see *RECORDS AND RECORDING LAWS* (2d ed., *VITAL STATISTICS § 3*).

Forms: Authorization for shipment of body or remains, 7 Am Jur Legal Forms 2d, Dead Bodies § 84:53; Oath on free entry of citizen dying abroad, 7 Am Jur Legal Forms 2d, Dead Bodies § 84:54.

20. *Deering's H & S C § 10378.*

21. *Deering's H & S C § 10381.*

22. *Deering's H & S C § 10175.*

23. *Deering's H & S C § 10382.*

registration district in which the interment is made, irrespective of the district to which it is directed.²⁴

Where human remains are transported from outside the state into a registration district in California for interment, the permit for disposition, issued in accordance with the law and health regulations of the place where the death occurred, will be accepted by the local registrar of the district into which the human remains have been transported, as a basis on which he is to issue a local permit. The registrar must note on the face of the permit the fact that the human remains were shipped in for interment and the place of death.²⁵

The state department of health has power to control the issuance of permits for dispositions in certain instances. Thus, in case of death occurring from a disease declared by the state department to be infectious, contagious, or communicable and dangerous to the public health, no permit for the removal or other disposition of the body may be issued by the registrar, except under such conditions as may be prescribed by the department and local health officers.²⁶

Anyone who interrs or incinerates a body, or permits the same to be done, or removes any remains, other than cremated remains, from the primary registration district in which the death or incineration occurred or the body was found, except removal by a funeral director under specified circumstances, without the authority of a burial or removal permit issued by the local registrar is guilty of a misdemeanor.²⁷

III. DISINTERMENT [§§ 16-21]

Summary

Disinterment is subject to local regulation; the law does not favor disinterment, unless good cause is shown, and regulations as to disinterment are strictly complied with (§ 16). By statute, certain

24. *Deering's H & S C* § 10383.

27. *Deering's H & S C* § 7055.

25. *Deering's H & S C* § 10380.

As to disposition of cremated remains, see § 13, *supra*.

26. *Deering's H & S C* § 10376.

DEAD BODIES

DIES

Interference will lie against a relative and interference can be manifested by improper burial procedures which contravene the beliefs of a party who has the right to dispose and inter the decedent, the cross-complainant's pleadings were devoid of allegation relative to injuries, mental or physical, which resulted from alleged tortious negligent interference, and the only allegation in that respect was not only tenuous and speculative at best, but was contained in a statement properly stricken by the trial court as it was not given under oath. *Sinai Temple v Kaplan* (1976) 54 Cal 3d 1103, 127 Cal Rptr 80.

In an action by a cemetery authority against the administratrix of a decedent's estate and the father of the decedent seeking recovery of burial expenses, the trial court properly dismissed causes of action of a cross-comaint filed on behalf of the estate and a minor daughter alleging that the cemetery was tortiously liable for either wilfully or negligently interfering with the child's paramount right under *H & S C § 7100* to control disposition of the decedent's body, where the pleadings showed that the father, who had not misrepresented his relationship to the deceased, had signed the contracts for the funeral arrangements, and that no notice was given of a claim of higher priority of control over the remains. *H & S C § 7111* expressly exempts from liability a cemetery which relies on the written authorization of a person representing himself to be "a surviving child or parent" without actual notice that such representation is untrue. *Sinai Temple v Kaplan* (1976) 54 Cal 3d 1103, 127 Cal Rptr 80.

—Action to enforce
Practice aids:

23 Cal Jur 3d Supp

DEAD BODIES

Validity, construction, and application of statutes making it a criminal offense to mistreat or wrongfully dispose of dead body. 81 ALR3d 1071.

§ 11. Gift for medical purposes; Uniform Anatomical Gift Act

Statutes:

Deering's H & S C § 7151.5, as amended in 1979, now gives conservators priority equal to that of guardians among persons authorized to make a gift.

Practice aids:

Tests of death for organ transplant purposes. 76 ALR3d 913

Opinions of the Attorney-General:

Arranging to have one's body placed in cryonic suspension does not meet the requirements of the Uniform Anatomical Gift Act, [Health & Safe. Code, §§ 7150 et seq.]. 63 Ops Atty Gen 879.

§ 13. Methods of interment

Statutes:

Deering's B & PC §§ 9607.5, 9780-9789 were enacted, in 1979, to provide for the licensing of a crematory as a separate entity apart from the licensing of it as a cemetery. The Cemetery Board is authorized to adopt rules and regulations prescribing standards of knowledge, experience and financial responsibility for applicants for a crematory license.

Case authorities:

A corporation, although in the business of incinerating or cremating human remains, did not make interments within the meaning of *H & S C § 7009*, defining interment as the disposition of human remains by inurnment, entombment, or burial in a cemetery or at sea, where the corporation accepted remains for cremation only where arrangements had been made for disposition of the remains by other persons or entities elsewhere, primarily by burial at sea by a religious organization, and where it did not make interments itself. *Cemetery Board of*

23 Cal Jur 3d Supp

§ 21

California v Telophase Soc. of America (1978, 4th Dist) 87 CA3d 847, 151 Cal Rptr 248.

§ 14. Place and time of interment

Practice aids:

Validity, construction, and application of statutes making it a criminal offense to mistreat or wrongfully dispose of dead body. 81 ALR3d 1071.

§ 16. [Disinterment] In general

Practice aids:

Disinterment in criminal cases. 63 ALR3d 1294.

Case authorities:

In an action to enjoin further excavation and "desecration" of property which was known to have been a burial ground of the Miwok Indians, the trial court properly found that the site had not achieved a protectable status as a public cemetery under the 1872 cemetery law by virtue of its prior status as a public graveyard. Although the 1854 cemetery law defined a public graveyard as a place where the bodies of six or more persons are buried, the 1872 and subsequent laws (Health & Saf. Code, § 8100 et seq.) added a prescriptive use condition, vesting title of the graveyard in the city or village using it only when the land was used as a public cemetery continuously without interruption as a burial ground for five years. Since the burial ground was no longer used in 1873 when the 1854 law was replaced, it was not made a cemetery by operation of the prescriptive use provision. *Wana the Bear v Community Construction, Inc.* (1982, 3d Dist) 128 Cal App 3d 536, 180 Cal Rptr 423.

§ 21. Permits to disinter

Practice aids:

Validity, construction, and application of statutes making it a criminal offense to mistreat or wrongfully dispose of dead body. 81 ALR3d 1071.