

PUBLIC HEARING

on

SENATE BILLS #365 AND #429

[Revising the New Jersey Cemetery Act]

before

SENATE COMMITTEE ON BUSINESS AFFAIRS

Held:
August 3, 1966
Assembly Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator A. Donald Bigley [Chairman]
Senator Maclyn S. Goldman
Senator Thomas J. Hillery

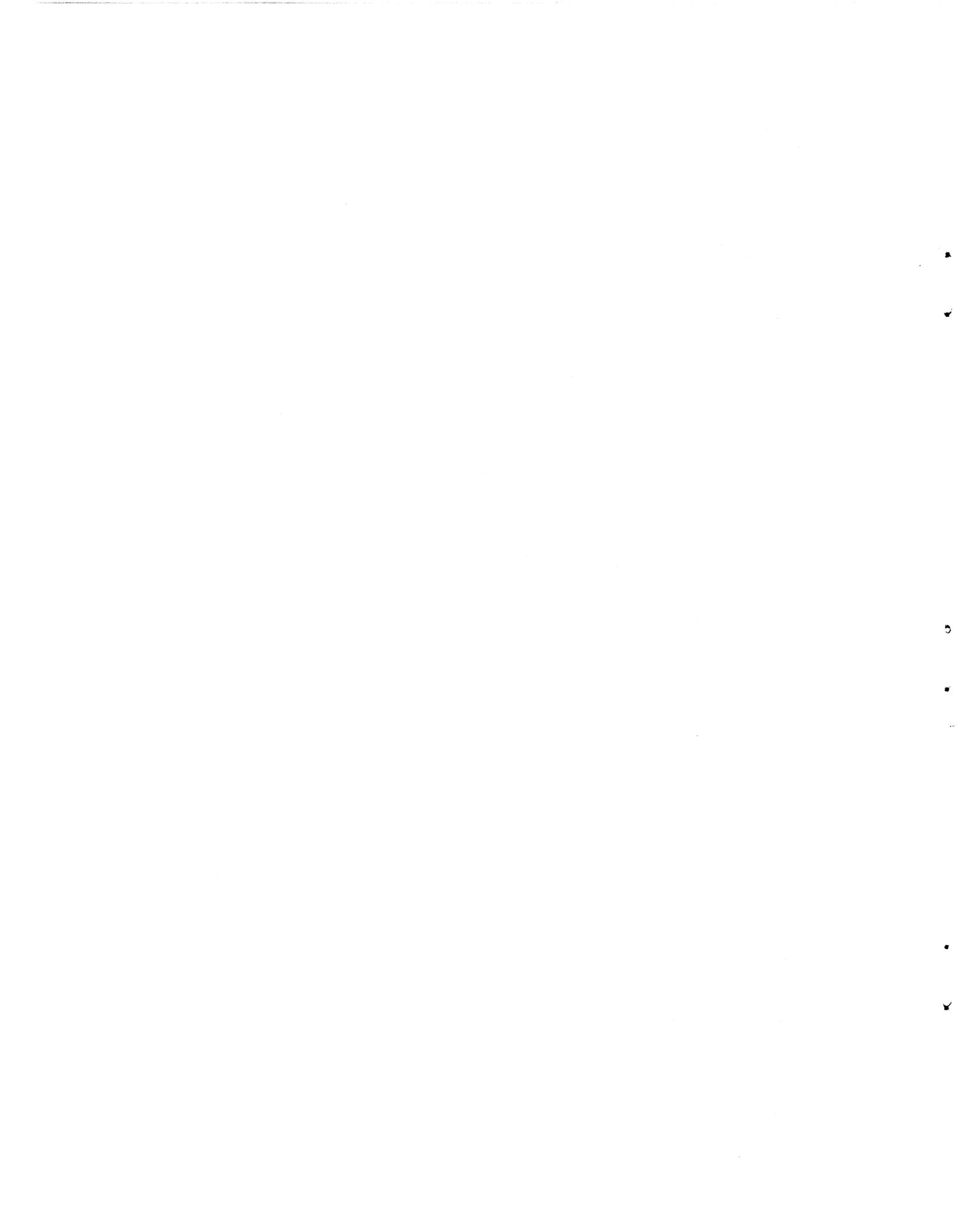
ALSO:

Senator Nicholas T. Fernicola
Senator Mildred Barry Hughes
Senator Frederick J. Scholz

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SENATOR A. DONALD BIGLEY [Chairman]: Ladies and gentlemen, we will now commence the public hearing on Senate Bills 365 and 429, respectively. Senator Fernicola, if you want to come up here, you are certainly welcome.

To my left is Senator Goldman and to my right is Senator Hughes and at the end of the table here is Senator Scholz and I am the Chairman of the Committee, Senator Bigley. Some of the other members of the Committee are on vacation and will not be here. There may be a few come in at a later time.

The usual procedure in hearings of this type is for those who are interested in testifying to so signify by signing the yellow pad which is placed on the desk. If any of you have not as yet signed it and do wish to testify, I would ask you to do so now before we commence and we will call the witnesses in the order in which you have signed. The present legislators who wish to make statements or testify will be given a preference. Any former legislators who are in the audience will then follow and we will then start with the list as it is given to us.

If anyone has a written statement, we would ask that you give sufficient copies to us so that the Committee has copies and also the stenographers. If you want to read a statement, it is certainly permissible. If you want to paraphrase it, of course, that is also permissible. I would make one note of caution. As you can see there is a great deal of interest in these bills and rather than be redundant if you can keep your remarks pertinent to the two

bills, we will certainly appreciate that. It will make the Committee's job easier when we go through the transcript and come to a decision on the legislation.

I believe we could start the proceedings now. Are there any legislators who would like to make statements at this time or submit statements to the Committee? Senator Scholz.

S E N A T O R F R E D E R I C K J . S C H O L Z: Senator Bigley, as one of the sponsors of one of the bills, S 365, I would just like to make the observation that I am here certainly to learn more about the cemetery business and the related businesses.

The primary purpose of this legislation which I cosponsored, and I am sure the primary purpose of the other legislation, is to act in the public interest to correct certain conditions which we feel should be corrected, to bring about a set of rules or legislation through which the many fine cemetery operators who do conduct a business properly may be able to continue to operate in that way and yet provide the services to the public in a manner and at a price that is proper for all parties concerned.

SENATOR BIGLEY: Thank you, Senator. Are there any other legislators who would like to make a statement at this time? If not, are there any former legislators in the room who would care to identify themselves and then they can start to make their statements?

J O H N E. T O O L A N: Mr. Chairman, my name is John E. Toolan and I am speaking now because of your invitation to any former legislator that might be in the audience.

SENATOR BIGLEY: Senator Hillery who is a member of the Committee is coming in. This is Senator Hillery a member of the Business Affairs Committee.

MR. TOOLAN: I am here representing the sponsors of Bill #429. I am prepared to make a statement on behalf of my clients. I am also prepared to present to this Committee a group of witnesses whom I believe will shed some light and intelligence upon this entire problem.

Now I would like to know whether you wish me to proceed at this time and to present our case or whether you wish to hear from others first.

SENATOR BIGLEY: Well, Senator, I would like to hear from you and, then as I announced, the procedure has been on a kind of "first come, first served" basis. So suppose you proceed and if your witnesses' names are on here, we will call them in that order.

MR. TOOLAN: May I distribute to the members of the Committee an analysis that we have made of Senate Bill #429 and Senate Bill #365. This analysis proceeds by title and section of each of the bills so that at quick glance you will be able to make comparisons between the two bills. [Mr. Toolan distributes copies of the analysis to members of the Committee.]

The respective bills are identified as Senate #429,

which was introduced under the sponsorship of the Cemetery Association of the State of New Jersey. Bill #365 is introduced under the sponsorship of a triumvirate consisting of the funeral directors, the monument dealers and the vault manufacturers.

Now the background and history of 429 is this: The Cemetery Association recognized some years back that there was need for a complete revision of existing cemetery legislation. As a result, we started working with the Attorney General's office to draft a bill. I personally have worked on that bill for somewhere between four or five years with representatives of the Attorney General's office. Senate Bill 429 is the product of that effort. There is before you a statement by the Attorney General and I do not wish to be understood here by this Committee or the press or anybody else as stating that the Attorney General has endorsed and is sponsoring our bill. However, that bill is, as I say, the product of our joint effort.

The cemetery group are interested in the legislation. I regretfully make the statement that I do not believe the triumvirate is in fact interested in a revision of the cemetery legislation. I have never been able to understand why the funeral directors and cemeteries could not get along because it seems to me the areas of their joint interest far surpass any areas of conflict.

Now why do I say, for instance, that the funeral directors are not interested in legislation or - and I say the funeral directors - I think I can perhaps include the

balance of the triumvirate? Well, the funeral directors a few years ago on December 12, 1961, when we were working on this legislation, in their release to the members of their Association - it is addressed to the New Jersey State Funeral Directors' Association, dated December 12, 1961, and over their signature - said this: "We have so far been successful in preventing a proposed cemetery bill from receiving action and consideration of the Legislature. This bill in its proposed form was detrimental to funeral service and the general public."

Now in a letter which the funeral directors sent out to their membership just recently, they made this statement: "The cemeteries are trying to obtain legislation which would destroy the public trust concept of cemetery operation and permit them to sell commodities at a profit." Now to the extent that that statement says that the cemeteries are endeavoring to destroy the public trust concept of cemeteries, the statement is entirely without foundation and I could even use stronger language, but I won't.

I have just given to you members of the Committee a document that we prepared which is a comparison and analysis of Senate 429 and Senate 365. If you look at that document, you will see that Senate Bill 365 sponsored by the triumvirate follows 429 word for word in about 90 per cent of its content. Senate 429 was written and developed, as I say, by the Cemetery Association with the Attorney General's office. It is not a coincidence that the language is the same. The

triumvirate by some method apparently obtained a copy of our proposed draft of a bill. They took our work product of four or five years, emasculated it in certain areas, changed a few paragraphs, not in the public interest, but in the commercial interest of the triumvirate. I will demonstrate what I just said now at a later point in my remarks.

There would be no legislation or suggested legislation at this time if it were not for the fact that the triumvirate knew that we were going to introduce our bill so they thought they would beat us to the punch. They took our bill, made a few changes in it and submitted it as Senate 365. Then they captured the headlines in the press and proceeded upon the theory that they were endeavoring to reform the cemetery situation in the State.

Now the triumvirate issued a little booklet called, "The Great Betrayal of a Sacred Trust - New Jersey's Shocking Multi-Million-Dollar Cemetery Scandal." Now if this document is the best argument that the sponsors of 365 can present for their bill, then it ought to be rejected out of hand. This document is scandalous. It is libelous. It is untrue. It uses the philosophy of the big lie to spread misinformation and I challenge the sponsors of this document to prove any substantial statement in the document of any merit.

Let's take the area of agreement. There can be no doubt that we are united in one aspect of this matter, namely, that there should be, that there must be legislation. Everybody is in accord on that. Two Governors, Governor Meyner and Governor Hughes, recommended it. The Attorney

General's office is in favor of legislation. The cemetery groups are in favor of legislation. Now, if we can take them at their word, so are the triumvirate.

There has been reference - I have heard it - that this legislation is a so-called "hot potato." It is not a "hot potato" if you think in terms of the public interest. The public interest demands and requires this legislation. It is a "hot potato" only if the political power and influence of the funeral directors of this State can dominate this Legislature. Now funeral directors we all know - I am not saying this critically - it's a matter of simple statement of fact - are men who have a lot of free time. They are engaged in politics throughout the State of New Jersey. I don't criticize them for that; I commend them for it. In this day and age any man who gives part of his time to public life in my book is entitled to commendation. But they are elected to many offices throughout the State. In my own county they have very prominent public office. The end result is they have a lot of political influence, political influence far beyond their numerical strength. That is the only reason this legislation is a so-called "hot potato."

I am going to ask this Committee and the Legislature as a whole to disregard the "hot potato" concept and think in terms of what is in the interest and welfare of the people of the State of New Jersey.

Now what is the problem? - this tremendous misinformation on this whole problem. I suppose for the past 40 years until

I got interested in this legislation and learned something about cemeteries, I probably was among those who believed that the operation of cemeteries was a great bonanza, that millions of dollars could be made in the operation of cemeteries. But all through that 40-year period I never knew anybody, never came in contact with anybody who ever got rich in the cemetery business. For instance, there are in the State of New Jersey, I supposed, about 2,000 cemeteries. About 40 of those cemeteries are so-called memorial park cemeteries. The others we will call the traditional type of cemetery. Of the approximately 2,000 cemeteries in the State, I would say that approximately 50 per cent of them are in a state of disrepair, neglect, almost virtual abandonment. Well, if there were millions of dollars to be made in the cemetery business, I think all those cemeteries would be in better condition today. As a matter of fact, the best exhibit that we can offer here to support our contention that cemeteries are in the condition that they are in today is the cemetery legislation and the decisions of our Supreme Court. There just was not sufficient revenue provided to permit cemeteries to exist.

Senate 365 will not only perpetuate that condition, but it will make it worse. This Committee and this Legislature has to make a very simple decision. The decision is this: Is something going to be done to correct the conditions that produced the very horrible and deplorable condition of the cemeteries of the State or are you going to give cemeteries sufficient revenue so that they can carry out

the public trust responsibility that the law imposes upon them?

Again in the area of making millions of dollars in cemeteries, will anybody in this audience stand up and point to any church cemetery where the church got rich as the result of the operation of a cemetery? Will anybody stand up and point to any cemetery association that operated cemeteries that got rich as the result of the operation? Will anybody stand up and point to the persons who supposedly made millions of dollars in cemetery operations in the State of New Jersey? Members of this Committee, it is the practice, the philosophy of the big lie.

I am not going to sit here and say that there may not have been some mismanagement in cemeteries in the past and I don't expect to spend one second of my time or take one second of your time in defense of that, if it happened and whenever or wherever it happened. That's the dead past. Neither our bill nor 365 can correct what happened 10, 15, 20, 30 years ago. This legislation is perspective and can operate only perspective. We can try to have legislation which can help correct some of these defects, but we can't unbury the dead past.

Now again I make reference to this letter sent out by the New Jersey Funeral Directors' Association, dated July 19, 1956, to their membership, in which they say the cemeteries are trying to obtain legislation which would destroy the public trust concept of cemetery operations. Our legislation, 429, the legislation of the triumvirate, 365, which is copied from our bill, each preserves the public trust

responsibility of cemetery associations. And if our bill was trying to destroy that, then their bill which they copied from us is trying to do it also. There can't be any question about that.

There is no effort in our legislation to attempt to change the idea of the public trust responsibility of cemeteries.

Now I was an ignoramus about the operations of cemeteries and how they are created until I got a little education from some of the men in the cemetery business and I would wish each member of this Committee and each member of the Legislature was really knowledgeable and an expert on cemetery operations. And if they were, we would have no problem, none whatsoever.

Now in the belief that you may not know too much about how cemeteries are formed, I am going to give you a little outline of how it is done. First, there has to be a group of men who are interested in forming a cemetery association, whether it be a religious association or what. They buy a tract of land. Let's assume in today's market they buy a tract of land and they pay \$250 thousand for it and if you are going to have any size cemetery in the State of New Jersey, you will have to pay that kind of money. Now they own the land. Next they must form a cemetery association. Under our bill - and most of the cemeteries of the State of New Jersey are actually formed under Title 15 which is the provision of our statutes which permits the incorporation of societies and corporations and

organizations not for pecuniary profit. So you incorporate under that statute.

Now you have the cemetery association or corporation. They own a piece of land. They don't have a single dollar with which to operate. They just have land. Where do they get money? They can't go to any bank or lending institution to get money because no bank or lending institution would lend any cemetery association any money. The only place they can get money is from the same people who bought the land. Now how does the cemetery association finance that purchase? They finance the purchase by issuing what is known as certificates of indebtedness or certificates of interest to the people who sold them the land. Under previous legislation and under our bill, the cemetery association can pledge that they will pay to the people who sold them the land 50 per cent of the proceeds of the sale of cemetery lots in liquidation of that indebtedness or of money loaned.

Now previously there was no limit on the amount they could issue in the way of those certificates of indebtedness. Today under our bill we say in the contract between the sellers of the land to the cemetery association, it must be sold for a fixed sum of money, a fixed and agreed-upon price. And since the trustees of the cemetery association are trustees, they must deal as trustees in the purchase and acquisition of that land, namely, pay a reasonable price for it.

Now what has been the history of many of these people who have invested thus in cemetery land in the State of

New Jersey? The history is that many of them waited 25 to 30 years to get their money out of the cemetery association. In contrast to the stories about the millions of dollars that have been made in cemetery associations, I would like to present the picture of the number of cemeteries that have gone in receivership in this State. Now if it were such a bonanza, that wouldn't happen. Then I ask you to check up every receivership in the State of New Jersey of a cemetery and to my knowledge there has never been a cemetery association that ever came out of receivership in less than 25 or 30 years, indicating that even when these cemeteries are operated under the supervision and jurisdiction of the court, it takes them so long to pay off their obligations that the receivership runs on to this sort of a period of time.

Now, of course, you can theorize about cemeteries. For instance, the picture that is usually projected is - "Oh, you can get a thousand burial lots out of an acre of land and if you sell them at what is about the average in the State of New Jersey," and I say the average because it is higher and lower in various parts of the State, "of \$100 a lot --" You come up and you say, "You get a thousand lots out of an acre, \$100,000 an acre. It is a bonanza." Well, of course, you have the problem of selling those thousand lots. How long will it take? Will it take 5 years? Will it take 10 years? Meantime, you have had to spend money on developing the tract, roads, walks, embellishments, fences, equipment, help - and this is what eats the heart out of the

cemeteries because they have to keep people working all the time to take care of peak loads who cannot produce efficiently at other times because there is actually not enough work for them to do. This sort of cost and expense of annual operation eats the heart out of the income from the sale of lots and I think anybody knowledgeable at all in the cemetery industry will tell you that no cemetery can possibly exist on the revenues that it gets from the sale of its land in plots. The only thing that permits the cemeteries to survive at all is the fact that they have certain additional charges on things that they can make, such as, the cost of opening the grave and closing the grave, the cost of installing and sealing the vault that is put into the grave, the cost of building the foundation and so forth for the markers and monuments that go over the grave and there is a miscellaneous assortment of charges.

Now in the area of this analogy of sale of cemetery lots, I am reminded and I always think of the fact that some years ago there was a promotion going around the country about hogs. There was a great promotion to invest money in the breeding and selling of hogs. For instance, every sow - I don't know what the period of gestation is - but as I remember it, it is a relatively short period of time, and the sow has 8 or 10 pigs and it can breed a couple of times a year. So out of each sow you get 15 or 20 pigs a year and then you start breeding them and the first thing you know you have a multiplication factor going on and you have sows and pigs up to your ears and on paper it would be a

tremendously profitable business. But we all know that people who raise hogs don't make that much money and similarly with cemeteries.

Now I want to spend a few minutes in pinpointing some of the crucial differences between 365 and 429. We will put a witness on the stand who will go through this bill item by item and point it out to you, but just to give you a little preview of it - for instance, I wish you would refer to 365 for a minute, Section 8A:8-2. That is on page 33. That section reads as follows: "It shall be unlawful for any cemetery company to offer or offer to sell any lot, plot, grave or cemetery service except as follows: Any cemetery salesman licensed in accordance with the provisions of this chapter and employed by the cemetery company may offer or offer to sell a lot, plot, grave or cemetery service to any prospective purchaser who communicates to the cemetery company his desire to make such a purchase." Then it goes on in the next paragraph: "No cemetery company shall solicit prospective customers for the purpose of offering or offering to sell any lot, plot, grave or cemetery service through the use of advertising media of any type, nor shall any cemetery company engage in any activity the purpose of which is to procure prospective customers for the purpose of offering or offering to sell to such prospective customers any lot, plot, grave or service, nor shall any cemetery company permit any cemetery salesman employed by it to engage in the activities of a cemetery salesman at any place other than upon the lands owned by the cemetery company, nor shall

a ny cemetery company permit any cemetery salesman employed by it to solicit prospective customers by telephone."

You know, the brazenness, the brashness, to put that sort of a paragraph in any piece of legislation in this day and age, just simply confounds me. That paragraph, I think, is an insult to the intelligence of every member of the Legislature. Just imagine, this public charitable trust, created by statute, with the endorsement of the Legislature, cannot advertise, can't solicit a sale, must wait for people to walk in to the office on the cemetery property and say, "I want to buy a cemetery lot." I want to tell you, members of this Committee, General Motors couldn't exist if there was a provision like this with reference to them. Standard Oil would go out of business and the Pennsylvania Railroad would be shot.

Unconstitutional? Is there any lawyer in this room that would say that thing is not unconstitutional? It is absurd. It is ridiculous. It is obnoxious in this day and age.

Now what is behind it? This is what is behind it, members of this Committee: There is a group of cemeteries in the State of New Jersey that are selling what is known as pre-need. In other words, they have salesmen that go out and visit people and ask them if they won't come to the cemetery when they are under no emotional stress or strain, when in calm deliberation they can look the cemetery over and pick out a site and purchase it, and purchase it on time, pay for it gradually over the years. So if an emergency

happens, they know where those whom they love are going to be laid to rest. The funeral directors oppose that. They are against that. I have asked a number of funeral directors to give me a reason. I have yet to find anybody who could give me an intelligent reason in opposition. The only thing they say on occasion is, "Oh, these salesmen may make some false representations or statements." Well, under our bill if any salesman does, the Board can revoke his license upon complaint. But there is more than that to it. I think the real reason is this: When there is a death in the family, the first person contacted is the funeral director. Now if the people have no plot, the funeral director can pick up the telephone, call the cemetery, buy the lot and add a charge for that service on top of whatever the cemetery charges. [Demonstration by audience.]

SENATOR BIGLEY: May I caution the witnesses and the spectators that everyone will have their turn and that anything that is said by any witness, you will have an opportunity to comment upon, and I don't think that we are going to accomplish anything by either applauding or showing your disapproval of any statement. We are here to have everyone have their say. If we can't accommodate them today, we will fix another day. The Legislature is not in session so that there is plenty of time to hear everyone. So I don't think we can accomplish anything by having a public outburst of approval or disapproval of any statement.

MR. TOOLAN: Well, in support of the statement that I just made, I am going to refer to Section 8A:5-1 of our

bill. This portion of our bill - I don't think you have to look at it - I can tell you in a few words what it is - authorizes cemetery associations to sell markers, monuments, memorials, vaults, embellishments, sod and plantings.

Now with reference to vaults, the vault business was developed by the cemetery associations because the old traditional cemeteries found that after a body had been interred a period of time a lot of the caskets collapsed because the grave caved in and the monuments fell over. In order to protect against that, they started enclosing the caskets in vaults and this business developed as a result of that procedure.

Today you can't buy a vault in the State of New Jersey except through a funeral director. Now the funeral directors buy these vaults for \$50 to \$60. They sell these vaults from anywhere from \$150 to \$200. The only service they render in that regard is a telephone call to the vault manufacturer who delivers the vault on the site. The vault is installed by the cemetery and for that telephone call the public pays the funeral director a profit of approximately \$100.

Now I don't blame the funeral directors for contesting our right to sell vaults because if the cemeteries had the right to sell vaults, perhaps there might be some competition in this area and perhaps the high cost of dying might be reduced a little bit. Now if I am in error in my figures in what I have said, I invite the funeral directors to present their invoices and so forth to show what their practice is in this regard so that at least we have an

exposure of the facts and not my mere statement of what the facts are with reference to this business.

Now why do we want to have the right to sell these various items? We want it to produce the additional revenue to try and support the cemetery associations around the State so that they can discharge the trust responsibility imposed upon them under the statute. We are not talking about operating for profit, but we are talking about an area where we can make a profit so that additional moneys can be put into perpetual care, so that cemeteries in the future can build up a fund where they can adequately discharge their trust responsibility. In this area I am going to make a statement. It may be shocking to you, but I think it is a fact. I do not think there is a single cemetery in the State of New Jersey that has adequate permanent care funds and this condition, members of this Committee, is going to grow worse through the years as more and more of these old traditional cemeteries get sold out. They have little or no perpetual care funds, most of them. Some of the later cemeteries that got going and got operating on a more business-like basis tried to prepare, but there wasn't available to them sufficient revenue to put aside enough money into perpetual care funds.

Let's look at the perpetual care fund. The perpetual care fund under the statute, the previous statute and now under both these bills, must be invested in securities that are under the law. Let's assume they get 4 or 5 per cent. You have to have \$20,000 to develop an income of \$800 to a

\$1000 and \$800 or \$1000 in today's market when you are employing help to maintain cemeteries goes a very, very short distance. There are various estimates of how much a cemetery ought to have put aside in a perpetual care fund in order to adequately take care in perpetuity of the cemetery. I am not going to go into those figures because they can be tossed around many ways, but it takes an awful lot of money.

In this area I want to point out that the members of this triumvirate, the funeral directors, the monument dealers, the vault manufacturers - and I don't use this term disparagingly, but rather descriptively - are one-shot dealers. In other words, they have one contact with the cemetery. The cemetery under the law is supposed to take care of that site in perpetuity. If you think of the cost of dying and you take the amount of money that goes to the cemetery and compare it with the amount of money that goes to the funeral director or the monument dealer, you will see the one who comes out on the short end of it all the time. The one who has to take care of that cemetery in perpetuity is the cemetery. Now if this triumvirate was here trying to correct this condition - and this is the thing about which they complained, the cemeteries are in disrepair and neglect - if they came forward under their legislation and said, "Here, let every funeral director - let every monument dealer - let every vault dealer contribute a certain percentage of his charges to the perpetual care fund of the cemetery," then I would say that they are working in the public

interest and trying to do something to solve the problem. "But, oh, no, they say, "don't interfere with any of our charges. Don't let the cemeteries sell anything to increase their revenues. Let the cemeteries go on as they have been functioning over the last 40 or 50 years. We are satisfied with that condition because we are not responsible for the care of any cemetery plot after we inter the body. It is up to the cemetery." Food for thought, members of this Commission.

Now in the area of non-profit cemetery operation, what can a cemetery do with its money? It can pay the help. It can keep the grounds and so forth in as good a state of repair as they have means to do. It can attempt to pay off the people who sold the land to them and they are usually the trustees of the cemetery. If they have anything left over, there is only one thing they can do with it - they have to put it in the perpetual care fund. They can't distribute it to anybody as a dividend, as a profit or anything like that. It has got to go into perpetual care.

In this area of so-called profit, I want to make this distinction. Cemeteries cannot make a profit because as you know in any business the profit is what is represented by the last line in your operating statement when you look at it in a year. Now if you can't take that money that is shown on that last line and give it to somebody, it is not truly a profit. With reference to cemeteries, I like to talk in terms of receipts. They need additional receipts. They must be able to sell items above the cost at which they

acquired them in order to have something to put into this perpetual care fund. Well, enough about that.

Now here is another beautiful paragraph. I'm going to ask you to look at this one. I would like to ask you to look at 365, 8A:3-12. Under 8A:3-12, if you go down to subparagraph (e), line 16, it says this: "No member of the Board of Trustees or any employee of a cemetery company shall be permitted, directly or indirectly, to vote through the use of a proxy." Paragraph (f): "No member of the Board of Trustees or any employee of the cemetery company shall solicit for himself or for the use of any other person the proxy of any lot holder." Well, the point about it is this: They put in this bill a provision that the trustees of a cemetery association - remember these are the people who perhaps have put their money in it, who are trying to manage it to get their money back and trying to manage it in the public interest and discharge their trust responsibilities - they can't solicit a proxy to sustain themselves in office. Here again, does anybody think this is constitutional? What an absurd suggestion! Again I say it is an insult to the intelligence of the entire Legislature. I am sure that the sponsors of this bill, and I say this respectfully, never knew that this provision was in it. I don't think they ever knew that the provision prohibiting any advertising, even solicitation by telephone, was in this bill because this kind of thinking goes back to the Dark Ages. Can you imagine any American corporation that couldn't solicit proxies for management? Again, what

is the object behind this?

You know, at the risk of inducing more boos and cat calls, under this legislation, if this was ever enacted, a group of funeral directors who had a number of burials in a particular cemetery could get together and over a relatively short period of time collect enough proxies to throw management out and take it over. Now I am not saying that is the purpose. I don't know. I really don't know the purpose of this in this bill. But it is certainly an obnoxious and brazen suggestion to the Legislature.

For instance, we have what is known as a grandfather clause in our bill, in other words, that a certificate of authority to operate will be given to all existing cemeteries, etc. They have no such clause in their bill. But they do have this provision in their bill. They say that everybody who is in the cemetery business in the State of New Jersey - and incidentally this bill does not apply to religious cemeteries - must make an application within 90 days after the Board comes into being for a permit to operate a cemetery. Then it provides that no certificate of authority to operate a cemetery shall be granted by the Cemetery Board for a period of 60 days after the application is filed. Query: What is going to happen with all the dead bodies during the 60-day period? There is nothing in the bill which says what is going to happen to them. What the purpose of that is, I don't know.

They go further. They say if there is any objection to any cemetery getting a certificate of authority, the

Board shall conduct a public hearing and so forth on the matter and the certificate shall not be granted and the cemetery can't operate and if they do operate, anybody connected with the operation shall be guilty of a misdemeanor. Now isn't that a happy thought, trying to make criminals out of these men who declined to receive the mortal remains of somebody who owns a cemetery plot in that cemetery?

Now there is an item that you will hear a lot about, tax exemption. 'Oh,' they say, "cemeteries shouldn't be permitted to sell vaults or markers because they are tax exempt. Therefore, they shouldn't be permitted to compete with these men who are in this commercial enterprise."

Number one, I am informed - and if I am in error, I ask the people on the other side to correct me - that New Jersey is the only state in the Union that prohibits the sale of vaults by cemeteries.

Number two, most of the states in the Union - I am not going to try to call off the number - permit the sale of vaults and markers. In those states, members of this Committee, there are vault manufacturers, there are monument dealers, that are still in business and they have not been put out of business by the fact that cemeteries have the right to sell these items. A little competition in both these areas might be very healthy for everybody and be in the public interest and perhaps reduce the cost of dying.

Now again, coming back to the matter of tax exemption, what is the philosophy behind this tax exemption? It is very simple. In other words, the fundamental reason for

giving tax exemption is to guard against the prospect of the local tax collector coming in and selling a plot of land in which bodies are interred for taxes. The philosophy and the purpose of this tax exemption is to protect the bodies that are interred in the ground and make them immune from being sold under the tax collector's hammer.

Now it is true that the cemeteries get some little overflow benefit from this. I want to say this to you: If you want to eliminate that tax exemption, go ahead and do it. But when you do it and you make the cemeteries pay this additional money to the tax collector, make sure you put in this bill some other source of revenue that is going to make up the difference. So what you are going to do is take it out of one pocket of the public with one hand and put it in with the other. So all this talk about tax exemption, tax exemption, tax exemption, gets down to that relatively simple proposition.

I have a number of other items, but I think I can produce them with other witnesses and perhaps better. That's substantially my story. This legislation is needed. The fundamental question you are going to have to decide - whether you are going to perpetuate in the State of New Jersey the condition that exists with cemeteries today and you don't have to be an expert on cemeteries. All you have to do is ride around the highways and look at the ill-kept condition of many, many cemeteries. They are in that condition because of existing law. 365 wants to keep them in that condition and even make it worse. If this is what you want and

this is the public policy of the State of New Jersey, then you vote for 365 and what will happen? These cemeteries will become public charges in relatively few years because there are many, many old cemeteries in the State of New Jersey today that have little hope of survival even with what we ask for. Thank you.

SENATOR BIGLEY: Thank you, Mr. Toolan. Any questions by any Committee members?

SENATOR HILLERY: Mr. Toolan, is it the law that a cemetery you say cannot sell vaults?

MR. TOOLAN: Yes. There is a decision, the Frank Case. It is cited in the Attorney General's opinion and I have a digest of it here. It is an opinion written by Judge Francis in the Supreme Court, Frank v. Clover Leaf, 29 N.J. 193. And the basis for that - and I don't think the Supreme Court could have done anything else - is because of the existing state of the law. On page 200 of that case, Justice Francis says this: "In our view the fundamental problem presented is whether the defendant has the authority to engage in the business of sale and installation of bronze memorials. Its corporate life and fields of operation stem from N.J.S. 8:1-1. Under section 1 of that statute the incorporation is 'for the purpose of procuring and holding lands to be used exclusively for a cemetery or place for the burial of the dead.'" In other words, in effect under existing law the court said, "You are simply to hold this land as a repository for the burial of the dead and you can't go into this commercial competition and so forth and so on." So we have to have legislation. Otherwise this Supreme Court

decision would be binding upon us.

SENATOR BIGLEY: Thank you, Mr. Toolan.

MR. TOOLAN: You're welcome.

SENATOR BIGLEY: Judge Leap.

JUDGE LEAP: I was waiting for Senator Toolan to ask me some questions if he desires me to appear at this time. Do you?

MR. TOOLAN: May I say this, that Judge Leap is one of those who perhaps knows as much about this legislation as anybody in the State because he worked with the Attorney General's office during this past four- or five-year period to which I made reference. But I do not have any specific item that I want to produce right at the moment from Judge Leap. I have some other witnesses that I will, of course, want to present.

SENATOR BIGLEY: Thank you, Mr. Toolan.

Mr. Howard Stern.

H O W A R D S T E R N: Mr. Chairman and Senators; I appear on behalf of the New Jersey Monument Builder's Association, Greater New Jersey Concrete Burial Vault Association and South Jersey Vault Manufacturers' Association. I do not appear on behalf of the total triumvirate as it has been characterized here. I think we should make that a quartette perhaps and include the public in the picture and we have perhaps a good deal to say here today not only about the interests of my clients specifically but also, and in the greatest sense, the role of the public in this matter,

which is after all uppermost in the minds of this Committee.

First of all let me say this, that reference has been made to a pamphlet entitled, "The Great Betrayal of a Sacred Trust," and it has been characterized with rather strong language. I want to say that I reviewed this pamphlet before it was printed. If anything, it is an understatement of the situation. It is moderate in its language. We accept the challenge by all means of producing hard, solid evidence to back up every word, every phrase and every paragraph in that pamphlet and perhaps right here today I will be able to provide you with some hard evidence which I think you will agree with me is more shocking than anything in that booklet. But we are not here primarily to shock anyone; we are here to discuss the relative merits of these bills.

Now it seems to me that Senator Toolan, Judge Leap, myself, and others in the audience here perhaps have something of an advantage over the members of the Committee. We come each with a certain background in the field and I think that any really intelligent consideration of these two bills requires some consideration of the background in which the bills come before the Committee.

First, I would like to make certain basic assumptions: A Cemetery Board will be no more effective than the enabling legislation permits it to be. What we are saying in effect is that unless you give to a Cemetery Board some

regulations with teeth to administer, you might just as well not have a Cemetery Board and we all agree that regulation, enforcement, and a Board - and I think we all do agree on this - is absolutely necessary.

We could also agree on another basic assumption. If there are malpractices in the cemeteries, we won't cure them by legalizing them. In other words, what I am saying is that if you are convinced that certain things need correcting, you will not correct them by writing legislation which permits them.

Now just a brief bit of history. In New Jersey and all over the country back in the '20's and the '30's there was quite a movement of promotional interest, down-right, straight-forward promoters, who were out creating memorial parks. And at that time the problem was a little different than it is today. But to a great extent we are dealing with the same people and I think that we should outline what the problem was and how it came about. In those days the promoters went out and sold blocks of graves to the public, not for the purpose of establishing a family plot, but with the promise of great profits on resale. When they promoted a new cemetery they went out and told people, "Buy twenty lots for \$10 apiece and we can assure you they will be bought back at \$100 apiece." The Better Business Bureaus all over the country, here in New Jersey and elsewhere, were very alert to that. For example, in September of 1935, the New York Herald Tribune reported that the Better Business Bureau had issued a

bulletin "outlining the activities of unscrupulous promoters and swindlers in the sale of memorial park lots to the investing public." Now many of these promotional schemes simply failed. They never got off the ground. And this, of course, is where the public complaints came from. The cemeteries never did get going. Money was taken for lots and never returned. Some of them survived.

You have been told this morning that there are perhaps 2,000 cemeteries in New Jersey and, an equally approximate figure, perhaps 40 memorial parks. We should make something very clear right at the outset. Most of the cemeteries in New Jersey have never expressed any desire whatever to engage in any of the activities of a commercial type which are anticipated by S 429. We are dealing with a relatively small group of what I will characterize, and I don't think unfairly, of commercial operators.

Now in the '30's and in the '40's, those memorial parks that did survive continued to operate. There were excesses of various types. New York moved in rather quickly. In the State of New York in 1949, the Attorney General ran a major investigation which resulted in major legislation, which also resulted in many of the promoters being heaved bodily out of New York State and lighting in New Jersey. On February 14, 1949, Governor Dewey in addressing himself to regulatory legislation in dealing with exactly the same kind of problem we are dealing with here had this to say to the Legislature of the State of New York:

"I have the honor to submit to you today the report of the Attorney General upon an intensive

investigation he has conducted into the operation of cemeteries organized under the Membership Corporations Law of our State. The report reveals shocking abuses on a widespread scale and of the most serious nature.

"Because of the extreme mental anguish suffered by the bereaved at the time of their contact with cemeteries, these abuses have continued unchecked, unnoted and uncorrected for many decades. The Attorney General has rendered a great service to the people of our State in the uncovering of these conditions. . ."

Now I won't read all of this. It is in the hands of the Committee. He went on to recommend that there be sweeping new regulation. You may have noted that in his message the Governor carefully explained that these things were allowed to exist for so long for the very reason that the individual members of the public find it not only distasteful, but too difficult to do anything about it.

In 1950, here in New Jersey there was an attempt to clean up the situation, following undoubtedly on the heels of the cleanup which occurred in New York State. A legislative committee similar to this one met and they made recommendations which included regulation, and I might note significantly, no recommendation that additional powers be given to cemeteries to engage in commercial operations.

I pause at this point by the way to ask that the Committee members clearly define in their own minds a distinction between cemeteries and the people who run some of these cemeteries and clearly distinguish between the financial condition of certain cemeteries and the financial condition of the people who run the cemeteries. It is not always true - and we will give you the detail on this - that simply because

a cemetery on the last line is in red ink that the cemetery is not making money in terms of money being derived through the operation of the cemetery in various ways which we will detail for you.

Now into the '50's, the memorial park operators were quite satisfied with things exactly the way they were. Theoretically, at least, they had no right to be engaged in commercial operations at that time under existing statutes. Apathy, public apathy, everyone else's apathy, resulted in their having rather free rein. Until finally their greed really overcame them and that is what created the present problem. Now I am telling you all of this because I feel that it is necessary to trace this history to see exactly how 429 comes before you, how 365 comes before you. What is the sudden interest of the cemetery operators? - and I say these cemetery operators and not cemeteries generally - in regulatory legislation? Why after all of these years do they suddenly want to be regulated? The answer is fairly simple and quite apparent.

By the '50's through their promotional methods they had garnered a great percentage of the interments which were taking place in this State. The memorial parks limit their memorialization to flat bronze markers. Largely in concert with a company known as Matthews Memorial Bronze and with other companies, the usual method of operation right here in New Jersey was one whereby more than 95 per cent of all of the memorials which went into the memorial parks was sold by the cemeteries. The Federal government moved

against Matthews Memorial Bronze and an injunction was entered prohibiting Matthews from refusing to deal with ordinary dealers and insisting upon dealing with cemeteries.

Finally the memorial dealers of this State did something about their plight, a situation incredible in which hundreds of dealers - and we talk about competition here today - hundreds and hundreds of dealers throughout this State were unable in all of the memorial parks in the State to sell 50, 40, even 30 memorials in an entire year, this in a situation in which something approaching 50 per cent of all interments were being made in memorial parks. So they brought suit, Frank v. Cloverleaf, the first case, and the Supreme Court speaking through Justice Francis in a unanimous opinion said a lot more than, "This is the result we must reach under existing law." The Supreme Court made it clear that for a tax exempt association to be engaged in competition with private tax-paying institutions and in a situation where they had captive customers - the opinion by the way is annexed to a memorandum which some time ago was given to the members of the Committee -- in that situation there was an unfair competitive practice which had to be stricken down. That unfair competitive practice remains the same whether you pass 429 or 365 or any other bill. You cannot create a situation in which a cemetery with a built-in monopoly, with the ability to sell every customer, every lot owner, every commodity which it is offering. You must understand that an outsider cannot compete with the cemetery and you will see why as we go along.

Now after the decision in Frank v. Cloverleaf, the trade journals in the cemetery industry came up with the grand solution and that was that we will incorporate cemeteries as regular business corporations. So a second suit was started, Terwilliger v. Graceland and Hollywood Memorial Park, and again the case went to the Supreme Court and again there was a unanimous decision in the Supreme Court. And what did they hold? They held that in New Jersey no matter what artificial form you give to a cemetery, it remains a charitable public trust which exists for the benefit of the lot owners and not for private profit of individuals.

After these two Supreme Court decisions, there were perhaps 15 other cases which amount to nothing more than an attempt to enforce existing law. When the cemetery memorial park dealers, people, promoters, finally determined that they would ultimately never be successful in the courts, they then became interested in promoting legislation and that is the origin of 429. We say that they have no interest in regulation. They have no interest in promoting the public welfare. They do have an interest in promoting the sale of commodities which the Supreme Court has said they may not sell.

Now the impression may have been given here that there is a semblance of approval by the Attorney General's office or some participation in the preparation of 429. The people in the Attorney General's office and the Attorney General have been most gracious over the years in working with all

of us and seeking a solution. I have spent hours and days working with the Attorney General's staff in the past on legislation. Both 429 and 365 are the product of the work of all of us. Have no doubt about it.

There are tremendously significant differences between 365 and 429 and it is in the differences that the importance lies and we will attempt at some point here to talk about some of those particular distinctions.

Now the people I represent have been characterized as having a self interest. Well, they certainly do. They have an interest in survival and it has always been clearly and frankly stated. They want to stay in business and they think they have the right to stay in business. However, it is also true that in the course of the various suits which have been brought to enforce their rights, millions of words - millions of words of testimony have been taken. To a great extent this testimony, which is the words of the people who run the memorial parks, has more to do with the public interest, has more to do with problems that were only collateral to the monument makers' interest than it does with the question of whether or not monuments should be sold. We have over the years provided this information to the Attorney General's office and I think that it serves as a vast area of documentation of the need for enforcing cemetery regulatory legislation.

It is unfortunate that the monument dealers have in the absence of legislation been required in effect to conduct their own law enforcement agency. There is a tremendous, terrible need in this State for some sort of an agency.

The Attorney General's office has been very much more willing than able in this situation. This is not by way of criticism. I don't think they could do anything different. In the past there has been one Deputy Attorney General whose part-time activity has been devoted to the cemetery problem. It cannot be handled in this fashion.

Now we want to relate to you some hard facts, some specific examples, of situations which will illustrate the need for the type of regulation that S 365 sets out.

Mount Lebanon Cemetery, located in Central New Jersey, went into receivership after the trustees had sold themselves portions of the burial ground and then left the management end. At a later time, the receiver made a contract with a promoter to let him sell some of the remaining graves, at a 40 per cent commission. The purpose of selling the graves was to improve the financial situation of the cemetery. But in that situation in which a 40 per cent commission had to be paid and the cost of improving the graves had to be paid by the cemetery, it quickly became apparent that the financial problems of the cemetery could not be solved by paying salesmen 40 per cent.

After Mount Lebanon had been in receivership for some time, a person involved as a trustee in Beth Israel Cemetery, which is practically next door, bought up the Mount Lebanon mortgage for \$90,000. About a year later Mount Lebanon acquired some money by selling off a part of its lands which it said were not needed for cemetery purposes. The promoter was paid his \$90,000 and Mount Lebanon continued to

owe him another \$90,000. This is not the way to deal with charitable trusts in our opinion and we believe that a Cemetery Board would make this type of thing impossible.

In the northern part of the State in North Jersey there is an industrial park which is valued at millions of dollars. It has been developed on land formerly owned by a public cemetery. Persons connected with the ownership of the industrial park have also been connected with the cemetery and the land was originally acquired, or at least a great part of it, at a tax foreclosure at a very minimum price. Our information on this case was turned over to the Attorney General's office several years ago.

At Riverside Cemetery in Northern New Jersey - these are all companies - not all - Riverside is a traditional cemetery. Most of them are memorial parks. At Riverside Cemetery, two of the trustees were brothers. Together they derived an income of more than \$50,000 a year directly and indirectly from the cemetery operations. One of the brothers was a New York attorney who maintained his law office within the cemetery's New York suite of offices. Did you ever know, gentlemen and madam, that New Jersey cemeteries maintained New York offices? Some of these promotionally geared operations do for the reason that they solicit the sale of graves and whatever else they are allowed to sell in New York State.

A large memorial park in South Jersey in the Camden area, Cresthaven, threw off private profits for years through a separate corporation operated by the promoters under the name of Consolidated Development Company, again the use of a

trust corpus in our opinion to line somebody's pockets improperly.

In Restland Memorial Park the trustees are among the owners of a corporation known as Restland Management Corporation. If you want to buy a grave in Restland Memorial Park, you buy it from Restland Management Corporation.

I wish the Committee would perhaps correct my script where Cresthaven is referred to as a South Jersey memorial park. The name of the memorial park is Locustwood.

I repeat the name of the memorial park in the Camden area is Locustwood, not Cresthaven. Cresthaven is mentioned in another context.

Windsor Gardens Memorial Park - here is an example of a memorial park that didn't make enough money so the promoters abandoned it. It is in such poor condition - and we believe that this could not happen if 365 were to be enacted - that relatives seeking to have bodies removed were unable to locate them after months of searching. There are people in the audience here today who are prospective witnesses who have had these problems. This is an example of what can happen when promoters don't turn a quick enough profit and simply leave. In Windsor Gardens the lot owners were sold graves in sections of the park which had not yet been developed. The actual burials took place in a front portion of the cemetery. When the promoters left, it was difficult, if not impossible, to even locate the graves. There is a suit pending now by the present trustees of Windsor Gardens Memorial Park in which the present trustees say in

stronger language than I have used here exactly what the former trustees did.

At King Solomon Memorial Park in Passaic County, investigation revealed so many associations, partnerships and corporations involved in the operations of their two memorial parks that it was practically impossible to untangle it. Trustees of the charitable association were, of course, connected with the profit-making aspects of the operations.

Hollywood Memorial Park and formerly Rosedale Linden Memorial Park were run by, among others among the Board of Trustees, two businessmen who were removed from business in the State of New York where they were also cemetery promoters. Before they established their successful operations in New Jersey, one of them had bought 73 acres from a New York cemetery for \$15,000 an acre and promoted it for resale at \$6,205,000. Another one of the trustees there, who was formerly a promoter in New York, started a grave sales promotion in New York with \$200 and sold \$3,300 worth of graves. - I believe that is in error; it was a larger figure - we will provide it to the Committee - using a battery of telephones and door-to-door canvassers.

Now the cost of graves in New Jersey has spiraled anywhere from 50 per cent to 800 per cent, depending upon the cemetery or memorial park that you are looking at. In order to circumvent the rather loose perpetual care laws that presently exist, gimmicks - and we call them gimmicks because that is what they are - such as, current care, future care and the like - such charges are being made and the funds

are not being placed in perpetual care funds which are subject to supervision.

The graves in memorial parks are usually 7 feet or 7 1/2 feet long, instead of the traditional 9 feet. What's the importance of it? When you put a memorial on a grave you have to have some solid ground to put it on. If the grave is not long enough, the memorial, even the relatively light bronze marker, sinks into the ground. However, when a promoter goes into a cemetery, he computes the acreage, he computes the number of graves he is going to be able to sell, and that is what controls the determinations as to the size of the grave.

The costs incurred at the time of installing memorials varies from \$5 to \$140. The difference is due to unwarranted and excessive fees, charged at the whim of the promoters. The charges are not presently subject to any State regulation.

There are hidden charges, road fees and the like, which are imposed and passed on to the lot owners.

In some instances as much as \$75 is charged by the cemetery for interment in a mausoleum. For this charge, the cemetery employees help to carry the casket and that is all they do.

Now there are many, many other items which are included in the materials given to the Committee, items of a rather specific nature and I think that perhaps the Committee can read them rather than having me recite them to them at this time.

With particular reference to the bills that are now

before the Committee, a great hue and cry has been raised about that portion of 365 which would outlaw the outside salesmen at the cemetery. This seems to be a very sensitive spot for the memorial parks. The object of the provision is two fold. You may note that 365 provides for a deposit in a perpetual care fund of 25 per cent of the selling price of the grave. 429 provides for a deposit of only 10 per cent. However, 429 by permitting the continuance of commission salesmen makes it impossible realistically for a cemetery to put more than 10 per cent into perpetual care where it is needed. We all agree that perpetual care funds should be implemented and enhanced.

Most cemeteries in this State have no outside salesmen, have no hucksters, have no telephone rooms, have no mailing campaigns, have no so-called surveys. The definition of a survey, a term invented by the memorial parks, "A survey is the total blanketing of a specific geographic area in which platoons of salesmen using boiler rooms filled with telephones, mailing campaigns and door-to-door solicitation go and attempt to reach every person of a particular religious faith who resides in the area in an attempt to peddle graves." That's a survey.

Now we say that the 40 per cent, 30 per cent, 35 per cent, which is being paid out by commercial promoters in memorial parks belongs in the till with the cemetery. It doesn't belong in any salesman's pocket. The traditional cemeteries of this State and the vast majority of the cemeteries

of this State receive 100 per cent of the selling price of the grave and contrary to what you have been told, there are many cemeteries in this State which are in fine, good, sound financial condition because they don't lop 40 per cent off the top of the sale price of the grave.

Now it seems to me that we could spend all day and all week sitting here and generally criticizing each other. That is not my purpose. I provided some specific examples of what we perceive to be improper practices because I did not want to bring to this Committee my generalized observations, but rather some evidence which the Committee deserves to receive.

Moving to the bill itself, there are other specific areas, for example, why should a Cemetery Board have six members, three of whom represent the cemeteries and only one of whom is the member of the public? At the outset we would think that a six-member Board would provide certain practical difficulties. Of more importance is the fact that the cemetery members of that Board would be able to stymie the Board. We therefore ask that you subscribe to our theory that there should be a seven-member Board with at least two members of the public on that Board. The public after all does own these cemeteries. You know when we talk about corporate entities and General Motors, we seem to be getting pretty far away from the concept that has been historically true in this State of New Jersey and that is that every cemetery in this State is owned by the lot owners, which leads us to the second area.

It has been stated that it is incredible to conceive of a corporation in which management cannot solicit proxies. Well, gentlemen, it is usually the illness that has to bring about the cure. What has happened in the past? You have already been told, and properly, that it is the trustees who put the money into the cemetery. Now think about that for a moment. How come it is the trustees who put the money into the cemetery? When you have a cemetery and you have it owned by the lot owners, why is it that no one else in the community in a memorial park particularly ever happens to be elected to the Board of Trustees? Well, what has happened is this: The original promoters indeed bought the land. The original promoters sold the land to the non-profit, tax-exempt cemetery association and I won't even allege that they sold it at a profit. They sold it. They received back certificates of indebtedness, essentially a mortgage transaction. When they sold the graves to the public, the practice was in many of these cemeteries to take back immediate and irrevocable proxies from the new lot owners. The promoters are then in the position of electing themselves as trustees.

Now what are the many hats of a promoter? Number one, he is the chief creditor of the cemetery. He has the mortgage or certificates of indebtedness. Number two, he is the trustee making the regulations. Number three, he is usually, if not a salesman, at least a sales manager receiving an overriding commission. Number four, he is a management employee of the cemetery.

Now you ask yourselves, gentlemen, whether in that

many faceted position it is very likely that the money that comes into the cemetery will be used to reduce the capital indebtedness of the cemetery or whether that money will be used to pay out commissions, interest on indebtedness, salaries and the like. Now this is what we mean when we say don't look at a cemetery and look at the last line and say, "That cemetery is doing very poorly. That cemetery needs to go into unfair competition with private enterprise because we have to help them to survive." That is utter nonsense. What happened to all of the money that came in in the first instance? Was it necessary to pay out 40 per cent of the cemetery funds in commissions? Was it necessary to pay out interest on capital indebtedness which was never reduced? And here perhaps we can see the philosophy of these two bills.

There is a provision - I won't even attempt to give you the number at this moment - for reduction of capital indebtedness. The present statute in New Jersey says that when you sell a grave, you take 50 per cent of the selling price and you pay off your capital indebtedness. By and large the commercial operators have ignored it or interpreted it to suit their own needs - interpreted it as meaning 50 per cent of the net price after you sell the grave, so that first they pay out the commission and then they pay out all the other expenses and they pay into the perpetual care fund and what is left, they take 50 per cent of and reduce capital indebtedness. Why reduce capital indebtedness when you are receiving the money in other ways?

Their bill, 429, would legalize this malpractice, would legalize it by saying, 50 per cent after expenses. You have to be reasonably sophisticated about cemetery matters to see the real distinction in philosophy there. S 365 makes it very clear. First you pay out the 50 per cent, a real 50 per cent, and reduce the indebtedness.

Now there are other areas here which were set out with some formality in the original memorandum. I don't know whether all of the Committee members received it. We would be happy to provide additional copies.

I will move along here. I wanted to go back to the problem that they say exists with respect to the cutting off of the outside salesman. And again I tell you that it is the malady that must produce the cure. Perhaps the provisions of 365 in this respect are severe. Let me assure you that the illness is very severe. I might say that I haven't heard any complaints from traditional, well-run cemeteries about not being able to send a salesman out on the road. I have heard some of them complain about the fact that they do advertise the cemetery and it may be that the provision of 365 in this respect should be modified, although we don't know of any great purpose in advertising a cemetery. Normally, people buy a family plot in a cemetery which has been recommended to them, where the family has been, where their friends are or which is conveniently located geographically. We don't know that there should be any great hot commercial competition to sell graves.

Now the spokesman up to today for bill 429 has been

the President of - I guess the proper name is the New Jersey Cemetery Association. There is only one association so I can't be far off. We do not believe that that Cemetery Association or its spokesman, Mr. Shipper, its President, represents by and large the great broad cross-section of cemeteries in this state. But rather than have me characterize for you what we are so earnestly trying to get to this Committee today, and that is the atmosphere, the type of operation that 365 is intended to eliminate, I am going to run through as quickly as I can a document which was prepared by Beth Israel Memorial Park, was copyrighted by Beth Israel Memorial Park, of which Mr. Shipper, the President of the Cemetery Association, is at the present time the Vice President. I believe his brother is the President. His father had been a trustee and numerous other relatives have also been on the Board of Trustees at various times.

I have provided the Committee with only one portion of a document known as "Beth Israel Policy Manual." You have just one section of it. The entire manual I have here. It is a little too lengthy to photocopy it. It is available for the inspection of the Committee. Now as we run through this, I want the Committee to realize that Mr. Shipper and Beth Israel Memorial Park are the leaders in the industry so to speak, are the leaders in this segment of 40 memorial parks, and I think they can give you the atmosphere better than I can. I have just picked out - out of context, admittedly - pieces of this manual which is provided to salesmen when they go to work at this cemetery. They set up quotas for the

salesmen. I read - this is not in the portion that has been provided the Committee: "Realistic quotas are set for individual and group performance. If a counsellor" - that's the word for a salesman - "consistently fails to reach his individual quota, this will be regarded by the sales manager as unsatisfactory performance. Nonperformance in an organization seriously hampers opportunities for producers." We are dealing with what the Supreme Court calls "God's hallowed ground."

"Cancellations." This is where a prospective lot owner cancels. "No refunds will be made to prospects on cancellations. Counsellors" - he's a salesman - "shall receive no credit on a cancellation where less than six payments have been made. Where more than six payments have been made, the counsellor shall be credited with 50 per cent of the total money paid in up to his full commission," etc., etc. I will move very quickly through here, gentlemen. I know that there are many other witnesses.

Here is another direction to salesmen. We are dealing here with a charitable trust. "Under no circumstances shall a counsellor discuss prices, terms, etc., with his prospect in any open or public area where such discussion may be overheard by other prospects. For this purpose the counsellor shall first take his prospect into one of the private closing rooms, seat them and then advise the girl where the coffee is to be served. When the counsellor rejoins his prospect in the closing room, the door shall be shut to insure complete privacy during their discussion of prices,

terms and all other pertinent data." Are we selling used cars or are we selling graves in a cemetery?

Again salesmen are not permitted to send out letters unless they are cleared by the management.

An interesting one - large block type - this is when they were selling memorials and I ask you whether legitimate dealers can compete with this: "The price of the bronze memorial includes installation, foundation and unveiling service." Unveiling service is a Jewish religious ceremony which occurs some time after the burial.

Now can my clients sell to a customer the installation? No, the regulations of the cemetery don't permit it. Can my clients sell to a customer the foundation? No, the regulations of the cemetery don't permit it. As a matter of fact, I say specifically that there is no foundation. Can my clients sell a religious service as a part of a package on the sale of a memorial? Of course not, and they wouldn't attempt to. In addition to these services, this cemetery has in the past sold insurance, estate planning, psychological counselling for the widow and other services.

I should like to know how a charitable trust, Beth Israel Cemetery Association, is able to offer to prospective lot owners free - F-R-E-E - bold-capped, underlined, perpetual care, and that is what they advertised and that is what they instructed their salesmen to go out and sell. Where does the money come from to go into the perpetual care fund? This is an example of the fact that these promoters will offer anything that comes out of the cemetery. Their prime interest is

in that portion of the gross that comes in that goes into private pockets, not into the cemetery's coffers.

I say all of this with respect to this particular cemetery which is selected for two reasons: One, it is the cemetery of the President of the Association that supports 429. Number two, we have sued them several times and I have all of their depositions and everything I have told to you, they have confirmed by their own testimony.

Now we did provide to the Committee that portion of this manual, which is known as, "Methods, Techniques and Approaches." It is an utter disgrace. They instruct the salesman - and you must bear in mind that the ordinary, properly-run religious, nonreligious traditional cemeteries are trying to compete, as it were, with this type of operation, the big 40 out of the 2,000. They instruct the salesman on how to get leads. First they tell him under the heading, "Third Party Story for Getting Recommendations." They tell him exactly what to say. He goes to Mr. Cohen and he says, "You probably don't want to impose on your friends and relatives. I appreciate how you feel because after I selected a plot, my wife was so impressed that she suggested that I get in touch with friends and relatives, etc." For five paragraphs he tells Mr. Cohen a story in order to get Mr. Cohen to give him somebody else's name.

Now we get to the calling upon the person whose name was given, "How to Call on Recommendation Names." "Don't come to the door," and I read specifically, "Don't come to the door and say, 'I am Mr. So and So, I represent

Beth Israel Memorial Park and I just sold your friend Sol Cohen a family plot and he recommended you.' That's probably the worst thing you can do. Here are the three simple rules." And they tell them exactly what to do, which culminates with his saying that he has to come to the door on a matter of great personal urgency and that Mr. Cohen asked him as a favor to come and see him.

Now they say in here for the canvasser, who is known as a counsellor, "There's a one dollar bill on each door knob, but you can make each door knob worth one dollar fifty by being persistent with each call and why shouldn't you?" Then they explain how - and I wonder how much money the cemetery is making on this - all you have to sell is one 8-space subscription - another term - it's a grave, a plot - or two 4-space subscriptions a week to earn a fine living.

I think we have provided the Committee with our original memorandum with advertisements from New Jersey memorial parks in which they invite applicants to make \$25,000 a year selling graves, a salesman, in New Jersey and it may be fine for salesmen, but it is poor for cemeteries.

As we continue on through here, we then find the instructions to salesmen of this great charitable trust on "First Answer to Stall." At the bottom of the page it is very interesting - I think I could use this manual for some of my real business clients, "After each answer hand the pen and the contract to your prospect and ASK FOR THE ORDER!" I don't think that's our idea of what we want to promote in New Jersey.

Then they have the additional answer to the stall. "The sale begins when your prospect says no!"

The "I Want to Think It Over (Stall)." The shocker stall where he comes in and it says there, "You may not be strong enough to use this shocker." - I don't know the particular page here. It goes on something like this: God forbid the white-faced policeman should come to the door and tell you that Mr. So and So has already passed away and you haven't signed the contract, and the other one which says you have to sign now because if you don't sign now, there are 25 salesmen out on the road and it will surely be gone by Sunday, and the other one which says, "How to answer the one who says, 'I want to see the cemetery.'" But, Mr. Prospect, it's only \$13.25 now and the rest is on time and you don't have to see the cemetery to know about our insurance plan and our counselling plan and our free perpetual care and all the rest of it. - I am paraphrasing what is in this book that is before this Committee. - The cemetery is not going to blow away and it won't catch fire. You can sign this now and on Sunday we will be happy to show you the cemetery.

This is so fantastic that I really hesitate to go much further with it because it almost appears to be a pitch addressed to the emotions of the Committee. It isn't. I don't know how we can emphasize to this Committee enough exactly how pressing this problem is in both areas, the positive and the negative. All of the cemeteries need to make adequate charges and that is where their financial

health lies. In S 365 we have set up a schedule for the making of reasonable charges which I am convinced exceed the charges being made today by most cemeteries in this State and we haven't in terms of our interest as monument makers or vault manufacturers by any means exempted ourselves. We have placed a heavy burden on ourselves. We agree that cemeteries must be made financially sound. But as we do in our prepared statement, we would ask the Committee: Look at the books of a cemetery which formerly sold memorials. Look at their books as of that time and as of now. And we very much doubt that you will see any drop in the real income of that cemetery based upon the discontinuance of the sale of memorials.

I am almost convinced that not only does a cemetery not make money when it sells commodities, but that it frequently loses money. They freely use the facilities of the cemetery to promote these sales. I don't know how any business man could survive paying out a 40 per cent commission on a marker which really doesn't have a very high or substantial markup over its acquisition cost from the manufacturer. The financial health of these cemeteries does not depend upon their ability to sell these commodities. The financial health of these cemeteries depends upon one thing, getting the money that comes in into the cemetery's hands and establishing reasonable and proper charges right down the line. Every time someone has contact with that cemetery, make a reasonable charge. If somebody comes in and puts in a memorial and the cemetery has some contact

with it, as provided for in our bill, make a charge. Make a charge for the care of the memorial. Make a charge for the setting and the sealing of the vault. Make a charge for the care of the mausoleum and make that charge as realistic as you think it ought to be. In addition to that, hire - and they are authorized to - good, competent professional people to run these cemeteries and pay them indeed handsome salaries and the cemetery will still do well. But when you have a cemetery in partnership with a couple of guys who are in business for themselves, you can't have a healthy financial situation.

I thank the Committee for its great patience. We have other witnesses who at an appropriate time we will present to the Committee. Thank you very much.

SENATOR BIGLEY: Any questions?

MR. TOOLAN: May I through you ask Mr. Stern whether or not one of the cases referred to with reference to Restland Cemetery and the mortgage situation - whether or not in the case of Larson against Restland that mortgage situation was not litigated and whether Mr. Stern wasn't the attorney for one of the parties and whether or not the court didn't decide the case --

MR. STERN: Not Restland, Mount Lebanon.

MR. TOOLAN: Yes, --whether or not the court didn't decide the case against the contention made by Mr. Stern in behalf of his client in that case?

MR. STERN: The court did not decide the case against the contention. The court decided that the sequestrator,

who is the receiver of the insolvent estate - that the sequestrator at this point in time and after the passage of this time had the right to determine whether he thought that the deal was a good one in terms of its original roots or not and should decide whether at this point in the light of existing conditions he should go through with the deal to sell or to confirm. It was upon that basis that the court decided the case. I handled the case, indeed, I did.

The facts that I presented to the Committee with respect to the Moreland Mortgage Company, Mount Lebanon Cemetery, where \$90,000 was paid for a mortgage, \$90,000 was repaid and \$90,000 was still owed - in other words, there was a double return - those facts are absolutely accurate and I will stand by them.

MR. TOOLAN: My question was in regard to the Larson Case, Didn't the court decide that the management corporation had the right to sell markers?

MR. STERN: We are talking about Restland?

MR. TOOLAN: Yes, Larson against Restland.

MR. STERN: In the Restland Case - I will be happy to respond to you, Senator Toolan - after the decision in Frank v. Cloverleaf and the decision in Terwilliger v. Grace-land and Hollywood, many memorial parks continued to sell memorials. Suits were instituted against at least a dozen. They are listed on the prepared text of my remarks for today. There were two types of situations. One was the situation in which the cemetery itself without reference to any collateral corporation was selling memorials. In other cemeteries

a collateral corporation had been set up to sell memorials so as to make an attempt to divorce it from the cemetery itself. For example, King Solomon Memorial Park had a corporation known as Bronze and Granite Memorials operating right within the cemetery. Injunction obtained - Bronze and Granite removed from the cemetery.

Lucustwood had a consolidated development company. Upon an agreed order after trial, an apparent divorce took place.

In all of these cases there were injunctions or agreed orders. Graceland Memorial Park - injunction entered; Lake Nelson Memorial Park - injunction entered. In one case we were unsuccessful, Larson v. Restland, the case to which Senator Toolan refers. I don't know the significance of that to this Committee. There was a determination made on the facts that Restland Management Corporation-- now there is a Restland Memorial Park, a cemetery Association; Restland Management Corporation, a regular business corporation. Restland Management Corporation in its turn had two distinct areas of operation. In one area of operations it sold graves from an office within the cemetery. In another area of its operations it sold memorials from an office outside the cemetery. The court held that we had not proven a sufficient connection between the activities of Restland Management in the sale of memorials from its office outside the cemetery to show that there was a utilization of the facilities of the charitable trust within the cemetery.

What I told this Committee today is with respect to

the sale of graves which is made by Restland Management Corporation and was not involved in the suit, and I say again the trustees of the Association, the directors and owners of the corporation are interrelated and if you want to buy a grave there, you go to management.

As a matter of fact, in Graceland, for example, I think all of the graves that are available today are owned by a management corporation and that the cemetery itself no longer owns anything.

We could go on really forever. In King Solomon Memorial Park, I went to a trustees' meeting. You should go to one sometime and find out whether this is a charitable trust. I made some inquiries at that trustees' meeting and I discovered and found out that the very building I was sitting in, the office in the center of the cemetery which had been used to sell memorials and other things, was not owned by the cemetery - it was owned by a private corporation - that the roads in the cemetery were owned by one corporation and another piece of the cemetery is owned by another Association. It would take me, I am sure, all of the rest of the time that this Committee intends to allot to this entire hearing to trace the corporate and partnership affairs of that one cemetery.

Now that is, it seems to me, the type of thing which will not happen when we have a Cemetery Board with proper teeth and regulation.

SENATOR BIGLEY: Mr. Stern, I have one question.

MR. STERN: Yes, sir.

SENATOR BIGLEY: There has been some comment - I think Senator Toolan alluded to it and, of course, the Committee has received correspondence on this prior to the hearing - concerning the markup on these memorials, whether the funeral director sells them or whoever and I am talking about the memorials and the vaults. In your opinion is there an area here where there should be some regulation so that the public is not paying an exorbitant price for an item which you are manufacturing and selling to Mr. X and he in turn, of course, is turning around and selling it and there have been some figures thrown out where the percentage of profit is, to say the least, a little high?

MR. STERN: Well, let me say this: I am personally more familiar with the memorials than with the vaults, although I do know that the figures were in error in so far as the sale price. You see, I represent vault manufacturers; I do not represent funeral directors. So I can only speak in terms of what the vault is sold for by the manufacturer. I don't know what it is sold for by the funeral director.

SENATOR BIGLEY: What are the average prices of the vaults?

MR. STERN: As I understand it - and when they meet there is anything but a combination to restrain trade - when it comes to price, they all hate each other - it usually runs about \$85 for a concrete burial vault. This is the price from the manufacturer. Now what expenses are incurred

by someone else along the line, I don't know.

Now with respect to memorials, the market place controls as with any other product. There are many areas you have undoubtedly observed where there is a cemetery, there are two or three or four memorial dealers all lined up. There again, there is certainly no combining to fix prices. I have over the years tried to re-educate the memorial dealers in one concept and that is this: Frequently, it appears that the price is higher than it is. Why is that so? Because the memorial dealers are the collection agency for some of these cemeteries. In other words, the cemetery says, "We will do the installation. We will do the foundation. We will make a charge for the perpetual care of the memorial." Now theoretically that charge is being made to Mr. Consumer. In actuality, Mr. Consumer doesn't want to know from nothing. He wants to see that memorial placed on that grave in the cemetery and Mr. Monument Dealer isn't going to get near that cemetery until all of those charges are paid in advance of his going near that grave. So I have tried to educate the monument dealers to do a job of educating the public to educate them to the fact that a major portion of what they pay for a memorial is not being paid to the monument dealer, but is being paid to the cemetery on these various charges. With respect to the basic price, there is simply an open competitive market which will not exist and did not exist when cemeteries or memorial parks sold memorials because case after case after case that we went into - I have the depositions - they never sold less than 95 per cent

and we know that they weren't super salesmen for a very good reason. When the memorial parks were taken out of the memorial business and their salesmen sought and were given jobs by regular dealers, they were no more successful than any other dealer and in some cases less successful because they no longer had the big crutch of the captive customers.

SENATOR BIGLEY: In your experience have the cemetery installation charges been exorbitant?

MR. STERN: In some cemeteries. Again we don't presume to set ourselves up as the arbiter of what a cemetery should charge. We feel that there is certain very realistic evidence available on a comparative basis. Diocesan cemeteries by and large have been run in a financially healthy and sound condition. As a matter of fact, they have, I understand, been able to provide, as is their churchly obligation, additional cemetery space for future need out of the operating revenue from existing cemeteries. At any rate they are apparently healthy and self sufficient. A comparison of their charges with some of the other charges made by some of the memorial parks will show that the memorial parks charged a great deal more. Now these charges are rather nebulous in some ways. For example, here we said free perpetual care. Now you, Mr. Jones, go in and buy a grave in a memorial park where either they say the perpetual care charge is X or they give you a story that it is free and you get a deed for that grave. Now after they stopped selling the memorials, they started to institute perpetual care

charges on the memorial.

Now actually we think this is good. We think that they should make a care charge on the memorials, but they should also give the care and this is where the Cemetery Board must come into play. The Attorney General's Office is not really equipped to consider the thousands of letters which they receive from individuals all through the year. We have received many of these letters. Somehow over the years, we have become kind of the headquarters for the complaints of every individual in the State with respect to a cemetery and you need an enforcement agency at this point.

SENATOR HILLERY: Mr. Stern, you said that the public was not aware that a major portion of the cost for a memorial -- You are speaking of a monument? Is this what you are talking about?

MR. STERN: Both a monument and a bronze marker.

SENATOR HILLERY: [Continuing] -- that a major portion of the cost was installation charges by the cemetery. Would you pinpoint that? Is it 25 per cent, 50 per cent, or what?

MR. STERN: Don't hold me to exact figures. A bronze marker, for example, may sell for \$150.

SENATOR HILLERY: How big is that?

MR. STERN: 14 by 24 or 12 by 24, something in that order, a few inches one way or the other. There are situations where the installation charge plus the perpetual care charge almost equal the selling price of the marker. What I am saying is ---

SENATOR HILLERY: The perpetual care of the plot, is this what you are talking about?

MR. STERN: Of the plaque.

SENATOR HILLERY: Of the plaque or the plot?

MR. STERN: No, of the memorial.

SENATOR HILLERY: Then what do you mean by perpetual care? What do they do - polish it up every once in a while or what?

MR. STERN: You want my frank answer? They do nothing.

SENATOR HILLERY: Well, that would be my opinion.

MR. STERN: That is based upon personal observation. That is a good question - what do you mean by perpetual care? I don't know what they mean now. I do say that they should be allowed to assess a care charge on the memorial itself, but that in accordance with proper regulations, a Board should see to it that a cemetery engages in proper care activities.

SENATOR BIGLEY: I don't follow you why they should even be allowed to assess a charge if they are not going to do anything. We have certainly gathered that the perpetual care is needed. Why don't we come out and call it perpetual care?

MR. STERN: We do in this bill. Let me explain. I went, for example, to - I have no hesitancy about naming places here - Graceland Memorial Park I would say 18 months ago. I want to be fair. Maybe it is different now; I don't know. I was astounded by the fact if you stand off on one of their roads and you look - it's beautiful - it looks like

a golf course. You walk across this place and you will find that the same thing happens with a flat marker as happens when you don't edge your lawn, the grass grows up over the sides. Vases are missing. You see these gang mowers -- the whole idea of the memorial park concept, aside from the touted democracy of it, is ease of maintenance. You go in with a gang mower and you go right across the whole place. Now every time the wrong part of the gang mower goes over the edge of a piece of bronze, you have damage. Every time that you don't at least periodically have somebody come in manually or with some proper implement and cut around the edge of that marker, you are one stage closer to the point where the grass meets in the middle and you can't find the marker any more. That is what we mean by perpetual care.

SENATOR BIGLEY: Thank you, Mr. Stern.

[Applause.]

Ladies and gentlemen, I wish you would refrain from any outbursts at all. I can appreciate your feelings, but we are not here to have a contest of whether one side can gather more people to clap or jeer. That doesn't aid us at all.

We are going to take ten minutes recess to give the girls a breather. They have been working very hard.

[Ten-Minute Recess.]

SENATOR BIGLEY: Ladies and gentlemen, we have had a number of requests - and I feel this would possibly be in the public interest - that the representative of the funeral

directors testify at this time. If he desires to do this, I would accommodate him and also by the same token accommodate the press. They have an afternoon deadline. So they could then have a little better picture of the three industries primarily concerned for their afternoon editions and wouldn't have just the two sides that we have heard up to now. If there is no one here, of course, we can't accommodate them.

I was asking if there was a representative of the New Jersey Funeral Directors Association that would like to come now and testify inasmuch as the press has made this request that they would like to get all facets of the story, at least the major people interested.

Before you start, I might say this that we are going to have to eat and our plans are to adjourn at 1:30 for lunch. Inasmuch as we still have a great number of witnesses, we are going to try to have a 45-minute lunch break and get back as close to that as we can.

Will you please give your name and your association?

S I L V I O J. F A I L L A: My name is Silvio J. Failla and I am the Executive Secretary of the New Jersey State Funeral Directors' Association. I didn't know that I represented such a politically powerful group. But I am here to just present the views of my Association in as short a presentation as I possibly can.

The membership of our Association consists of about 600 funeral directors, all of whom have their places of

business in our State. There are a number of District Associations located throughout the State and they are each affiliated with our State Association. I address myself to this Committee on their behalf as well.

The Funeral Directors of this State have always had a very keen and, indeed, imperative interest in the proper administration of cemeteries. Funeral Directors are not directly involved in the operation of cemeteries, but obviously they cannot ignore any issue which relates both to the total conduct of the funeral industry and to the public interest in general.

Indeed, this can be said of any one segment of the industry at large. But it has always been an act of circumstances that the Funeral Director, and not the frequently anonymous cemetery operator, must receive and necessarily act where possible, on complaints from the families they service. And it is perhaps the greatest irony that, when these complaints deal mainly with the questionable practices of some cemeteries, all the Funeral Director can do is listen helplessly. This committee may well help to correct that situation.

In the past, the Funeral Directors have devoted great effort toward the support of sound legislation governing the operation of cemeteries and those areas of business which relate to the cemeteries. The public interest demands this effort be made on our part. For example, the 1957 pre-need trust fund law was sponsored by Funeral Directors. Let me explain this.

In 1957 the New Jersey State Funeral Directors' Association over the bitter opposition of a powerful cemetery lobby - successfully sponsored the pre-need trust fund law. This law made it necessary for Funeral Directors et al to hold in trust with interest accumulating, any money received for the sale of any commodities in advance of need - and the trust being made returnable with interest upon demand. The pre-need sale of cemetery plots was specifically exempt from the requirements of this law.

As is manifested by this pre-need trust fund law, Funeral Directors are not opposed to the pre-need sale of cemetery plots and S 365 does not prohibit the sale of graves in advance of need as is claimed by the cemeteries. S 365 does, however, restrict the solicitation of pre-need sales and the expenditure of excessive moneys for advertising which naturally is part of solicitation.

Recently the New York Cemetery Board ordered a New York cemetery to return to the cemetery maintenance fund some \$140,000 which it had used for advertisement. Coincidentally someone handed me this and I believe this is the cemetery that received such an order. It's a full-page ad in the New York Daily News. The philosophy was that these are moneys from the lot owners and should be treated as such.

Further, it is generally acknowledged and recognized that people who purchase a cemetery plot in a particular cemetery do so for the following reasons and do not need high-powered solicitation with boiler-room tactics:

Firstly, because of religious belief and affiliation.

Secondly, if the parents and relatives are already interred in a particular cemetery, a family may purchase their plot there.

Thirdly, the proximity and location of the cemetery.

Today, the Funeral Directors are supporting S 365, once again because the public interest is critically at stake. S 365 seeks effective regulation of cemetery practice, a need that surely will be expressed in whatever abuses are described to the Committee during this hearing.

The cemetery people also say they wish to be regulated by S 429 against abuses within their own ranks. Apparently enough then, the need for a regulatory measure is more or less the unanimous purpose of the people who appear before you. What then is the dividing issue?

Clearly, it has to be something beyond the most flagrant abuses of cemetery operations as they may be recounted to this Committee. Clearly again, it has to be this:

S 365 seeks effective regulations within, I repeat, within the present and timeless, court-sanctioned, quasi-public trust concept of cemetery operation.

But what the cemetery people seek additionally - and, I insist, primarily - is a legalization of commercial privileges, the right to sell auxiliary products for profit on a cemetery or within the scope of a cemetery operation, despite the constitutional fact that this privilege must do maximum violence to the quasi-public

trust, tax-exempt concept which has supported the public interest since 1857.

It would be an attempted hoax upon this Committee for cemetery operators to suggest glibly that they are perfectly willing to pay taxes on the products they want to sell commercially. Such taxable sales still would be strongly related to the tax-exempt base of the cemetery operation which guards the public interest, and this Committee, I am sure, would never be so naive as to believe otherwise.

How could it be otherwise? Can you imagine the treatment a family might expect from a cemetery if the family decided it wished to buy its auxiliary products elsewhere? The tax-exempt sale of graves is inseparately allied to the products which the cemeteries want to sell commercially, and here we obviously would have an influential form of unfair competition which this Committee certainly would find intolerable.

Indeed, the thousands of individual entrepreneurs who are now engaged in the sale of such products and services would be in one axe-like stroke destroyed, and I do not believe this Committee would find that tolerable. Nor do I believe this Committee would permit a handful of cemetery operators to use a tax-exempt status to drive these many thousands out of business. The constitution would not sustain it, the courts would not. And certainly neither would the public interest.

It should be noted here that neither S 365 nor S 429 would permit cemeteries to enter into the funeral directing business, so obviously we have no specific axe to grind with

this bill. But we do have a public interest to support in an area in which the constitution and the courts of this State have moved to provide protection ever since 1857.

By and large, the cemeteries in this State are well and efficiently run for the benefit of the grave owners, and there is absolutely no reason whatever to alter that situation in the direction of commercialization.

Surely we do not oppose the proper and reasonable compensation of cemetery administrators and employees. We do oppose the perversion of public trust for the purpose of producing great amounts of quick profits for private individuals.

It is certainly a valid presumption that the moment S 429 would be enacted, a horde of sharp-shooting, quick-buck operators would descend upon this State and extend their greedy hands in the public direction. How can we possibly tear down the barriers which forbid this today?

We say to you, gentlemen, that you have a mandate from the people, and a responsibility to the people, to establish a system of reasonable regulation of non-profit charitable trusts, all as provided for by S 365, and we call upon you to reject S 429 because it specifically seeks to trade trust for profit.

Your support to this extent would indeed be wholly in the public interest. Thank you.

SENATOR BIGLEY: I just have one question in the same vein as I asked the gentleman representing the vault

people. There has been an allegation, as you have heard, that the vaults are sold for \$85 thereabouts, the average price, and in turn sold to the public at a much greater price than that, which would seem to be a large percentage of profit. Do you have any light to shed on that allegation?

MR. FAILLA: Well, the only thing I could state about the sale of vaults, it is like the sale of any other commodity. I can speak for my business and I am sure for many of the funeral homes. In the final analysis, the accountants that we do business with figure out the prices that we should charge and ultimately our reports will indicate a gross profit of 30 to 40 per cent over all. You will find the Internal Revenue reports will indicate this. Now it is true that we purchase concrete vaults - I purchase concrete vaults for \$90 or \$92 and sell them for \$150. But this gross profit in no way indicates that this is our net profit.

Secondly, this sale of vaults has been from time immemorial a duty of the funeral director and, more particularly, when the funeral director sells a casket. We have some problems with some cemeteries of the older type where the graves measure only 27 inches, for instance, in width. There are times when you must get a concrete vault that particular width. Yet, you must consider the inside width because the casket might not fit in this width. This is how the funeral director came about from the very beginning to sell concrete vaults. This was never a premise for the cemeteries. I don't believe that at the time

concrete vaults came into being the cemeteries even considered participating in the sale of vaults or other commodities.

SENATOR BIGLEY: Let me ask you this: Do all cemeteries insist that their concrete vaults be installed now before they will permit a burial?

MR. FAILLA: No. Some do and some don't. While we are on that subject, the concrete vault manufacturers, when they sold a vault to a funeral director, they included with the sale of this vault a lowering device, a canopy, chairs, grass matting and some runners which would decorate the grave and make it comfortable for the family. Most cemeteries have now stopped concrete vault companies from giving this service which they did not charge for. In return now, if the funeral director or the family wants this type of service, they must now rent it from the cemetery people. This is practically universal now as far as New Jersey is concerned.

SENATOR BIGLEY: What are these rental figures?

MR. FAILLA: A canopy I believe in most cemeteries would range from \$15 to \$25. I think the lowering device and grass and so forth in New Jersey would be somewhere about \$8 to \$10.

SENATOR BIGLEY: Must these be paid before you are permitted to bury?

MR. FAILLA: This is one of the greatest burdens that a funeral director faces. Most families do not have the available cash at the time of death. Many of them have

insurance and they must wait for the insurance or they must wait for estates and it has become general practice that the funeral director lays out this money. Cemeteries insist that everything be paid in advance.

The funeral director in practically 100 per cent of the instances, the morning of the funeral -- as a matter of fact, even before I go into that, if a family wishes a grave, the funeral director usually takes the family, drives them out to the cemetery, gets their superintendent or their foreman, whomever they have in charge, and many times they are not available, brings the family around and they make their selection. Then the cemetery people give you the prices with the opening, the care charges, etc., and usually the money will be in advance. Now the morning of the funeral, we cannot enter that cemetery until we have a burial permit and whatever necessary papers are required for that morning along with the check. Usually you will find that the funeral director's check pays for these advances. That includes vaults and everything else.

SENATOR BIGLEY: How about the cost of installation of the vaults? How have you found that in the State of New Jersey, your Association?

MR. FAILLA: Well, we have found that recently one or two cemeteries, maybe three - and maybe Mr. Stern is in a better position to answer this because my businesses are sort of restricted to the Hudson County area - but there are to my knowledge I think two or three cemeteries who now refuse to permit the vault companies to install their own

concrete vaults. They have adopted regulations that the vault people can only deliver the vault to the roadside and then the cemetery will relieve them of any responsibility from that point on and they will charge anywhere from \$15 to \$25 for the installation of that vault, which at one time did bring up a question as to the guarantee. The vault men used to issue a guarantee for this particular commodity, but since they were stopped from performing the most important part of this, in many instances they have refused to give a guarantee because they say, "We don't know what the other men are doing, whether they are putting it in properly or not. We have no control over it."

SENATOR BIGLEY: Thank you.

MR. TOOLAN: Mr. Chairman --

SENATOR BIGLEY: Mr. Toolan, I don't think we can go back and forth. We do have a question from the Committee.

SENATOR GOLDMAN: Everybody before us has given us a copy of their remarks. Do you have a copy?

MR. FAILLA: I will get one for you.

SENATOR GOLDMAN: It doesn't have to be this minute.

SENATOR BIGLEY: I had one request from Senator Fernicola that I would like to accommodate, if possible, but I told this gentleman if there was any objection, of course, we would follow our prearranged plan. A Mr. McGlynn has requested that he be heard. He has a very urgent matter in court this afternoon. He is probably going to be late anyway. He is about half way down on this list. He apparently is connected in some way with one of the cemeteries

in Northern New Jersey. If there are no objections from any of you, and you probably know where you stand on this list, I will grant that request of Senator Fernicola.

Mr. McGlynn, we can accommodate you then and get you out of here.

W I L L I A M E. M C G L Y N N: Thank you, Mr. Chairman. I appreciate the opportunity to go ahead of the other people and I thank them too.

I am an attorney-at-law of the State of New Jersey and executive vice president and general counsel of Arlington Cemetery Association in Kearny. I have been so for eleven years and I thought I had learned everything about the cemetery business until I heard certain things this morning.

If you wouldn't mind, I would like to say that in Arlington Cemetery there are no rental charges for canopies, or grass or anything of that nature. The opening charge covers everything that happens in so far as that cemetery is concerned.

I would also like to ask the Committee that should they at some occasion like to see the operation of a cemetery, I would like to invite the Committee to come to Arlington Cemetery and see how a cemetery is actually operated.

But in any event, Mr. Chairman and members of the Committee, I will probably be a voice crying in the wilderness here. I would like to refer for a moment to what Mr. Stern said about cemetery operators being able to charge what they desire with any whim that they may have and I don't think

that is absolutely so.

I might say first that basically I am opposed to regulation of any type. If this Committee must consider regulation, then they should consider regulating the costs of funerals, the costs of monuments, the costs of graves, because the main reason for any legislation is either to protect or benefit the public. The only persons interested in that proposition in this instance is the Legislature of the State of New Jersey. Neither of these two bills is in the public interest. The one bill, S 429 sponsored by the cemetery officials - I am a member of that organization - is said to be for the purpose of increasing the income to cemetery associations. It is strictly an effort to bypass judicial decisions that prevent cemetery associations from selling products that are sold by private tax-paying enterprises and to allow cemeteries to do so would be to create unfair competition.

Let me say for a moment it is certain, cemeteries could use more income for the care and maintenance of cemeteries, but this is not the answer. And that would be in the public interest because it would preserve the cemetery grounds. But it should not be done at the expense of other citizens who are lawfully engaged in private enterprise.

Now let's get to the next bill, 365. It must be noted that religious cemeteries were not included. Now religious cemeteries operate very reasonably and fairly and yet there are religious cemeteries that deal in certain services that

I am sure the proponents of this bill do oppose, but they are left out. But the most important thing is the question as to the public interest in this bill. I have read somewhere that there are unscrupulous cemetery operators. Yet I can honestly say I know of none. I have heard of unscrupulous funeral directors. Yet I can honestly say I know of none. All the funeral directors with whom I have had contact have been fair and reasonable people. But there must be unscrupulous cemetery operators and there must be unscrupulous funeral directors. Otherwise, these two bills would never have been presented to the Legislature of our State.

I can understand Senators introducing such legislation as they have heard of the great public interest in such bills from the sponsors of same and they feel that it is important to protect the public. But that doesn't make it so.

It is my view that both bills are not in the public interest. One, as I said, is to allow cemetery associations to engage in unfair competition with private enterprise. The other is to allow funeral directors to subsequently take over the management of cemetery associations; for what purpose, I don't know. That can be done by that proxy situation because you see Mr. Failla said when the people come to the funeral director to select a casket, etc., and they need a grave, he will send them to the cemetery but because the officials of the cemetery can't solicit proxies of these people to vote for honest, hard-working trustees, the

funeral director can arrange to have him sign a proxy for him to represent him at the meeting of the trustees and in a few years, the funeral directors will be the trustees of the cemetery associations.

So it is my further view that all cemeteries, whether religious or private, are affected with the public interest and as such are subject to the scrutiny of the Executive Branch of our government through the Attorney General, the Consumer Frauds Bureau or the Commissioner of Banking and Insurance. Any complaints as to unscrupulous operations should be brought to the attention of the proper official and immediate action taken to correct any abuses. The courts of our State will quickly right any wrongs being done to the public and should there be a private wrong such as the establishment of a funeral home on a tax-exempt cemetery property, action by the wronged party or parties should bring immediate relief.

So I would conclude by answering my own question which I posed at the beginning of this statement: What are the reasons for the proposed legislation? The reasons - greed and animosity without regard to the interest of the general public. Constitutionally it has been said that the police power of the State may be exercised to protect the public interest. But if the dominant purpose of the legislation be the advancement of private interest under guise of the general welfare, there is a perversion of the police power. It is evident that with these two bills, private interests are attempting to be satisfied under the cloak

of the general public good. As such, I feel they are unconstitutional. Therefore, members of the Committee, I suggest that both bills be scrapped. Thank you.

SENATOR BIGLEY: Mr. John Birnie.

J O H N B I R N I E: Gentlemen, I am John Birnie of New Milford, President of the New Jersey State Florists Association.

Our Association is composed of some 400 retailers, growers and others associated with the flower industry in New Jersey. We are enormously concerned over that which is expressed and implied by Senate 429 and we very much oppose its enactment. We support the enactment of Senate 365 and we consider the matter which is now before this Committee to be very much involved with the very survival of the floral industry in New Jersey.

Let one thing be absolutely clear. We cannot compete with a monopoly, and every cemetery which engages in the sale of flowers will have an automatic monopoly on sales to its lot owners. This is an absolute certainty. We have seen it operate in the past. We are down at the grass roots and we must deal with these problems in a very practical way. When a cemetery sells grave covers, for example, we might just as well not make the effort in that cemetery because we will certainly be unsuccessful. But grave covers are a small part of the business. If a cemetery is able to sell flowers, they will undoubtedly move into the sale of flower pieces for funerals and cut flowers for

periodic placement on the graves. You gentlemen may not realize it but there are many small and medium-size business operations in this State which rely upon exactly these sales to stay in business. There are many flower shops which sell more than half of their total output for exactly these purposes. In the total picture there are probably thousands of people employed in these shops. They will not be able to survive against tax-exempt cemeteries who have a built-in contact and relationship with the lot owners.

If you enact S 429, you will simply remove them from business and in the process you will remove any restraints on prices. The cemeteries will not compete with each other in the sale of flowers. They will sell to their own lot owners. We florists are a very individualistic group. There is stiff competition among us and the price of flowers to the customer is very much regulated by the necessities of competition. When people can choose their florist, they pick and choose and they are interested in quality as well as in price. When the cemetery tells them that if they buy from the cemetery, it will be properly taken care of, they feel compelled to buy from the cemetery and they will pay the charge that the cemetery assesses.

We, therefore, call upon you honorable gentlemen not to be deceived, but to take careful account of the impact of what you may recommend. In the past we have not raised our voices very loudly, but now we call upon you with all the eloquence we can muster to preserve this entire industry

and not to subject it to this type of unfair abuse.

SENATOR BIGLEY: Mr. Birnie, have you had experience where the cemeteries have been selling flowers to the individual people?

MR. BIRNIE: Personally in my own business, yes, sir. We are one of the florists who make and sell cemetery pieces to be put on graves. We have some cemeteries who tell the people that they will only accept their type cemetery grave piece because it is made on a certain form and this form is made with very little wood so that it won't hurt the grass underneath. Now, of course, we in the horticulture business know that the grass is dormant during the winter and the grave blankets are also taken off before the spring sets in, generally before Easter, and there is very little damage to the grass, even the ones we make. But this is one restriction they mention to the customers and, of course, scare the people by telling them if they damage the grass, they will have to replace it. Because of this a lot of them have given orders to these certain cemeteries to take care of it.

SENATOR BIGLEY: Do they actually sell them? Do they have a flower shop?

MR. BIRNIE: No, they don't have a flower shop, but they have the grave blankets being made right on the premises.

SENATOR BIGLEY: By another florist?

MR. BIRNIE: No, it is not made by any florist. It is made by, I presume, the cemetery help, whoever takes care of that. This I don't know.

SENATOR BIGLEY: And they buy the flowers from the wholesaler ---

MR. BIRNIE: No, they buy the greens - this is Christmas greens - no flowers are used in Christmas blankets - the greens are bought from the same concern that we buy from in New Hampshire. I know the seller of the product. I think she supplies this one cemetery that I am speaking of.

Also we have had complaints that the public wasn't pleased with these cemetery grave pieces, that they were very skimpy and they weren't decorated as nice as ours were and they were charging more money. In fact, last year they said they even went up a couple of dollars more for the grave blankets.

SENATOR BIGLEY: The public is paying more for these from the cemetery than they would be from the individual florist? Is that what you are saying?

MR. BIRNIE: Well, I wouldn't say more. It all depends on what they are buying. In other words, some florists may charge more than the cemetery charges, but they are buying a better blanket with more decoration and better shape and things like that.

SENATOR BIGLEY: Thank you very much. I think we will recess now until quarter after two.

[Recess for Lunch.]



AFTERNOON SESSION

SENATOR BIGLEY: We will continue the hearing. I will call Mr. Virgil Zucchi.

V I R G I L Z U C C H I: I am Virgil J. Zucchi and I am Past President of the Monument Builders of New Jersey. I am presently engaged in the sale of memorials and I am residing in Pennsauken. Now, I have no prepared speech. I think it was very ably covered by our counsel. I would just like to mention about some of the costs to install memorials in our area, and I think you might be interested in knowing that. There is such a variance that you wonder where they get these fees or how they dream these things up, but they are here and they exist.

To give you an example, I will speak about the cemeteries in my locality because they are the ones I am most acquainted with. I couldn't talk about Trenton or North Jersey because I don't do work in there. There is Locustwood Cemetery that never had a price list prior to the court decision that permitted monument dealers to work in there. They were forced to give us a price list by the court and their present installation cost to install a single bronze plaque - when I say a single one, that's 24" by 12" - is \$89.00. Now, the same installation in Berlin Cemetery, which is a very well-run cemetery incidentally, that is \$25.00. That price includes perpetual care. And again I would like to compare Locustwood's cost with, say, Harley Cemetery. Most of you folks here from South Jersey know that Harley Cemetery is also a very well-run cemetery and a very respected cemetery,

Their cost is \$40.00 and that includes perpetual care.

Now, let's move into a companion type marker. That is usually 42" or 44". Now Locustwood's charge for that is \$204.50, in comparison to a companion marker in Berlin Cemetery, which is \$35.00. In Calvary Cemetery it is \$55.00. These are comparable - \$35 and \$55, and then it shoots up to \$204 at Locustwood.

I would just like to mention another matter in Locustwood: The trustees who are in charge now took the cemetery over in 1932, I understand, and from 1932 to 1962 there was no monument dealer permitted to do any work in there. They just would not allow you to go in - period. We tried many times but were always refused until we brought them to court. The court ruled that they could not keep us out, that the plot owner had a right to buy from us as well as from anybody else. So by court decision we were permitted to do work in there, and that's when the price list was born, when they got the court order to issue this price list.

Now, in order to still harass the monument men further, they have a corporation which is known as Consolidated Development Company and which sells memorials on the side. On this particular item of the companion marker, they sell them at \$390.00. Now, this is the actual cost of the marker, including that \$204.50. When we sell it, we have to come up with a \$390.00 actual cost, plus our 30 per cent, and we can't do it because they sell them for \$390.00 and that automatically keeps us out. This is a gimmick they are using to keep us out - just an ornery trick. When they sell them, I suspect that they have

their profit somewhere in this \$204 that they impose on us that is not imposed on them.

That is only one of the little experiences I have had in my area. Several years ago there was an incident that I thought was very unsavory. This involved Bethal Cemetery. There was a family by the name of Bidamen that contacted us to straighten their monument which was leaning and needed attention, so I measured the base and the foot-stone and computed the price in accordance with their price list of eighteen cents a square inch to put new foundations in at the head and the foot of the monument. We came up with a price of \$125 for installing new foundations and our labor to move the monument and re-set it after the foundation was installed. But the cemetery said, "No, you can't do that. There are other things we have to consider," and they went on in a long-winded story and they finally came up with a price of \$538. for something that should have been done for \$125.

That monument laid there for a long, long time. In fact, incidentally, I just checked on it yesterday to see if it had been done and, sure enough, the sod was moved away from the monument and they had done some fixing to it. Now, what the family did, whether they paid the \$538 or what, I don't know, but it has been fixed. I suppose these trials inspired them to fix it.

There are many instances just like it, and I think that a Cemetery Control Board is mandatory. The Bidamen family has nowhere to go. We did all we could; we pleaded with them, and whether they paid the \$538 or not, I don't know. But had there been a Cemetery Board established, I think they could have

got a ruling to have it done for the \$125. That was the actual cost.

Going back to Locustwood, I think they should be made to justify how they get that \$204 there to install a companion marker when other cemeteries do it for \$35.00, and why they sell it for \$390 and our cost is \$390. I think a Cemetery Board could look into that.

Well, that's about all I have to say, gentlemen, and I want to thank you for listening to me. If there are any questions I will be glad to answer them.

SENATOR GOLDMAN: Sir, what do you mean by perpetual care to a monument? What do you do to it?

MR. ZUCCHI: Well, when it's called perpetual care, as I know it and as I've been told, meaning that after the head-stone is placed, if there is any leaning to it in the future, they take care of it, and cut and trim the grass around it. That is perpetual care as I understand it.

SENATOR BIGLEY: Do you sell vaults, Mr. Zucchi?

MR. ZUCCHI: No, sir, I sell monuments.

SENATOR GOLDMAN: Undoubtedly, you are familiar with both Senate Bill No. 365 and 429. Is that correct, sir?

MR. ZUCCHI: To a degree, yes.

MR. GOLDMAN: An opinion was expressed here by a previous speaker to the effect that he felt we didn't need either bill. Do you agree with that?

MR. ZUCCHI: Oh, no, definitely not, I don't agree with him at all. If you will excuse me just a moment, sir, I have 33 years experience in this field and I feel that

I can speak with some authority. I know that these abuses exist and I can prove them, and they don't get any better; they get worse. For him to say we should throw both bills out, I think he was "off his crock." I don't think he spoke with any responsibility at all. There is a need for it, a desperate need; the public is crying for it. Every time there is a problem that comes up between cemetery and plot owner they have nowhere to go - nowhere. There is nowhere they can go.. They just have to take the abuse or pay the high cost, or whatever it is, and like it. It is either that they do that or get out of the cemetery. This is the way they rule. I couldn't agree more firmly that we do need a Cemetery Board or some control, some agency, to look into these abuses. I think the public is entitled to that. When they are abused or overcharged, I think there should be somewhere they can go to complain, so it can be investigated and looked into and corrected. There is no other way.

I might add that this goes back to, I think it was 1948. There was a bill introduced in the Senate by the late Senator Shershin. I made some remarks at a meeting then - that was some 18 years ago, and here 18 years later I'm back again asking and pleading for the same thing - a Cemetery Control Board. If we don't get it this time, if I live long enough, I'll be back 18 years from now. We need it, gentlemen. It is in the public interest and don't let these fellows kid you that it's profit motivated. It is not. There is a public demand for it. I have seen so many abuses heaped upon the plot owner and they have nowhere to go. They are just like

babes in the woods - nothing to do - either take it or leave it.

SENATOR GOLDMAN: Thank you, Mr. Zucchi.

MR. ZUCCHI: Thank you for listening to me.

SENATOR BIGLEY: Is Mr. Ostrow or Judge Ostrow here?

MR. TOOLAN: Mr. Chairman, would you have any objection if I directed some specific questions at this time of this witness?

SENATOR BIGLEY: Senator, I think we are going to get far afield of our ordinary procedure. Suppose we do this: If you will let Mr. Ostrow testify and then we will certainly feel free to let you ask questions through the chair, but we can't have an adversary proceeding on this thing or we will be here all day with objections interposed, and I am not qualified to rule on the questions. Would you care to sit next to him? You might want to suggest some questions.

T H E O D O R E D. O S T R O W: I have not come here with any prepared statement. My name is Theodore D. Ostrow. I am an attorney, merely permitted to practice law in the State of New York. In 1948, while an Assistant Attorney General in charge of the Frauds Bureau of the Attorney General's Office of the State of New York, I conducted a statewide inquiry into abuses and evils in cemetery operations. I had four assistants under my jurisdiction. The investigation lasted about a year and three months, at the end of which I drafted a bill which was introduced in the legislature of the State of New York under the auspices of the Attorney General and that bill was a revision of the New York State cemetery laws. It provided for a Cemetery Board consisting of the Attorney General, Secretary of State, and the Commissioner of Health and a

Director. I became the first Director under that bill and organized a Cemetery Board. It had four offices in New York, Albany, Schenectady and Buffalo, in New York State. It consisted of accountants, investigators and, of course, office help.

The law substantially is the same as the bill introduced by the Cemetery Association and many of the provisions in the funeral directors bill follow the New York law. I recognize some of my own language in it.

The report to the Governor, which I believe Mr. Stern mentioned - the report to Governor Dewey - was prepared and drafted by me and submitted to the Governor, as a result of which the bill was enacted.

Is that enough? I don't have a prepared statement.

SENATOR BIGLEY: Were you here all morning, Mr. Ostrow?

MR. OSTROW: Yes, I was.

SENATOR BIGLEY: Well, you know what the testimony has been up to now and I would be interested in your comments on the areas where there has been disagreement evidenced by the witnesses this morning.

MR. OSTROW: As I see it, there has been disagreement in reference to pre-need sales and in reference to the sale of markers, the sale of vaults. Well, as to pre-need sales, I was very much taken aback at the fact that the funeral directors support a bill which would not permit pre-need sales. From my experience, both as an investigator and in charge of the Cemetery Board for six years in New York, we feel that this is most urgent and necessary for the

support and maintenance of cemeteries, and I can give you several reasons for it.

In the first place, let's take the woman or wife who suddenly finds that her husband has died and she has no plot or grave. In the midst of her grief, she has to go running down to a cemetery and select a grave or a plot. She has to pay cash. Whereas if this cemetery plot was purchased, the same as an insurance policy - although, as you know, some people fear the idea of death and don't even purchase an insurance policy - but it's the same idea. Purchase in advance - two, four or eight graves - and you have it ready when the occasion comes. Now, she will inevitably make a mistake. She will either purchase a grave and she will find later on, after the interment, that she needed a plot, or vice versa. Or she may be reminded by some close relatives of her husband that it was understood he was to lie near somebody very close to him - and again she made an error. Had that grave been purchased during his lifetime it would have been done with calm and it would have been done on an installment basis if they couldn't afford to pay and, as you may know, many cemeteries have a plan where, if the purchaser of the plot dies before full payment, the plot is fully paid for by the insurance policy which the cemetery sells with the sale.

In addition to that, we must allow pre-need sales and even a certain amount of advertising if we are to provide a decent cemetery, a dignified place for the repose of the dead. I just can't envision a cemetery sitting by waiting for

somebody to come up and buy a plot.

We found a situation in New York similar to the conditions which have been described here - neglected, abandoned, deteriorated cemeteries - and you will find in that type of cemetery - it may be a little country cemetery, it may be a larger cemetery - but if they make no effort to sell graves in advance of need, their income is curtailed, their receipts are curtailed. The two important avenues from which a cemetery must obtain income are the sale of graves and the sale of gardening and care. I heard a witness here testify concerning care that the cemetery had a monopoly. In New York that is not the case. We permit the owner to bring in his own flowers or his own plants, provided he makes certain not to injure or damage the grave of an adjoining lot owner. And we have permitted some of the cemeteries - this is after much investigation - to require a bond to be put up to insure against damage, because some of the cemetery plots in the more advanced cemeteries which are better cared for have very elaborate plots, paid for by the owner, with elaborate planting, elaborate flowers and, sad to say, some of the plot owners don't hesitate to step on these flowers and destroy them in taking care of their own plot. So some of the cemeteries, upon request and upon investigation as to the need, have been permitted to require bonds.

SENATOR BIGLEY: Not to interrupt, but is that a general practice?

MR. OSTROW: No. The general practice is that the plot owner may be permitted to care for his own plot.

SENATOR BIGLEY: Unfettered by the Association other than the normal rules.

MR. OSTROW: That is correct. But there is no question about the fact that a cemetery or a gardener which they are permitted to bring in does a much better job, does a professional job. I might add that I am not here as a special pleader on behalf of cemeteries. I occasionally represent a cemetery. I am on retainer to no cemetery. Lawyers retain me in reference to cemetery matters and most of my cases have been against cemeteries. The reason I am here is that I was asked to read this bill and, if I approved it, my time would be paid for to come down and testify concerning the merits of the bill.

This bill goes even further and is better than the New York State law. I am talking about the Cemetery Association Bill, and the Funeral Directors Bill in many respects follows your bill. Now, I don't want to cast any reflection upon Funeral Directors but I know that they differ in respect to permitting cemeteries to sell these graves in advance, as I have indicated, and we found in New York -

SENATOR BIGLEY: Does New York permit salesmen to solicit outside the cemetery lot there?

MR. OSTROW: Yes. And may I say, because Senator Toolan asked me about this, I know of no instance where the cemetery salesmen made any misrepresentations - none was brought to our attention - so that was not one of the factors

in our investigation. They do have cemetery salesmen and they do get a commission. They have to pay a commission.

SENATOR BIGLEY: What is the commission, do you know, in New York?

MR. OSTROW: Anywhere from ten per cent - it may go up to twenty per cent.

SENATOR BIGLEY: How about forty per cent?

MR. OSTROW: I wouldn't think it was that high.

SENATOR GOLDMAN: Mr. Chairman, may I ask the witness a question?

SENATOR BIGLEY: Yes.

SENATOR GOLDMAN: Mr. Ostrow, you heard testimony - we all did this morning - on the question of pre-need sales. You made mention of the fact that you would permit a certain amount of advertising.

MR. OSTROW: Yes.

SENATOR GOLDMAN: We know that there have been abuses and we know that salesmen do get a little overambitious. At what point would you say - how far would you let cemeteries go in order to promote their sales?

MR. OSTROW: Well, we do not have salesmen who are licensed in New York and, as I have indicated, we haven't come across any problem concerning misrepresentations. You have an existing cemetery; their prices are approved by the Cemetery Board except with respect to land sales, to grave sales. But every other price is approved and regulated by the Cemetery Board.

SENATOR BIGLEY: Are the salesmen's commissions regulated?

MR. OSTROW: No. They are indirectly. Let us assume a cemetery comes in for an increase in its care charge. We go over in a very detailed and summary way the income and expense of the cemetery, and we have succeeded in compelling a reduction of the salaries of the executives, not alone the salesmen, because we say to them, "You're asking for an increase? Now look at the salary this man is getting. How much time does he spend?" And we have found the Cemetery Board and I think the public has found the Cemetery Board to be a very great factor in helping the public welfare and the public interest. There is an absolute need for cemetery control. Now, I am not familiar with the facts in New Jersey but I say that this bill goes very far in that it is indigenious to the public welfare. Let me say this to you also, gentlemen: I know that the bill requires an initial deposit of \$50,000 before a cemetery can be organized in New Jersey. I say categorically to you that since 1949, when the New York bill became law, there has not been a single cemetery organized in the State of New York, and we wonder did we go too far, because there is a limitation of available space in the State of New York for burial.

Now, if you compel them to put up \$50,000, I said to Senator Toolan, where are they going to get that, because, in addition to that fifty, you have to lay out the cemetery, you have to lay out at least three of the hundred acres that you buy - grass and irrigate it, make roads, put up a building, put up an office - and the \$50,000 stays there for some period of time. In that sense, it is excellent if it is workable.

They have gone further and it is an improvement on the New York law, but maybe it's whistling in the dark.

SENATOR BIGLEY: How does New York finance the acquisition - well, of course, they haven't had any since 1949, but prior to that? The same as the certificate of indebtedness here in New Jersey?

MR. OSTROW: Yes, cemeteries were organized through certificates of indebtedness and land shares, and we found that such a condition was proper because who organized the cemetery? The people who organized it were interested in making an investment and getting their money back. In some of these situations, they didn't understand what profit meant; they went way overboard, and we cut that out. We prosecuted a number of cemeteries - I did - and we got back hundreds of thousands of dollars from some cemeteries. But the reason why cemeteries have not been organized since 1949, as I and members of the Cemetery Board see it, - of course, I am in contact with them - is because today the value and the amount of certificates of indebtedness which may be issued to men who create the cemetery must be approved first by the Cemetery Board and then by the Supreme Court of the State of New York. I dare say these men who wish to invest in a cemetery or organize a cemetery may find that they could make more money and with more immediacy if they erected an apartment house or an office building. So we can't get them to organize cemeteries in the State of New York.

Now when we speak of a cemetery as a non-profit institution, that is true to a great extent. The receipts which come

in are segregated. For care we have 10 per cent for permanent care; that's a trust fund - 15 per cent for current maintenance, and a portion of it is used to pay off the certificates of indebtedness. And if they are paying too much, regardless of the fact that their contract states that they will receive a certain amount of land sales receipts and payment, we have been successful in the courts under the so-called police power of the State to reduce the amount which is payable on the certificates of indebtedness. But you can't avoid reality. These men have invested; they invested before we came into this, and we had a real fact-finding investigation, whereas here statements are being made by witnesses who testify; they are not under oath; they haven't had the test of a court or of an investigation such as we officially conducted. But if what they say is true, the situation is awful and cries out for legislation, but insofar as certificates of indebtedness are concerned, we are not shocked at that. We found it that way and we found a reason for it. And we also found, gentlemen, that if certificates of indebtedness are issued, this is not a get-rich-quick scheme because it will take about 25 years before the cemetery has reached such a stage that any portion of the certificates may be paid off. And then they are paid off in order. You may have a thousand certificates issued of \$2,000 each, as an example. Whatever is in the land fund is distributed equally or it can be distributed in a certain order. So insofar as this get-rich-quick scheme is concerned, today under this type of bill it never could be.

Now insofar as lot owners are concerned, I would like to tell you the benefit of our experience. I wonder if there is a lot owner in this room. You will find that in a large cemetery - and I talk about a cemetery in New York State where you have about 250,000 interments already. You call an annual meeting. Not a single lot owner will show up, and if he does they will give him the best breakfast he ever had, because they call these at nine o'clock in the morning. I have attended some of these meetings as an observer. And so management - and that is, they have been referred to as the persons who hold the certificates of indebtedness - must run the cemetery and manage the cemetery because, unlike a business corporation or a stock corporation or even a club, a member - and a lot owner is a member - does not participate in the affairs of the cemetery. He becomes interested only when he has a complaint concerning care or some other complaint, and then he goes running into the office and makes the complaint, and we found in New York that the cemetery paid no attention to him, which is one of the reasons why this bill was enacted.

I am very much in favor of this bill and I support it. I'm an outsider; I don't want to impose myself upon you; I'm simply giving you the benefit of my experience.

SENATOR BIGLEY: What does New York do in the way of vault sales?

MR. OSTROW: New York permits the sale of concrete liners. That is similar to a vault but it isn't a vault.

SENATOR BIGLEY: The cemetery sells that?

MR. OSTROW: The cemetery sells that, yes.

SENATOR BIGLEY: How about markers?

MR. OSTROW: New York permits the sale of markers, yes - not monuments, but markers.

SENATOR BIGLEY: Are they permitted to solicit those sales?

MR. OSTROW: Why, yes, certainly. And we have found that this law has created a very healthy situation. A cemetery is a quasi-public institution. It is cloaked for the public interest; it is indigenous with the public welfare and, as somebody said here today, they have nobody to turn to. Now we have what you might call a public utility office, similar to an office where you may complain against the public utility, although a cemetery is not a public utility. They come in there, a complaint is made, we send out an investigator, the investigator makes his finding, they bring in the cemetery, and most of the time we can settle this over a table. We have found the cemeteries since the law - oh, they balked and they had their lobbies the same as the cemeteries here and the funeral directors - but once the law became effective we were able to work with them - it took a year or two, but it's working out very well now.

SENATOR BIGLEY: Did the price of the interment go down to the public?

MR. OSTROW: I cannot say it went down. We did not regulate - I'm sorry, you said the price of the interment.

SENATOR BIGLEY: Excluding the funeral directors, coffin, etc.

MR. OSTROW: You mean the grave opening charge?

SENATOR BIGLEY: And the general expense.

MR. OSTROW: That is based on cost and expense. In fact, there is an admonition in the bill that the Cemetery Board must take into consideration the cost and expense. It's a tailormade proposition. It differs with each cemetery. They have to submit their costs and they tell us what they want in the way of a charge and we will pass upon it. We have reduced it; we have permitted the charge where we find it justified. All we have done is made them cut down on commissions or salaries, as I have indicated, and we have left the charge alone sometimes.

SENATOR BIGLEY: You have ordered them to cut down on the commissions for example that they have been paying to a lot salesman?

MR. OSTROW: Yes, and this bill requires the salesmen to be licensed. That certainly gives you a great deal of jurisdiction over the salesmen. Our salesmen are not licensed.

SENATOR GOLDMAN: How do you feel about proxies?

MR. OSTROW: We permit them in New York.

Senator Toolan asked me whether a cemetery may exist on the sale of land alone. As I have indicated, it cannot, and I say this from our investigation and from our experience of six years directing the cemetery boards.

SENATOR GOLDMAN: What else should it do besides sell plots?

MR. OSTROW: There is gardening care. There is a charge for the foundation to a monument. There is a charge

for plants and, as I say, we don't forbid the introduction of plants by the plot owner himself. There is a charge for grave openings.

SENATOR BIGLEY: Do any of your cemeteries sell flowers?

MR. OSTROW: Yes, a Memorial Park may sell flowers.

SENATOR BIGLEY: How about the others?

MR. OSTROW: The traditional cemetery, as it's been called here, usually sells plants.

SENATOR BIGLEY: Do you permit that under your law?

MR. OSTROW: Yes, we do. But we don't forbid them from bringing in a plant from the outside or using their own gardener. We have permitted that.

SENATOR BIGLEY: It's been alluded to - Do you have any problem where the people didn't want to go to the cemeteries for these services and they went outside, and has the cemetery given them a hard time? Have you had any complaints of that nature?

MR. OSTROW: In the beginning, yes, until we made clear that it was our opinion under the law that they could go outside. As a matter of fact, I sat as an arbitrator and the distinguished attorney, Louie Nizer, appeared before me on behalf of a gardener. Against him was a very experienced cemetery lawyer, and you can count on your fingers the number of men who do any work in the cemetery field. This was arbitrated without cost to anyone. I did this as a public service, with the consent of the Cemetery Board, for a period of about four months, and we did this after hours. This was

while I was Cemetery Director, and the charge was that the cemetery refused to permit outside gardeners to render annual care and special care. I held in favor of the plot owner; that is, he was permitted to hire an outside gardener. The case went to the Supreme Court where my determination was affirmed. It then went to the Appellate Division, which is the court below the highest court, and again my determination was affirmed. It did not go to the Court of Appeals - and that is the law in New York State.

SENATOR HILLERY: Mr. Ostrow, you said that when they hold meetings very few people show up.

MR. OSTROW: That's right.

SENATOR HILLERY: Are they given individual notifications, the plot owners, of a meeting?

MR. OSTROW: A cemetery will send out notices and yet the New York State membership corporation law, under which a cemetery is organized, Section 74, says that five members constitute a quorum. And I can see the reason, because nobody shows up.

SENATOR HILLERY: You didn't answer my question. I said, do they send individual notices to the plot owners of a meeting?

MR. OSTROW: Yes, they do.

SENATOR HILLERY: These certificates of indebtedness -

MR. OSTROW: They are similar to a promissory note.

SENATOR HILLERY: Do they bear an interest rate?

MR. OSTROW: Yes, but interest in my experience is never paid.

SENATOR HILLERY: What is the rate set at?

MR. OSTROW: Well, when the cemetery feels that it can and has the ability financially to pay off some of the certificates at irregular intervals, they will pay part of it. In New York State, sir, you cannot sue a cemetery in an action at common law for breach of contract, for failure to pay a certificate of indebtedness. You can sue for an accounting, so that if the cemetery has not properly applied its receipts for the proper maintenance and preservation of the cemetery but the individuals have put the money in their pocket, they have to account for it.

SENATOR HILLERY: Do they pay interest on the balance of the indebtedness until they are amortized?

MR. OSTROW: They are supposed to but they don't pay the interest. Legally they are required to do so. Now that may sound paradoxical. I don't know of a cemetery that is paying interest. They are paying the principal and it's not labeled as interest. True, the interest may keep mounting but if and when they should ever want to pay that interest, I think the Cemetery Board will step in.

SENATOR BIGLEY: We have heard testimony here this morning where, in New Jersey apparently, some of them are paying interest and no principal.

MR. OSTROW: That may be in New Jersey, I don't know.

By the way, there is something in this brochure that I understand was put out by funeral directors that New York operators fled to New Jersey and that we put them out of business and prosecuted them. I have no such information that

any of the New York operators fled to New Jersey.

SENATOR GOLDMAN: Mr. Ostrow, getting back to this question which seems to be very important with regard to the sale and the extra curricular activities on the part of the cemetery. We had a gentleman testify who runs a cemetery - I think it was Mr. McGlynn - the Arlington Cemetery - who said they were successful without the sale of monuments. You made a statement that cemeteries must sell other than plots in order to survive.

MR. OSTROW: I did not include monuments.

SENATOR BIGLEY: In your opinion, they can survive without the sale of monuments?

MR. OSTROW: Possibly, yes. They have done so in New York. That does not include bronze markers. You see, the Memorial Park came into being in the early nineteen thirties and from the very beginning they sold on the long plan and with it they sold a bronze marker, Now it is a comparatively simple operation to take care of a memorial park. A fellow gets into a power mower, goes right over the cemetery, and that's why they can advertise perpetual care. Now even the words "perpetual care" may be a misnomer. I would rather call it "endowment." But it is true for so long as the cemetery is in business and is going, they can easily clean the cemetery, cut the grass - they may in the course damage the plaques; sometimes these plaques sink; perhaps the foundation sinks and the plaque sinks with it and you have to raise it up and have to give it some care.

MR. GOLDMAN: In your statement that they must engage in some other purposes than the sale of plots in order to stay

in business, do you make that as a general statement or when is the last time that you examined the books of a cemetery?

MR. OSTROW: Personally?

SENATOR GOLDMAN: Do you speak with specific knowledge?

MR. OSTROW: Oh, I speak of specific current knowledge. I had a conference with the New York State Director on some other matters only last Thursday, and when I come down here we speak about cemeteries and I say to you, Senator, it is absolutely mandatory; it is no different from a business operation, even though it's called non-profit. The non-profit is insofar as the cemetery itself is concerned. The only time we attach maybe a business principle or a commercial principle to it is where they have certificates, and I say that they are entitled to those certificates because they started the cemetery with this investment and they stayed with it. You know, the funeral director performs a good service, a fine service. He takes care of the burial of the dead, but after that is over he walks away. The cemetery must stay with this body in perpetuity so to speak, take care of the cemetery, take care of the roads, take care of the land, take care of the office, take care of the foundations. It needs income, and I don't know where they are going to get this income from except as I have described. Now, sure, there comes a point where they buck up against what is a commercial enterprise. And we just did the best we could in New York for the preservation of cemeteries. We too have some two thousand cemeteries in the State of New York and we find, when we permit them to sell the items I've described,

they keep going, especially under the control of a Cemetery Board.

SENATOR BIGLEY: Mr. Ostrow, why would a person want to form a cemetery in New York if they are not going to get interest back on their money?

MR. OSTROW: That would be the reason to form it.
Interest -

SENATOR BIGLEY: Well, you testified that the ones that you know aren't paying interest. They are just getting their money back.

MR. OSTROW: Oh, no, they are not just getting their money back. They will buy cemetery land for, let us say, a hundred thousand but will take back certificates of indebtedness of two hundred and fifty thousand. However, that two hundred and fifty thousand is payable over Lord knows how many years, so that given an investment of a hundred thousand dollars in a building - that's the only example I can think of at the moment - you would get that money out sooner and you could sell it at rising values, but when they take two hundred and fifty thousand dollars, that is not shocking, because statistics show that in New York State at least one acre it takes a year to sell the graves in one acre. An acre would hold about a thousand - eight hundred to a thousand graves, depending on how big you make them. The usual size is two and a half to eight - three feet wide to eight feet. But when you consider that for the first 15 to 25 years they are busy developing and paying high costs to care for the cemetery, it takes a long time to pay off that \$250,000.

SENATOR BIGLEY: Is that subject to your regulation, the amount of indebtedness -

MR. OSTROW: Yes.

SENATOR BIGLEY: In relation with the investment?

MR. OSTROW: In the old days, when they paid a hundred thousand dollars, they might issue a million dollars, and to this very day - now I am talking about cemeteries that were formed in 1910 and we are now in 1966 - that million dollars is not paid off. So while the figure looks entirely disproportionate to the investment, when you consider the length of time to pay it off it is not disproportionate.

SENATOR GOLDMAN: Mr. Ostrow, don't you think that if either one of these bills is good that either or both should contain a provision with regard to the extent to what they could profit on their investment?

MR. OSTROW: How much of a profit should be made?

SENATOR GOLDMAN: Yes. Don't you think the Board should be able to say you can't put a hundred thousand dollars in and get two hundred and fifty thousand back?

MR. OSTROW: It has been my experience that if you attempt to regulate that, if a government agency attempts to regulate what you can take out of a commodity or business, you will not have venture capital going into it.

SENATOR GOLDMAN: But, sir, this isn't a business.

MR. OSTROW: It isn't a business and it is a business.

SENATOR GOLDMAN: Well, this is a business affected with such a public interest -

MR. OSTROW: That's right.

SENATOR GOLDMAN: And you are going to try to control

it to some extent - each of the bills has some control therein, although they could be a little more specific with regard to the certificates of indebtedness which are very important, and don't you think as an expert, in your examining of these two bills, that you might have commented on that?

MR. OSTROW: Well, I want to give you this - shall I say advice? You might get the same experience that we got in New York where no cemetery has been formed since 1949. That's the only thing I can say. Theoretically your idea is excellent.

SENATOR BIGLEY: What is New York going to do? People are still dying. You say they are running out of space.

MR. OSTROW: I don't know. It may be that the government may have to step in and condemn land.

SENATOR BIGLEY: What does the Director of the Cemetery Board say about it over there?

MR. OSTROW: Well, he has made certain recommendations and he has talked to the officials about it, but nothing definite has been done.

SENATOR GOLDMAN: Mr. Ostrow, are you familiar with the provisions in both bills with regard to re-sale as to minimum maintenance and preservation, the amount set forth?

MR. OSTROW: Yes.

SENATOR GOLDMAN: In 365, they have an amount set of \$1.25 per square foot or 25 per cent of the purchase price, and in 429 I think it is 50¢.

SENATOR BIGLEY: Fifty cents per square foot. This

is the perpetual care section.

MR. OSTROW: There's a difference. There has been some criticism of the amount set forth in each bill.

MR. TOOLAN: Can you give us the section?

SENATOR BIGLEY: Senate Bill No. 365, page 13, 8A:4-5, line 3. And the other one is Senate 429, page 11, 8A:4-5, sub-section a. One calls for 50 cents and one calls for a dollar and a quarter. You're an expert.

MR. OSTROW: You are talking now about re-sale?

SENATOR BIGLEY: This is a perpetual fund or endowment fund, as you called it.

SENATOR GOLDMAN: One calls for half a dollar and one for a dollar and a quarter. Which do you think we should consider?

MR. OSTROW: I can only give you this type of answer. It cannot be yes or no, or cannot be this one or the other. It would depend upon the experience of the cemetery. You may take away too much from the price and put it into a trust fund and the cemetery would not have enough money to continue the current maintenance and care. Certainly there should be an amount that should be set into a trust fund and what that amount is only experience can tell. You should have the testimony of cemetery operators, or maybe somebody might say they are directly interested and maybe they are disqualified, but you can be the judge. Those men who do this on a day-to-day basis, I think there should be some money set aside on the initial sale; I think there should be some money set aside on a re-sale. As a matter of

fact, in New York State it is very difficult to resell a plot. We don't permit it. You cannot purchase a plot for resale. You purchase a plot for burial and we have found in our investigation that some people, including funeral directors, had purchased huge blocks of cemetery plots and graves for speculation, not for burial purposes.

SENATOR GOLDMAN: You mean, if you own some plots in a cemetery for graves and for some reason you can't use them, you can't resell them?

MR. OSTROW: No. Under the law, section 85 of the New York Cemetery Law, Membership Corporation Law, you must first offer to the cemetery at the original price, not profit, plus two per cent interest per year for as long as you've kept it. In other words, if you've kept it ten years and there is no interment, you get 20 per cent on your original price, so that we are certain you are not making a killing.

SENATOR GOLDMAN: I am not talking about a killing. You have half a dozen plots for graves and for some reason you can't use them. In New York City, you said before, you can't sell them legally.

MR. OSTROW: You must first offer them to the cemetery.

SENATOR GOLDMAN: You must first offer them to the Association and if the Association doesn't want them, then what?

MR. OSTROW: Then you may offer them at large to the public, provided you get the permission of the Cemetery Board who will decide whether you are offering them as a speculation and if you are they will impose a 25 per cent

penalty on a resale. You know many folks organize societies and they will fake societies. They are rubber-stamp societies and they will purchase plots, huge amounts of plots ostensibly for the purpose of burying members, and once they got control of this organization they would, if they heard of someone dying, offer the family a grave; they had the permit for burial, and they would say to the cemetery we are burying a member of our society. There was no such real society.

SENATOR BIGLEY: Have you stopped that?

MR. OSTROW: Oh, every time we find that we stop it. We stop, I'm sorry to say - or I regret to say because we have funeral directors here and some of them are good friends - many funeral directors have done this, have acquired large blocks of graves and plots, under the name of a society - and, in New York, at least, have sold them under the name of a society whose so-called members are not members.

SENATOR BIGLEY: Didn't you testify this morning - I thought you said that 10 per cent went into the perpetual care fund.

MR. OSTROW: When the cemetery sells it 10 per cent goes into what we call a permanent maintenance fund.

SENATOR BIGLEY: Is that 10 per cent fixed by law or by regulation?

MR. OSTROW: By law. Section 86 a of the Membership Corporations Law.

Senator Toolan has asked me to comment on proxy voting. As I have indicated, we permit proxy voting and I think it's a very good idea to have management solicit proxies because

they're responsible for the care and maintenance and operation of the cemetery.

MR. STERN: Senator, may I please ask Mr. Ostrow some questions, through you?

SENATOR BIGLEY: Well, as I told Mr. Toolan, we can't get an adversary thing going here because this isn't a trial.

MR. STERN: I certainly don't intend to cross-examine. I intend to attempt to clarify a few things for the Committee.

SENATOR BIGLEY: How many do you have? We'll see. Why don't you submit the questions and I'll ask the questions rather than going back and forth.

MR. STERN: Well, I could cover it very quickly.

Mr. Ostrow was asked whether or not the sale of vaults is permitted by the cemeteries in New York and the response involved a reference to grave liners. I would want to be certain that the Committee fully understands the distinction and, through you, Mr. Chairman, ask Mr. Ostrow whether it is not true that grave liners are simply, shall we say, separate pieces of concrete which are set into a grave merely for the purpose of maintaining the grave rather than having it sink and that is totally distinguishable from a vault, and that both in New York and New Jersey cemeteries generally have engaged without apparent complaint in the sale of such liners though not in the sale of vaults either in New York or in New Jersey. Do you want me to split this off or -

SENATOR BIGLEY: I'll ask the question. Mr. Ostrow, -

MR. OSTROW: I heard the question. In respect to vaults, New York at the present time does not permit the sale

of vaults, only concrete liners, and that is also for the purpose of preventing sinking of the grave, contrary to what Mr. Stern has stated.

SENATOR BIGLEY: Let me ask you this about the vaults in New York: Do you regulate the price of them in any way?

MR. OSTROW: We don't permit the sale of vaults.

SENATOR BIGLEY: So you don't regulate the price of funeral directors or anything of that nature?

MR. OSTROW: No, we don't regulate any price -

SENATOR BIGLEY: Did your investigation ever disclose any exorbitant sales prices of these items?

MR. OSTROW: Insofar as funeral directors are concerned?

SENATOR BIGLEY: Or anyone selling them.

MR. OSTROW: Well, since you asked me the question, yes. We find that funeral directors buy these concrete vaults at a price and sell it at a very excessive price.

SENATOR BIGLEY: Is there any legislation pending in New York to correct that?

MR. OSTROW: No. May I add, in fairness to the funeral directors - the practice of funeral directing is a business or profession and cemeteries are a membership corporation, non-profit membership corporation. Under our laws we felt we could regulate cemeteries but not funeral directing any more than we could regulate a shoe store or a manufacturer.

SENATOR BIGLEY: That might be if cemeteries did not require a vault, but I can't get buried unless I have a vault.

MR. OSTROW: That is not so. In New York State you can insist on being buried without a vault.

SENATOR BIGLEY: The Cemetery Board would permit me to be buried without a vault?

MR. OSTROW: If the funeral director would sell you a vault, the cemeteries would prefer a vault, because it prevents the sinking of the grave, and preserves the remains to some extent, but it's the funeral director who has the sales pitch concerning a vault.

SENATOR BIGLEY: I have a question but I don't think you can answer it on New Jersey practice.

MR. STERN: The next point for clarification: Reference was made to the sale of markers in New York State by cemeteries, and I should like to know whether I do not accurately state the situation. The New York State Cemetery Law does not specifically say they may sell or they may not sell. When the Cemetery Board came into existence it found memorial parks selling markers and it found cemeteries generally not selling monuments, and the New York Cemetery Board took the position that its function was simply to enforce the status quo, that there is a rather peculiar distinction between the sale of markers and other types of monuments that has never been litigated in the State of New York and that there is no decision of any court in the State of New York which prohibits the sale of memorials, but they do have this rather novel situation where the Board does not permit monuments to be sold but permits memorials to be sold, but there is nothing specifically in the New York State statute which refers to it.

Is that accurate, sir?

MR. OSTROW: In partial essence it is accurate. However, the reason why we do not permit the sale of monuments as distinguished from markers is that we have held - and I wrote the opinion and I think I have it here; Senator Toolan must have it with his papers; in 1952 I wrote that opinion. To engage in the sale of monuments would mean you would have to have a separate department with workers and tools and implements and if there was a loss the cemetery would suffer that loss. We also found that from time immemorial, so to speak, the cemeteries did not engage in the sale of monuments. We then found that memorial parks from the very beginning did engage in the sale of markers and we permitted that to continue. But monuments would put a cemetery in business. Markers are purchased on the outside. They don't manufacture them.

MR. STERN: I will be very brief. The statement was made by Mr. Ostrow that under the law, and I quote, "Memorial parks may sell flowers." I think that was not an intentional misstatement but is it not a fact that the Cemetery Board in New York simply has not prevented memorial parks from selling flowers and there is not a word in the New York State Cemetery Law which says cemeteries of any type may sell flowers.

MR. OSTROW: Mr. Stern, New York gets annual reports from the cemeteries as to their activities and as to their income. That's how we know they sell flowers. We do not abide by a specific regulation. We don't have any regulation on that. We have simply passively permitted them to sell flowers. If we thought there was anything wrong with it

the Cemetery Board would act. We do know - we know from their report - that they sell flowers. Some of them but not all.

MR. STERN: But there is no law which permits them to sell.

MR. OSTROW: That's not stating it correctly.

SENATOR BIGLEY: I think we're clear on that.

MR. STERN: Now one last question.

SENATOR BIGLEY: You're running out of time.

MR. STERN: I've already run out of time, I'm sure.

Mr. Ostrow has made a number of, I think, quite gratuitous remarks with respect to funeral directors, and I would like to ask Mr. Ostrow if I do not recall correctly that he was the chief investigator, the subject of a lengthy article in the now defunct Collier's Magazine, which I'm sure he will remember, who broke the cemetery scandal in New York, revealed in the report which has been alluded to here today a situation then in New York quite similar in memorial parks to what I outlined here today, and if there weren't certain names mentioned in that article of people he exposed in his investigation who known to him came to New Jersey and successfully operated here?

MR. OSTROW: I never wrote an article for Collier's Magazine.

SENATOR BIGLEY: Let me explain this. There has been some mention this morning by Mr. Stern that there were some New York people who came over here that were in the cemetery business prior to 1949, who came over and are now operating

in New Jersey. Do you know of your own knowledge -

MR. OSTROW: I know of none and I have so stated. I never wrote any article except for the Bar Association on perpetual care.

SENATOR BIGLEY: Thank you.

UNIDENTIFIED VOICE: May I ask a question?

SENATOR BIGLEY: No, we are not going to have a question and answer period. I was fearful of that when I gave Mr. Stern that courtesy.

Mr. Roth.

R O Y R O T H: I am Roy Roth. I appear as a representative of the Passaic-Bergen Florists Association and as a Trustee of the New Jersey Plant and Flower Association.

Frankly, gentlemen, I am rather amazed at the entire concept of handing over to what we in our Association had always thought to be nonprofit associations the power to go into all kinds of business enterprises while continuing to give to them tax exemption and all sorts of other benefits.

What possible benefit can accrue to the public after these people, who are supposed to be operating cemeteries, start to sell flowers or vaults or monuments or funeral services or anything else. We have a free open competitive society in which everyone is supposed to be on a relatively equal footing. We have many, many contacts with cemetery people and with many well-run and well-managed cemeteries and we are firmly convinced that it must necessarily be some very small segment of cemetery operators who have this great anxiety about entering other fields of business endeavor. We'll compete with any one who wants to open a florist shop.

We'll probably even give him advice on how to make it successful. But we can't compete against tax exemption and with the kind of pressure that a cemetery is able to put on its own lot owners.

It seems to us that the operation of a cemetery is a very specialized pursuit and that the good management of a cemetery is very important to the public. We have absolutely no objection to reasonable regulations where they involve our entry, but we do not know of any justification for putting more money into some promoter's pocket at the expense of an entire industry.

We have every confidence that this Committee and the Senate and the Legislature will do the right, the moral, and the lawful thing and bring about the enactment of S-365.

SENATOR BIGLEY: Thank you.

Gene Long?

G E N E L O N G: My name is Gene Long and I am in the monument business in West Atlantic City. This is a personal problem we have had. We operate in the Atlantic City area where the Atlantic City cemetery is. That cemetery has no employees. It has a contract to have all of its services performed by a company of which the President is also the Superintendent of the cemetery and for 20 years we have been trying to prevent discrimination in the interpretation of the rules and costs of foundations and any other operations in the cemetery. At the end of 20 years we had a consent judgment agreed to. That was effective the 8th of

February of this year and, when we got our June statement back from the bank, we found that all of the provisions of that judgment were still being violated. As the previous witness said here, there aren't very many lawyer who are too familiar with cemetery operations and the cemetery law. But the condition still prevails after 20 years and the lawyer we consulted said that the other people are in contempt of court. But we still, after 20 years, have had no relief from discrimination against us and against the cemetery lot owners who came to us to buy monuments or for cemetery work.

SENATOR BIGLEY: Does this same condition apply to other monument dealers in your area or do they discriminate solely against you?

MR. LONG: Against all others; particularly against us but against all others.

SENATOR BIGLEY: And they won't permit you to install or they make it so hard it's impossible to install?

MR. LONG: The procedure was that all other monument companies had to have a permit signed by the lot holder and pay the cemetery for the foundation, or for the permit for whatever was to be done. The one company never had any permit, never paid any money to the cemetery for the same work which the cemetery supposedly charged others. Since that time we have found that two bank accounts in the name of the cemetery were in fact private accounts, that the money we paid supposedly to the cemetery ended up in the pockets of the operators of the cemetery, the superintendent of the cemetery and/or the monument company of which he was

president.

SENATOR BIGLEY: What were these charges in relation to the actual cost?

MR. LONG: There was a minimum charge of \$50 for the installation of a marker; \$100 if it was a companion marker, regardless of the size.

SENATOR BIGLEY: What would you install them for if you were permitted to go in?

MR. LONG: Other cemetery foundation charges in the area range from \$20 to \$35.

SENATOR BIGLEY: Thank you, sir.

Is Mrs. Pastor here?

I D A P A S T O R: I am Ida Pastor - P-a-s-t-o-r.

SENATOR BIGLEY: Will you tell us what you have to say about the two laws that are being considered - the regulation?

MRS. PASTOR: Well, we purchased in Windsor Garden in 1941 from a door-to-door salesman, with undeveloped land at the time, and my mother was buried there three years later, and at that time they couldn't bury in our plot that we had the deed, so they gave us another plot, telling us that they would give us a new deed for the ground where she was buried. Well, we also bought a bronze plaque from this same cemetery concern and for a few years it was taken care of, but then there was a time when we couldn't get out there. When we did return, everything was stolen, all the plaques were gone, the sign for Windsor Garden was whitewashed out so you couldn't tell where the cemetery was. I found out later on that they had wanted to sell this property and they wanted to

move the bodies from the graves they were in to another section. Well, we didn't know what to do with it then, but when my father died in November we bought a new plot close to town where we lived and we wanted my mother moved to this cemetery. I called up the people who had Windsor Garden Cemetery and they told us that they had marked all the graves for the people who were in Windsor Gardens and they knew where she was. We went out there and we could find no marking for her body, so we had to wait and see what would happen. He asked me if I would be willing to help them get the land cleared so that it could be sold. I said I would be willing to do anything to find my mother's body so we could have it moved. So I received several legal forms but I didn't want to sign anything until the remains were found. So as of today we still don't know what is to be done. Everything just seems to be out of order there. They are building further in the back but if we can't find my mother's remains it won't help me any.

SENATOR BIGLEY: Have you made complaints to other than the cemetery about this problem?

MRS. PASTOR: No, I haven't made a complaint to anybody. I went to my undertaker who had buried my mother. I thought maybe he had some idea of where her body was located, but he only had the same records that I had and I understand the records from the cemetery were gone.

SENATOR BIGLEY: This area where you thought your mother was buried, has there been any change in it? Is it still a cemetery? Or what is it now?

MRS. PASTOR: Well, there are some plaques that marked the year my mother had died and they have tried to clear the area there but, so far as my mother's grave is concerned, I can't find it.

SENATOR BIGLEY: Has any construction taken place there or anything?

MRS. PASTOR: There was a truck clearing up the back where they said they were going to put the bodies but I wouldn't say it was fit for burial there right now.

SENATOR BIGLEY: When did you purchase this lot?

MRS. PASTOR: In 1941.

SENATOR BIGLEY: Do you recall what your family paid for it?

MRS. PASTOR: Eighty dollars. I believe it was for four graves.

SENATOR HILLERY: Mrs. Pastor, you indicated that you thought they might have built a road over that area?

MRS. PASTOR: Well, there is a road built there. I believe it's the regular highway, and some of the markers that they have put down are right on the highway, but it's not just exactly in the section where my mother was buried. It's further in, I believe. But I have heard that some of the bodies are around the street there.

SENATOR BIGLEY: Thank you very much.

Is Mrs. Fieldberg your sister?

MRS. PASTOR: No.

SENATOR BIGLEY: Mrs. Fieldberg?

H A N N A H F I E L B I G: My name is Hannah Fielbig from Jersey City and my mother and I purchased a plot in Windsor Gardens in 1943. It was further back in the cemetery. We bought it from a man who came to the home soliciting.

SENATOR BIGLEY: A door-to-door man.

MRS. FIEIBIG: Yes. And then when my mother died they wouldn't bury her in the plot we had, so they gave us a plot right up near the front of the cemetery and sent me a deed after the burial for that plot, which I have. Then my father died about 8 years after she died. There was vandalism there and all the plaques were stolen. I purchased a plaque too through the same company and when I was notified of the plaque being stolen, then I went to the lawyers Berger and Berger at Five Corners in Jersey City and we purchased another plaque.

SENATOR BIGLEY: For the same cemetery?

MRS. FIELBIG: For the same cemetery. But I didn't have it put in there because my father died and I couldn't have him buried in Windsor Gardens. There was no burial permitted. So I bought another plot in another cemetery. In January I decided, of the following year, 1957, I decided I was going to move my mother to the Jersey City Cemetery and Donald Wood, the funeral director, and the Sure Seal Vault Company and myself went out to try and find my mother's vault, and we could not find it. We spent a whole afternoon and I was working then so I couldn't give any more time. So Donald Wood and the Sure Seal Vault people went out two

or three more times trying to locate my mother's vault, and they couldn't find it. Then I know they put a new road in there which is a turn-around for the main highway. It's a big V thing. I think that my mother is under that road.

I went to a lawyer in Journal Square and he was going to investigate for me. He took the case and I gave him my deed and he did his best, I think, to try to find out something about it but he could get nowhere because the cemetery was in bankruptcy. There was nothing he could do. I didn't have the money to further investigate and all these years - it's been about ten years now - I've been wondering where my mother is.

SENATOR BIGLEY: The cemetery has no records?

MRS. FIELBIG: No record. They said they put a marker there after the plaque was stolen. I went out there that week and there was a little piece of stick stuck in the ground. The next time I went out there, there was no stick or anything. There was no possible way that you could really tell. The only thing, I had an idea - there was a big clump of bushes, oh, I'd say about 25 feet, heading my mother's grave and I kind of figured that was in line with where my mother should be. But that part is taken over now by a road.

SENATOR HILLERY: Was this marker close to the road that you are speaking of?

MRS. FIELBIG: There was, I think, four graves and then my four graves and the road was here. There were four graves between the road and where my mother was buried, but now I'm sure that road has gone over those eight graves and

I have nobody that I could turn to to find out what I could do about this situation. That's why I was listening to these two bills and I think we do need a cemetery board, somebody that people can go to and give them their problems. This is a problem. I've lived with it now for 20 years - well, 10 years, since my father died and there's no way I can do anything about it. I think maybe if we had somebody who could investigate these things to find out why these situations develop in cemeteries that are supposed to be there forever. You feel when you bury somebody that they are there forever and not have to move them all the time or have something built over them, which is what I understand they are trying to plan to do. Now, I don't like the idea of an apartment or a store being built over where my mother is supposed to be buried. And this is what worries me.

SENATOR BIGLEY: Thank you very much.

Mr. Buchanan?

H A R O L D B. B U C H A N A N : My name is Harold B. Buchan and I am a mausoleum specialist. I took up construction and design in 1924. I went with the Vermont Marble Company as a monumental designer. Then I came to New York as a mausoleum specialist handling church work. Since 1932 I have been exclusively in the mausoleum business. I would say that in the last 30 years I must have put in 3,000 crypts - marble, slate and bronze - in the State of New Jersey. I cover New England, New York, New Jersey and Pennsylvania. I have been a consultant to cemeteries in writing specifications for the perpetual care of mausoleums.

I have written specifications for the proper treatment of the interior of mausoleums. I was invited here today on very short notice and am not quite prepared.

With regard to a condition that exists in New Jersey where they are building these concrete crypts, so-called outside community mausoleums, of various units from 25 to 50 or 75, that are not going to stand up in the period of time they are supposed to be built for, they are very poorly constructed and if the State does not have a commission there will be trouble in the future with those mausoleums.

SENATOR BIGLEY: Who is building these?

MR. BUCHANAN: Outside corporations come in, various companies come in to build them. Some are built by regular corporations and others are small jobbing - a small group of men -

SENATOR BIGLEY: The cemeteries are not building them.

MR. BUCHANAN : The cemeteries are putting them in their cemeteries.

SENATOR BIGLEY: Under contract?

MR. BUCHANAN : Under contract, that's right, as I understand it. Now, there are no rules or regulations that protect the State or the public who puts their bodies into those mausoleums, to protect them that they will be there a hundred years from now, because the construction will never last a hundred years.

SENATOR BIGLEY: Where are they? Above ground or below ground?

MR. BUCHANAN : These are above ground. This is an

above-ground proposition. It is an outside deal. And as time goes on, due to your limitation of land available for cemeteries, you are going to go, the same as in New York, high rise, like apartments.

SENATOR BIGLEY: Does New York regulate these mausoleums now?

MR. BUCHANAN: No. New York regulates it in this way, that the cemeteries that build these mausoleums are the larger cemeteries that have engineers and practical men and most of them have been built as buildings with heat, humidifiers, drainage, and all the ramifications required to build a good substantial type of community mausoleum that will last. But besides that, they are required by the State to also peel off a certain amount for perpetual care and maintenance so the State is assured that the money will be there to take care of such things. But here in New Jersey there are very few. I don't even remember one cemetery that has specific rules and specifications for the building of a mausoleum in a cemetery, and it's only by the good graces of honorable monument dealers who have built them, the majority - although there are always cases that don't do the right thing - have created a fair amount of mausoleums that are in good condition and will be that way. But they all need a certain amount of maintenance, and if the cemetery hasn't created a fund to take care of this, the joints will eventually weep out in 25 years. Now, that's one more reason why there should be a commission, because to protect the public and the State, there is no question that if a cemetery hasn't

got the money and the building falls down, the State is going to have to do something.

SENATOR BIGLEY: Are there any questions? [No questions] Thank you very much.

Now, let's take Mr. Mead and then we'll take Mr. Boorstein. There's only one more. Mr. Mead .

J. E D M E A D: Mr. Chairman, ladies and gentlemen, I appear here today as President of the Greater New Jersey Concrete Burial Vault Association and I have also been authorized to represent the South Jersey group. These two associations represent most of the vault manufacturers in the State. We are all small independent operators which collectively employ a great number of people. We also utilize a great amount of raw materials, the production of which again involves employment of many local people. For many decades we, as vault manufacturers, have enjoyed the friendliest of relations with most of the cemeteries in the State of New Jersey. We are convinced, however, that if promotional cemeteries are permitted to go into vault manufacturing and/or the vault selling business in competition with private business, we will soon have to close our doors. More importantly, many employees would have to be displaced as a result of this. We are actually here fighting for our very survival. Some of these businesses have been in existence for more than 50 years.

It was interesting to me - and may I digress for a minute - to hear some of the numbers that have been thrown out here during the course of this session. One of the

figures that I made a note of was \$50 to \$60 as the price of a burial vault to a funeral director. Gentlemen, this is ridiculous because I don't know of anybody in our north Jersey group that can produce a unit at a profit at this price. What is not commonly known in public circles is that there are many grades of burial vaults on the market and these burial vaults are manufactured from coast to coast. Many of us here are members of private trade associations as well as the national association, the National Concrete Burial Vault Association. These associations spend a great deal of money annually in trying to improve the quality and techniques of producing better vaults. Today fibre glass and exotic materials are on the market and already being used and the big question I raise here is that if a promotional cemetery gets into the manufacturing of burial vaults, what is the incentive to increase this quality if they have a captive monopoly.

Many of the vaults will be obsolete in a few years because of the methods and improvements I have just mentioned.

I would like to quote from a pamphlet which is put out by the Association of Better Bureaus and I feel that they can explain this far better than I can. And before any legislation is passed, I urge this Committee of the Senate to please read in full this bulletin. I would like to quote here from the bulletin, and this is titled "Questions You Should Ask About Cemetery Lot Promotions." It starts off:

"Have you been selected to receive a 'free' cemetery lot, a 'free' burial vault, or 'less-than-cost' rates for other funeral merchandise or services?

"Has the alleged 'advertising representative' of an as yet undeveloped cemetery offered to give you \$250, supposedly in exchange for the use of your name for sales or publicity purposes?

"Some promoters have devised tempting lures like these because the chance of getting something 'free' or at 'bargain' rates appeals to all of us. Don't let this crude, but shrewd, sales psychology blind you to the obvious fact that no one is in business to give you something for nothing."

We all know this is impossible, gentlemen.

"If past experience of Better Business Bureaus is any criterion, cemetery or funeral 'bargains' are more likely to be costly speculations.

"It should be pointed out that, as in most businesses serving the public, the established, well-operated cemeteries which have served their communities well for generations suffer from the questionable practices of a few promoters."

SENATOR BIGLEY: Mr. Mead, may I ask you this: What is the price of a vault, the average price in North Jersey?

MR. MEAD : It is honestly hard to tell you an average price. They are all different prices, depending on the quality.

SENATOR BIGLEY: Well, what's the minimum price?

MR. MEAD : The minimum price is around the \$75 - \$85 field.

SENATOR BIGLEY: What would it go to. What would be the best one you could buy?

MR. MEAD : The best would be in the neighborhood of \$400 or \$500.

SENATOR BIGLEY: So that's the spread?

MR. MEAD : Correct.

SENATOR BIGLEY: I take it your fear was that the cemeteries were going to manufacture. Would you have any objection if they just sold and bought from you?

MR. MEAD : Well, we have never considered this. This has been going on for generations. My company alone has been in business for 58 years and we have exclusively sold through funeral directors.

SENATOR BIGLEY: Why do you fear that they would manufacture? Have you heard anything that they are talking about manufacturing?

MR. MEAD : Well, this is a fear that we have, and I haven't anything authentic to say that we have directly heard this but it has been rumored that they intend to manufacture. The price that was mentioned here this morning of fifty or sixty dollars - I know of one cemetery out of State that charges this amount just for installation of a burial vault. In manufacturing these units we are dealing with very heavy industrial equipment, bulk cement plants; these things have to be cured properly, properly ware-housed for seasoning, and they are loaded onto a truck and it takes two men to deliver these units.

SENATOR BIGLEY: Do you install them?

MR. MEAD : We install them.

SENATOR BIGLEY: Have any cemeteries stopped you from installing them?

MR. MEAD : Yes, there are two that I can think of.

SENATOR BIGLEY: And they install them, is that it?

MR. MEAD : They are now installing them, yes.

SENATOR BIGLEY: How much do they charge for that, do you know?

MR. MEAD : Fifteen and twenty.

SENATOR BIGLEY: Dollars?

MR. MEAD : Dollars.

SENATOR BIGLEY: What can you install them for? What is your cost?

MR. MEAD : It is competitive with what they are installing them for. Of course, we have over-the-road transportation. What is more important is the service that we issue, and I know that in our own business 26 per cent of our installations we had to supply full equipment; namely, you heard the tents mentioned, the artificial grass, lowering device, and chairs. And I might add that this has been a major part of the funeral directing profession, their livelihood. They have to make these very elaborate funeral homes today because the public demands this, and the sale of a casket and the sale of a burial vault is a very important item to them.

I want to go on here: Some professional promoters have gone from city to city leaving a trail of dissatisfaction behind them. We have all heard of the package plan. "Some promoters sell cemetery lots as part of a 'package' which may include a burial vault.." This I think covers the sale of burial vaults, although it is not being done in New Jersey that I know of - as a burial vault. Markers and so-called cemetery services such as opening and closing of graves - this introduces additional speculative aspects because many

years may pass before they will be required to make good on the agreement to deliver what is purchased.

SENATOR BIGLEY: Mr. Mead , I don't like to cut you off. If you are going to read this, we, of course, can read it ourselves.

MR. MEAD : All right. Fine.

SENATOR BIGLEY: Then we don't have the pressure of other witnesses. If you have anything else to say, you go right ahead, sir.

MR. MEAD : Well, the vault manufacturers today, as in the past, compete with each other for the business of the funeral director and ultimately the public. The pressures of the competition and price assure the quality of the product and efficiency of the service.

In closing I would just like to say that we understand that a taxpaying business is not constitutionally obliged to compete with a tax-exempt organization and, aside from the legalities of the situation, I think it would be absolutely unfair and an unfair arrangement. The public is being properly served now and the public will continue to be properly served and at the most reasonable prices which competition produces. The system has worked well for many decades. The vast majority of cemeteries have found no fault whatever in the present method of supplying vaults. Are these few cemetery promoters who would like to sell vaults really interested in providing better service at a better price, or is their primary, if not their only interest one of profit for themselves - and I say for themselves; I do

not mean for the cemetery association which they represent. These same operators have managed to gather handsome commissions for selling graves and selling memorials when they sold memorials.

In summary let me say this: The cemeteries of the State by and large have been operated on a high-ethical principal based for the benefit of the local lot owners. We are absolutely convinced that Senate 429 is a hoax being perpetrated by a very few promoters who have in the past exhibited their avarice and greed. We call upon you as a committee of the Senate of this State to look behind the motivations of these people and study and compare these bills with the care which they deserve and to report to the full body of the Senate your conscientious conclusions. We are satisfied that an objective and honest appraisal of the situation will readily reveal that the continuance of the system of charitable trust and non-profit operation of cemeteries for the benefit of the public, as provided by Senate Bill 365, deserves your favorable recommendation.

Thank you.

SENATOR HILLERY: Can you give me an idea of how many vault manufacturers there are in New Jersey?

MR. MEAD: They are not all part of our association. There are probably ten in the northern - well, including the north and south associations combined.

SENATOR HILLERY: In the entire State there are about ten manufacturers?

MR. MEAD: Major manufacturers.

SENATOR BIGLEY: Thank you. Mr. Boorstein, please?

This will probably be our last witness because it's obvious we are not going to get through if everybody wants to testify who has signed up to do so. Senator Hillery is leaving and he has made a suggestion. For those of you who have signed we are going to reschedule another hearing. I don't see how we can get out of it, but if any of you want to submit statements rather than testify you may feel free to do so and it will be part of the transcript and placed in the record for our review and for review by the full body.

All right, Mr. Boorstein.

W I L L I A M B O O R S T E I N: I will not take very long at all. My name is William Boorstein; I am a member of the New Jersey Bar, and I have represented a number of cemeteries over the last 20 years. Senator Toolan has already covered in depth every topic I intended to talk about this morning and, therefore, I will only talk about three subjects which I just heard raised by the last two or three witnesses.

First of all, I want to make it clear to the Committee that under present existing law and certainly under the bill that we are tendering, cemeteries do not - and we do not intend that they shall - have the power to manufacture vaults. Secondly, a gentleman testified here that there is no regulation of mausoleums. That is absolutely untrue. Title 26, which covers public health, the Department of Health, etc., absolutely requires that the condition precedent to the construction of any mausoleum is that plans and specifications in great detail must be filed with the State Department of Health. That goes to the Engineering Department. I have dealt with - Mr. Goodlove is his name - and they are very meticulous in their inspection.

These are graduate engineers, very capable gentlemen, and before you are through with them you really go through the wringer. Secondly, the work is also subject to the inspection of the municipal building department.

The further statement was made by the same gentleman that there is no requirement for perpetual care deposit. That is also untrue. The statute expressly states that before you may even operate a mausoleum, even after it has already been completed, it is absolutely required there must first be deposited in a special fund, subject to the approval and with no dispute of the Department of Banking and Insurance, at least - not exactly ten per cent, but at least ten per cent of the actual cost or value of the mausoleum, and proof must first be made by a filed certificate with the Department of Banking and Insurance before you could even put one body into that mausoleum. So, therefore, I say the gentleman is wrong on both counts. It is definitely subject to State jurisdiction today. Secondly, there is a requirement for a deposit of at least ten per cent. And I'll go further than that. There has been a decision that came down from Judge Stanton involving the Fairview Mausoleum, where he laid down an order that they are to deposit more than ten per cent, - I believe he made it fifteen or twenty per cent - of the value of the structure, and Judge Freund, sitting for the Appellate Division, stated that the act specifically says not ten per cent but at least, and it's up to the Judge to decide how much is going to be put up. Therefore, I say that under existing law, the public is fully protected.

Finally, I would like to discuss one final thing and that is the matter of maintenance charges. Under the bill sponsored by the Cemetery Association, we provide for more mandatory deposits into the Maintenance and Preservation Fund. On the other hand, the bill of the funeral directors and their associates - I wouldn't call them triumvirates; I'll call them associates - requires that the minimum maintenance consist of the maintenance of the usual things such as the lot, etc., but also of mausoleums - family mausoleums which we haven't even constructed and have no responsibility for - we have responsibility for maintaining memorials and markers, which we have never constructed in there. Now, they in their bill do not give us the right to mandatorially charge the plot owner or the person building the memorial with a tax or assessment for the maintenance to be put in the fund. They say, "This you must do under all conditions." And the only way we can charge this and compel a deposit in the fund is only if, when, and as the Cemetery Board sees fit to grant us permission.

That is all I have to say, sir.

SENATOR BIGLEY: Thank you, Mr. Boorstein.

Is Mr. Harold here?

J O H N R. H A R O L D: Thank you, Mr. Chairman, for the courtesy of five minutes, and I think the best news I can bring you and the madam is that I will speak no longer than five minutes and you have my privilege to use the gavel at the fifth minute.

I represent the Cemetery Workers Union. I am counsel to it. Stanley Matujewski is in the room, the president, who

for 15 years or so had led the Union and for 15 years before that maybe, has dug graves and made disinterments and knows as much about the business as I dare say anybody here.

I am reminded every time I come before a higher court or a legislative tribunal of the IOGWU Broadway Play "Pins and Needles," that had an excellent song - "Sing Me a Song of Social Significance." So thus when I talk to the highest court in my State, New York, or I talk to a legislative body, unless I can sing a song of social significance I shouldn't talk at all.

Obviously everybody is here with a selfish interest. The interest of the legislature should not be concluded by the selfish interest of the numbers that appear before them. We can all marshal numbers. The Trade Union movement can marshal quite a few. We would rather like to appeal, even if we could marshal numbers, to your intellect and to the public welfare. In this sense then we have two postulates, both of which are selfish admittedly, but we plead that they both have a significance from a public point of view: One, we have lived in New York for a great length of time with many problems with Mr. Ostrow and the Board that controls cemeteries to the hilt - pricewise, everywise. We have negotiated with cemeteries in New York and we know what it is to negotiate against a no-profit motive cemetery, and we have had many tears shed against their inability to pay us what we think we should get and there is tight control there. But more specifically we do know that it is a very real problem that unless money is set aside for perpetual care, cemeteries are a dead-end street and a public menace and a public charge that the public treasury must

ultimately pay for, unless you provide the means to do so. Therefore, in terms of public interest, inadequacy of income for the cemetery is mandated as a postulate public interest.

Now, you have heard Mr. Ostrow say it - I don't have his confidence - that without these auxiliary charges, a cemetery cannot put away sufficient for perpetual care. I assume it's true. I know that when I bargained with them they plead poverty no end, and I believe them unfortunately. So I do not believe cemeteries in New York are making a fortune. I would rather suppose that the gilt has gone out of them in Jersey. Many people took an awful lot of time to tell you how terrible the abuses were that did exist in the cemeteries, and they did. Mr. Ostrow could give you better pages and numbers than Mr. Stern ever could about people who ran away with cemeteries. But that's ten years ago and it's done and gone, at least in New York, and I rather hope it's gone in New Jersey. The present operators of the cemeteries have to produce the wherewithal to run the cemetery and unless they have it they cannot provide perpetual care.

Secondly, we are concerned about regularity of employment, and now I speak as a Union representative. It is through the means of this auxiliary work that the cemetery employer is able to employ the Union man year round. If he does not have it, he will be a seasonal and the work force will be cut down to 10 per cent, maybe a third of the normal work force. It is by means of this additional income that a cemetery worker is able to work a full year, and this is very important to us but it is also important to the public, for if you are concerned,

as I know you are, with the unemployment insurance, the cost of unemployment insurance and the need for regularity of employment, it behooves you in the public interest to try to encourage as many industries as possible to provide full annual employment. If the cemeteries are able to perform this kind of work, then they can give us regularity of employment and if they do not have this income we will become seasonal employees and left to unemployment insurance for a good quarter or half of the year.

Lastly, in terms of the broad policies,- and, of course, any lawyer should approach any problem in terms of intellect and public responsibility - I am now out of my depth but permit me to make a few remarks. If you are to charge that the cemetery is a public institution - and I think it is - then, of course, you must control it and you must control it perhaps broader and deeper than either of these laws propose. New York does. If you must control it, and if you must be assured of sufficient income to provide perpetual care, then you must have a means of controlling the income to see that it may be charged against perpetual care. If you have a private entrepreneur who comes and goes, rises and falls, goes in and out of business, sells a box or doesn't sell a box, can you charge his profit, can you charge his sales price, with a percentage towards perpetual care, or can you not more easily and more readily control a body that is so permanently affixed to the State of New Jersey as the property that exists in a cemetery. I suggest that if it is desirable to be sure that the income from a cemetery is controlled, or rather the income

from the cemetery industry is controlled, it behooves you to at least permit the cemetery, on an equal basis, to provide the services as private industry might. Some day, somehow, you might want to provide or decree that that degree of profit from the sale of a vault - and it's part of the cemetery industry, the burial industry, that has this public problem - you would want to say that the sale of a public vault must be surcharged with a piece for perpetual care and maintenance.

I have only suggested a few things but at least you can imprison that portion of the income if you know where it is and how it can be controlled. Personally, and I think in terms of my client, you do have an industry very directly affecting the public in its most tender moment. Whether you should want to extend that control to these people who rise to compete against the cemeteries such as the undertakers and the mausoleum or the vault makers and how far the responsibility extends to control an industry just as directly connected with the dead as the cemetery, is a matter for your competence, but I rather personally think it is hard to insist that you control a piece of dying.

Thank you.

SENATOR BIGLEY: Thank you. That will conclude the testimony today. The Attorney General has forwarded me a letter under date of August 1, 1966, which will be placed in the record. He reaches no conclusion on the laws - just that he is of the opinion that legislation is necessary and awaits the outcome of the public hearings and an opportunity to discuss with the Committee our conclusions after the hearings have been completed.

JUDGE LEAP: Have you fixed a date for the next hearing?

SENATOR BIGLEY: Judge, I wanted to accommodate one of the counsel here so far as the hearing tomorrow, but my Committee won't be here and there is no sense in just having me here.

MR. TOOLAN: Incidentally - I don't want to interrupt you - but I do not have the European commitment I spoke about.

SENATOR BIGLEY: Well, we will fix a date then. Unfortunately I am involved in another public hearing next week.

I am going to fix the 17th, at 10 o'clock, the same place. This is on Wednesday.

H E A R I N G A D J O U R N E D

59 A

[Over]

August 1, 1966

Richard A. Donald Digley
Senator
Senate Committee on Business Affairs
Trenton, New Jersey

Director Engle

This is a matter of great public interest and has been referred to the Committee on Business Affairs, Senate Bills Nos. 100 and 101. These bills deal with the existing Title 8 - Cemeteries - and the revised version will amend Title 8A of the New Jersey Statutes in its entirety as a complete revision of this State's cemetery law. It has long been the law in New Jersey that the Attorney General, as principal legal representative of the public, is an interested party in matters involving cemeteries. It is his obligation and duty to vindicate and protect the public right. This is the basis of our interest here.

The problem here is complex in nature. There are some cemeteries which are incorporated under Title 14, other cemeteries are governed under Title 8 or a small percentage under a special act of the Legislature. In addition to the different ways in which cemetery corporations can be formed, there are other unique problems that also arise in connection with them: the size of a cemetery, the location, the kind (e.g., monument, memorial park or woodland), the services rendered in its initial phases (surveyor, landscape architect, engineer, draftsman, horticulturist, etc.), the cemetery's development (land costs, clearing and excavating, contouring, drainage and water systems, roadways and walkways, low mowers, lawnmaking and nursery stock, etc.), facilities and equipment (trucks, lawn mowers, surveying equipment, fencing, buildings,

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power and hand tools, business and office machines), its maintenance (fertilizing, pruning of trees and shrubs, trimming evergreens and hedges, seeding, road repairs, replacement of dead trees, shrubs, hedges, etc.), administration (bookkeeping, insurance, employees' salaries), competition from other religious organizations in the area which may be exempt from regulation, adequate charges to be made for the sale of lots, burial fees, etc., sources of revenue that a cemetery association should reasonably be expected to have in continuing the operation and management of a cemetery so that (1) the proceeds thereof may be applied to the proper care and maintenance of the cemetery during the time in which interments are being made, and (2) sufficient funds are set aside so that the income may be used for the proper care and maintenance thereafter.

Taking these factors into account, questions arise as to whether a cemetery should be permitted to sell monuments, bronze markers and vaults. If they cannot sell these commodities, questions arise as to the reasonable charges that should be made for the installation of monuments by monument dealers, the installation of vaults by funeral directors or vault manufacturers, and whether regulation should be extended to these other connected industries.

Other problems are:

(a) the concept of a cemetery association as a profit or nonprofit organization;

(b) consideration of the public interest;

(c) adequate reporting as to the present financial status of a cemetery and assurances of adequate planning for the future;

(d) the relationship of lot owners in the management and operation of a cemetery and the rights of lot owners;

(e) the handling of complaints that are registered by lot owners;

(f) whether a cemetery should employ salesmen, and if so, what regulations should be imposed;

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- (g) the reasonableness of salaries of officers and trustees of a cemetery association;
- (h) methods of financing of a cemetery by Certificates of Interest; and
- (i) the prohibiting of sales of graves for investment purposes.

These are just a sampling of some of the basic problems concerning any proposed cemetery legislation. They cannot be discussed in their entirety in this letter.

This office has made an extensive study of the cemetery problem in New Jersey including an analysis of the cemetery laws of other states. We have met on numerous occasions with representatives of the several industries uniquely concerned with enactment of a cemetery law revision. We have made known to these various persons that any cemetery law revision must at least accomplish the following:

1. The establishment of a State Cemetery Board with regulatory and auditing control over cemetery operations, which Board shall include in its membership the State Commissioner of Banking and the Attorney General;
2. Licensing of cemeteries and cemetery salesmen;
3. changes in the nature and structure of cemetery corporations to insure their efficient operation;
4. assurance of adequate reserves for perpetual care; and
5. provision for adequate cemetery revenues.

As I have noted above, one of the essential items in dispute among the sponsors of the respective bills before your Committee involves the question of whether a cemetery should be permitted to sell monuments, bronze markers and vaults. In this

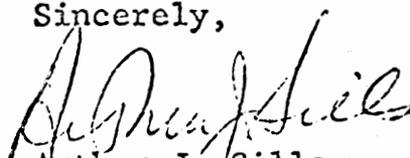
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connection your Committee's attention is invited to the cases of Terwilliger v. Graceland Memorial Park Ass'n., 35 N.J. 259 (1961) and Frank v. Clover Leaf Park Cem. Assn., 29 N.J. 193 (1959).

New Jersey's basic cemetery law dates back to 1877. Thus, for almost 100 years the operation of cemeteries has been recognized as affecting the public interest. However, the machinery for such regulation and supervision has been proven hopelessly inadequate. Our existing laws do not provide sufficient machinery to afford the public the protection to which it is entitled. Investigations by my staff have persuaded me that many of our problems here can be attributed to the inadequacy of our laws.

In conclusion, permit me to say that legislation in this area is of paramount importance and secondly, any legislation resulting from your hearings must have as its cornerstone the protection of the public interest. To this end, at the conclusion of the hearings, I shall be happy to make members of my staff available at the call of the Committee.

Sincerely,



Arthur J. Sills
Attorney General



