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U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Assembly Room, State House
Trenton, New Jersey
January 19, 1954

MEMORANDUM

Re: Assembly Room, State House, Trenton, New Jersey

To: Director

From: Mr. [Name], [Title]

Subject: Investigation of [Topic]

Reference is made to [Topic]

Hearing Division
New Jersey Civil Service Commission
New Jersey State House

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ASSEMBLYMAN FRANK F. SHERSHIN (CHAIRMAN): The hearing will now come to order. I may state for the record that this is the third and final public hearing to be conducted by the Cemetery Committee, especially created by the Legislature this year. At the conclusion of this hearing, the members of the Committee will go into executive session to review the testimony and likewise to consider any communications, resolutions, etc., that have been forwarded to the Committee, all of which, whether they are presented at this or the previous hearings, will be incorporated into the minutes, and will be given consideration by the members of the Committee.

May I ask those of you who have testified before to limit your remarks so they are not repetitious so they will not clutter the record. If during the course of the hearing I find that it is my recollection that those who desire to testify today are repetitious, don't mind me if I just rap you and ask you to limit your remarks to new matters not previously brought before the Committee's attention.

At this time I would like to call on John G. Blahy, City Counsel of the City of Clifton, who is here representing the City of Clifton. Mr. Blahy, for your convenience you may sit down here.

JOHN G. BLAHY, COUNSEL FOR THE CITY OF CLIFTON:

Mr. Chairman, may I say at the outset that I represent the City of Clifton, the City Council, and also represent the Monument Builders of New Jersey.

THE CHAIRMAN: Excuse me. Gentlemen, you don't mind my asking

this statement: In the course of the hearing-naturally it may be a little prolonged - and if you have any confidential things you would to talk about among yourselves, I would prefer as Chairman of the Committee that you use the ante-room or the hall. Let's try not to confuse the person testifying. I think it will be a lot easier if we try to keep it a little quiet in the room.

MR. DLUBY: I started saying I also represent the Monument Builders' Association of New Jersey as well as the City. I may at times in my discussion, if you will permit me, talk possibly as the City Attorney for the City because of my interest in the municipality and in behalf of the public, and at times I may be discussing phases which may affect the monument industry or the monument builders' industry. So I would not want your Committee, for instance, to consider that any statements that I may make, or all the statements, may affect either one or both of them.

THE CHAIRMAN: We will consider, Mr. Dlubny, you are appearing here in a dual capacity and we will take note of your testimony to that effect.

MR. DLUBY: At the outset I am appearing for the City on the question of perpetual care funds. David Schiffman, who operates a business in the City of Clifton and its environs is also here. I may be able to present his views, if you care to hear me. In addition to that, if you care to hear him on the subject in question, you can have his testimony as well.

We find from our investigation, it is alleged that some cemeteries have no perpetual care and others have. The question of whether or not it is sufficient to take care of the future needs of cemeteries is a question which we feel the Committee should go into very thoroughly and recommend some legislation that would take care of the situation that now exists. In some cemeteries, for instance, in our own locality, we understand there is set aside approximately six cents a square foot for perpetual care purposes. Now, in the case affecting the City of Clifton, Mr. Schiffman, for instance, has become interested because he bought a plot in a cemetery -- I believe you do not wish me to refer to names or individual cemeteries or groups, is that right?

THE CHAIRMAN: It won't make any difference. This is a legislative hearing and anything that you may want to say, you may include in the testimony.

MR. DLUHY: Mr. Schiffman had occasion to buy a family plot in this cemetery and then became interested in the question of perpetual care. When he checked into the matter through the State Commissioner of Banking and Insurance he was advised -- and I have some letters here from the Commissioner's Office as well as from the Attorney General's Office -- that the cemeteries, namely, the Crest Haven Cemetery and the King Solomon Cemetery were incorporated under the General Business Act and that because of that fact, they are not subject to the existing regulations pertaining to examination of

perpetual care funds.

Now, from my experiences as representative of the City, I also checked into the same situation and found that there are numerous cemeteries that were formed probably within the past twenty or twenty-five years that were incorporated under the General Business Corporation Act instead of the Rural Cemetery Act, and for that reason - the wording of the statute as it is now - they have been construed not to be subject to the requirement for examination by the Banking and Insurance Commissioner, so that there is that group of cemeteries which are not now setting up their trust funds in a manner required by the law. In the case of Mr. Schiffman, I am told that after he obtained this information, he went to the cemetery people and they showed him at that time their books and records, indicating that in the case of Crest Haven and in the case of King Solomon, at that time in 1949, they had two separate funds of \$40,000 each, invested, whether it was in building and loans or banks, I am not sure, and that these deposits, if you want to call them that, were in the names of three individuals rather than in the name of the cemetery. Now, of course, Mr. Schiffman's objection to that as a lot owner is that first off, it isn't good practice. It shouldn't be permitted by the State to have trust funds in the names of individuals. It should be set up in such a way that it would be under the control of some regulatory body in this State so that it wouldn't be at the whim of fancy or depend on any act of any individuals as to what shall happen to the trust funds.

Of course, there is the added feature that knowing human beings, we never know what they will do if they are entrusted with funds.

THE CHAIRMAN: Excuse me. Under the present cemetery law is there a provision requiring the depositing of trust funds under the corporation name, or under the general corporation statute?

MR. BLUNT: No, sir. I know of no such provision. In fact, I think that the provisions of the Cemetery act are inadequate; in addition to the fact that they don't take care of all cemeteries, it would seem to me that the examination made by the State department is certainly perfunctory. It is required to be made every two years. There is no complete examination of the funds, as you can see, because they only deposit as I recall the statute \$20 with the application. Now that certainly is not like a bank or a building and loan which is subject to a thorough examination of everything pertaining to these funds.

THE CHAIRMAN: So that from your research, there is nothing under the law, either the general corporation act or under the cemetery act, which vests in the state or any of its departments the duty to investigate, check and review the perpetual care funds, wherever they may be deposited, by these associations.

MR. BLUNT: I think that is a fair statement, and I might read from a letter signed by Sackett M. Dickinson, Assistant Attorney General of this state, addressed to Mr. David Schiffman, and dated April 25, 1949. He states in part: "From my investigation it appears

that the West Ridgewood Cemetery --" which apparently is the parent corporation, which is still in existence and in which the Crest Haven and King Solomon operate --has divided the main cemetery into portions and has sold such portions to diverse organizations who pretend to be cemetery corporations, which action was never contemplated by the statute. It may well be true that the owners or proprietors of these so-called smaller cemeteries may not be acting within the provisions of the statute and that they are making unjust demands against the lot owners. I am reliably informed that none of the original promoters or owners are now interested in the cemetery. It seems to be true that certain people promote the organization of a cemetery corporation merely for the anticipated profit to themselves and with no consideration to the burial of the dead, and it might well be that the Governor should appoint a committee to investigate the operations of the cemeteries of this state." Of course, at that time Mr. Schiffman had asked the Governor for that type of relief.

THE CHAIRMAN: Mr. Bluh, before you go ahead, I might say for the benefit of those in the room that we have also present Assemblyman Emmert R. Wilson who is a member of this Committee. He came in just a little late and he apologizes for his tardiness.

MR. WILSON: I certainly do.

THE CHAIRMAN: If any members of the Committee would like to interject questions when the witnesses are speaking, I trust that the witnesses will have no objection. If we ask for your opinions, it

is because we would like them for guidance and for study. Now, Mr. Bluky, do you feel that a perpetual care fund is a necessity? How can a perpetual care fund actually be set up so it will work? Do you feel that in the sale of lands by a cemetery, such sale should include a perpetual care fund or do you distinguish a perpetual care fund from a maintenance fund? Now, there are four or five questions and you will have quite a bit of leeway if you desire to express your comments.

MR. BLUKY: I will attempt to answer that. First off, I would like to state, in my opinion a perpetual care fund is an absolute necessity. In the present day and age, we find that cemeteries are not like the old cemeteries where we had a church cemetery in a small town, where the church authorities would take care of the burial of the dead, and we were built up around that type of a service. Later on, as things moved faster, we found that cemeteries grew up with the idea of taking care of this kind of a service for people who probably would bury their dead in a town and probably live miles away. We find ourselves even further away now from that situation because of the planes and the type of travel. So we may have a person in California who may bury his dead over in Clifton because Clifton might have been his home town where he originated. It seems to me that we should have a fund set up for perpetual care to make sure that that individual when he buries his dead can rest assured that that cemetery plot will be taken care of for all times - that he won't have to worry whether the grass is cut, whether the sidewalks are there or the roads

are there or whether his stone is in good shape or not. That, I think, gives you my opinion about the necessity.

On the question of how it can be done, I think that the New York statute has set up something that in my opinion is a very good way of handling it. Whether or not you agree with New York on the amount of money set aside from the proceeds of each cemetery plot, of course, is another question. In New York they set up a ten percent perpetual care fund and they set up a fifteen percent current perpetual care fund. I have seen an amendment offered this year which would increase the permanent perpetual care from ten percent to twenty percent. I don't know whether that was enacted or not. They said, in effect, we want 25 percent of the proceeds set up to take care of perpetual care. Now out of that perpetual care fund there should be paid out sums for purposes such as cutting grass - taking care of the improvements, of course, in the cemetery - taking care of stones. That plot which that man paid for should be kept in good shape, and I say that should be taken care of out of perpetual care funds, deducted from the original purchase price, so that there should be no charge made against the owner of a cemetery plot at any time after he makes his initial payment.

Let me show you, for instance, a recent resolution that I picked out -- or one of our members picked out -- of a newspaper right in Lodi. They published a resolution which said a two dollar annual charge would be made for each single grave, and that is supposed to be for care and maintenance, mind you.

THE CHAIRMAN: Annual charge?

MR. OLNEY: Annual charge. We have seen other cases where there has been one dollar per single grave annual charge. Even that, gentlemen, seems to me --

THE CHAIRMAN: By the way, was that resolution adopted by the cemetery association or by the governing body?

MR. OLNEY: By the cemetery association. I have a copy of the printed article which indicates on December 28, 1950, the Lodi Cemetery published this.

MR. MC DONOUGH: Could we have that? (Searches through papers.)

MR. OLNEY: I have that somewhere.

THE CHAIRMAN: You may look over your notes after you get through and leave it with the secretary before you leave.

MR. OLNEY: So you find that situation. In New York I saw published an article which indicated that the New York Cemetery Board recently ordered nine cemeteries to discontinue the annual charge of one dollar per grave per year for the same purpose and they gave an opinion in which they said that a person who buys a cemetery plot has a right to expect that that plot will be taken care of at all times without an assessment being made against him.

Now, here is the part that makes it hard on the public. Say that one dollar charge is assessed and it is made annually and a person has no need for the use of the lot for a period of twenty-five years. He may suddenly find himself asking for a burial permit and then they throw this bill at him for \$25 or whatever it is, and they won't give him a permit until he pays them. I don't think that should be

imposed upon the lot owner or upon the public.

THE CHAIRMAN: Mr. Dluhy, before you leave that subject matter -- of course, as a practical matter some of these cemeteries run anywhere from one acre to one hundred twenty-five acres. How would you administer a perpetual care fund in those cases where the cemetery plots have been sold out and the promoters are no longer interested in the continuance of sale of lots? Would you have the perpetual care fund in the hands of the trustees of that cemetery? For instance, in Newark, I believe, one of the cemeteries is completely sold out and they have one trustee or one employee who is at the cemetery for the purpose of opening graves, and perhaps looks after the perpetual care. Do you think that that perpetual care fund should be maintained by the association or would you suggest that some state agency be organized or set up under a new law which would have general control of all the perpetual care funds?

MR. DLUHY: Mr. Chairman, I feel, of course, that set up as we are, there should be some state agency that would take care of examining cemeteries, examining perpetual care funds, and seeing to it that the statutes relative thereto are enforced.

THE CHAIRMAN: I think that you missed the point that I tried to bring out. You did recommend that a state agency examine them - or something should be done by the state. What about the actual control by the state - should they be in the hands of a state agency or in the hands of the private cemetery associations?

MR. BLUNY: I think under the present circumstances, they should not be in the hands of private cemetery associations. Of course, I can say this from my experience with many associations that I have dealt with in this state, that they have run their affairs the way probably a state agency would want them run. There are others who have not. Of course, we have to regulate all because of the few who are transgressing these statutes.

Now in Chicago -- or Illinois, I believe they have a statute that I read about which required all cemeteries, old and new, to come in within a certain time after the passage of the act and register. Then they were required to come under the statute and show what funds they had and then make arrangements to deposit these funds with a banking institution or some other trust company named under the statutes to handle these funds from that time on. I think that that would be a good way to have these handled. They should not be in private interests, or especially not in individual's hands who may be representative of these private interests.

THE CHAIRMAN: Are there any time limitations under the present act with respect to the type of security the association may purchase with the perpetual care moneys?

MR. BLUNY: If I may take the time out -- I don't believe that there is any such specific provision or limitation on the cemeteries, although there is a section 8:2-40, which provides that the commissioner can apply to the Supreme Court for an order requiring the cemetery to

immediately dispose of any unauthorized securities and properly invest them and provides for the holding of the individuals personally in the event of any improper investments. But I have not gone into the statute to learn whether or not there is any other provision of the law which makes obligatory --

THE CHAIRMAN: There is a limitation for a cemetery organized under the general corporation act which you speak about and perhaps further limitation in 8:2-37 would not apply.

MR. BLUNY: I don't believe it would apply. Now, in connection with the Monument Builders' Association, we had occasion to send out a questionnaire to all of the members in order to get some information so that we could be of some help to your committee. We found in some associations they made charges for the planting. They made charges for shrubs. We have some of the members here present who might be able to testify.

THE CHAIRMAN: You mean as a condition precedent to the erecting of a monument?

MR. BLUNY: Some of them at the time that the grave was purchased and others--most of them, I believe, after the purchase. In the case of Mr. Schiffman, for instance, he has authorized me to say that he has found it necessary, after the purchase of a plot, to get his own man to go in there to do some work and he has questioned the authorities about it and they have told him they didn't have sufficient help to do it. But that again is something that we feel ought to be

done by the cemetery as part of the price that they seek for the sale of a lot.

You have another matter, suppose a marker is damaged by vandals. Suppose a monument is damaged not through the fault of the owner. That ought to be something that the cemetery should take care of. It shouldn't be necessary for the owner to be notified somewhere out in the West Coast that his monument has been damaged and that he should pay an additional sum of 1 dollars to take care of it.

THE CHAIRMAN: Mr. Blumy, do I understand you to say that the people in the monument business would expect that the cemetery association replace a tombstone that may have been cracked by vandals?

MR. BLUMY: Not the monument dealers, no. They are not the ones, although it comes indirectly to them in many cases where the cemeteries have said to the plot owner, "Get your monument dealer. It is his fault that this thing happened!" Let's take the case where some boys go in and, as has happened in our locality, just turn over stones.

THE CHAIRMAN: You mean at Halloween time.

MR. BLUMY: Should the lot owner be compelled to put that in shape himself or should it be something that the cemetery ought to do because they are the ones who are in charge and control of the cemetery and should police it and see to it that that doesn't happen? Shouldn't they put it back?

THE CHAIRMAN: Should it be their sole responsibility?

MR. DLUBY: I think it should. There is some opinion to that effect in the State of New York because I noticed an amendment was introduced again along the same line to the New York statute which was passed in 1947.

THE CHAIRMAN: If on Halloween someone turned over a few stones in a cemetery and one stone knocked up against another and cracked it, the responsibility, you recommend, would be upon the cemetery association to replace that stone.

MR. DLUBY: I think so. Take the situation that the Chairman gives. Suppose I am out in San Francisco and I get a notice, "Mr. Dlubny, somebody threw a stone over onto yours and cracked yours and did some damage to the adjoining one." -- maybe you are responsible for the adjoining one -- "What about yours? You have to pay to get it fixed up." I think that is incident to the operation of this business and ought to be the responsibility of the cemetery, because again we are thinking of the individual who buys a cemetery plot with the idea that when he buries his dead, he will not be concerned with all of these matters which have to do with the operation of the cemetery.

THE CHAIRMAN: This is an action of a third party. The cemetery association is not chargeable, in my mind. I'm trying to get your thinking. Here is a third party comes in. Certainly you can't expect a cemetery association to be a guarantor that once you place a monument, it is going to remain in the same condition, notwithstanding wear and tear of the elements plus damage which third-party individuals may inflict.

MR. DLUNY: I say it should be. There is no difference between that than the usual thing that may happen. Suppose an individual has a monument put up on this grave according to specifications of the cemetery and later on, through no fault of anybody --

THE CHAIRMAN: Do you know of any state in the Union that has a similar provision touching that point?

MR. DLUNY: No, I don't.

THE CHAIRMAN: May I stretch the point a little further. We have throughout the state many old-time cemeteries where because of the elements the sandstone monuments are hardly legible. They have fallen down and the sandstone itself has worn away through erosion. Would it be the responsibility of the cemetery association to replace that type of stone?

MR. DLUNY: I don't think you should go that far. That is stretching it too far. I don't think you should replace a stone. I know, as I go to the Station here in Trenton, I think I have seen where stones might have fallen over. I have seen that in other cemeteries. You probably have too. Should they lay there for years because nobody puts them up again? It seems to me that ought to be the responsibility of the cemetery. Maybe it is due to the settling of a foundation. Maybe somebody may push it over.

THE CHAIRMAN: That brings to my attention a complaint I received through the mail, and it came from the people who sell monuments. Have you found in your analysis and your research on behalf of the

monument people, that the foundations set up by the cemetery associations are not properly constructed?

MR. DLUHY: Yes, I think that we have. We have found that there are complaints--various complaints about that. Of course, the poor monument dealer is always blamed for everything. We have found in some cases that the specifications have been violated by the cemeteries.

THE CHAIRMAN: When you say, the poor monument dealers, you say that advisedly, don't you?

MR. DLUHY: Let me say, yes. We have found that. And I agree with this principle - that cemeteries require foundations to be put in by them because of the safety factor, and they ought to do it. But we have also known of cases where instead of a three-foot foundation, if it was required, it might have been only a foot. I don't think that is an exact example. I have some men here who could give you the exact details of cases that they know, if you want to hear them. I do know in our canvass of these men, we have found that in numerous incidents there have been these violations.

MR. WILSON: Mr. Dluhy, I would like to ask if it is your opinion that a separate reserve fund be set up for this purpose or would it be sort of a general fund that would take care of these things from time to time?

MR. DLUHY: At the outset I think I said I agreed with the principle of the New York statute, and they have two separate funds. They have the permanent perpetual care fund and a current fund. From that,

I would say that the permanent would be limited to expenditures for maybe capital improvements. On the other hand, I should think that if a monument fell over or if something needed fixing that might come in the ordinary course of events during the year, that might be chargeable against the current fund. Of course, that should be replenished each time.

THE CHAIRMAN: I might say for the benefit of those who may testify that Osie M. Silber of the Attorney General's Office has been assigned to this committee to assist in the drafting of legislation. He will from time to time if he has any questions, propound questions to the witnesses.

MR. SILBER: Mr. Blahy --

MR. BLAHY: Yes, Mr. Silber.

MR. SILBER: It seems to me there are at least thirty important features, perhaps more, that I personally think come in a more serious position than this question of monuments. And as the meeting goes on, you may agree with me. It is my thought that these isolated points might better be taken up after we thresh out the real purpose and intent of this get-together. Your point on the establishment of perpetual care funds is most important. I think that would be in the top flight of points of discussion here today - far ahead of the discussion of monument stones and what some monument dealer did forty, fifty or sixty years ago or what might happen ten years from now. I am mindful of your point, but it weakens your real strong ace - I might call it - in the perpetual care funds, annual charges, the rights

to make assessment and the one very fine point that you made as to the all-inclusive cost or purchase price at the time the sale is made. If we can iron out these strong features, the rest almost automatically will fall in line. Don't you agree with me?

MR. DLUNY: I agree with you.

MR. SILBER: I think you are weakening your case. I am mindful you represent the monument workers, but if you continue your thoughts as I have read them in your resolution - a couple of the many which I have discussed with the committee - these lesser ones will be so simple to iron out and discuss if we get the major ones straightened out.

MR. DLUNY: I agree with you. I was ready to go on to the next point, except for the Chairman asking me the question that he did.

I think that the next important question is the regulation of cemeteries and the method to be followed in doing it.

MR. SILBER: These are important points. This business whether or not the cemetery is an insurer of the plots against vandalism, third parties, etc., isn't 1/50th of one percent as important as these salient features you are stressing.

JUDGE CAREY: I would like to ask --

THE CHAIRMAN: Judge Carey, just a minute, if you have anything to say, you will testify at the proper time. Right now the questions that are to be propounded to any witness will be confined to the members of the committee. You will have your turn at the proper time.

You are out of order.

JUDGE CAREY: I have been down here two or three times --

THE CHAIRMAN: Order please. And I ask you to wait until you have an opportunity to testify.

JUDGE CAREY: You asked all of us to ask any question we wanted to and I want to ask him a question, just as the last two gentlemen have.

THE CHAIRMAN: You are out of order.

JUDGE CAREY: I ask you as chairman of this committee to permit me to ask one question.

THE CHAIRMAN: You have no right to ask anyone any question.

JUDGE CAREY: If I can't do it, I want to know it and why.

THE CHAIRMAN: I am ruling you out of order.

MR. BLUHI: Mr. Chairman, I think the next phase of the question, the important one, is the regulation. Now we find under the present statutes, if you want a new cemetery or to enlarge an existing cemetery, you must get permission from the local authorities. That, I think is a good provision, but I feel also that we should go a step forward and that this state body, which you may be contemplating recommending, should have some authority. I think the matter of cemeteries in the state is an important one from the state angle. We find that in New York, for instance, they have placed restrictions on cemeteries to the extent that they can't formulate new ones or establish new ones, and we find some of them coming into New Jersey. And the question I think is an important one as to whether we are not now at a point where we

don't need any more. Another point follows, which cities are much concerned with, and that is the question of exempt properties. As soon as a cemetery comes in and starts setting up, we find ourselves confronted with a good deal of valuable land coming into the exempt class. So I think from that angle, from the overall state picture, the state should also have a say whether or not a cemetery should be established in a local municipality, even though the local municipality may be agreeable that it should. I say that on the theory also of the public having an interest in the cemetery business. We should treat the cemetery business somewhat similar to the public utilities where we have a state body that controls and regulates the business. It is my feeling that a state body should be set up which would have jurisdiction over all cemeteries, whether they be existing ones or new ones, so that all regulations should be approved by this state agency. In the case of existing cemeteries, I feel that the board would have a right to do it, and, I believe, they have done it in New York, so that regulations, whether they be with respect to prices of lots, the management of the cemetery, the type size and installation of monuments, or whether it has to do with who shall have the right to do this type of work upon the cemetery grounds -- all of these matters, without my referring to them individually, should be the subject of regulations. For instance, we find that all over the state, there are various prices of lots. Yet, if you are faced with the situation of going to a cemetery, I wonder if you could get prices of lots if you wanted to purchase them. I think that there ought to be a state

body to control prices of lots so that you don't have these so-called excessive prices that we find in some places is being charged. We find that in some cemeteries a monument builder may be refused even a right to go into the place on the theory that the lot owner has no right to say who shall do his planting, who shall put up his monument or who shall take care of it. I certainly disagree with that theory. I feel that a lot owner has certain rights. And I think that under most of the good laws in the country, the majority opinion seems to be that a lot owner has certain rights. I think the state ought, through this body, uphold those rights.

MR. WILSON: Just a second, if you don't mind I would like to interject this question: Is it your opinion that the state body would approve the price of lots set by the cemetery associations?

MR. BLUNY: Yes, it is, sir.

MR. WILSON: Say, for instance, an individual came in and bought a block of ten lots - not a corporation, but an individual. He in turn bought these with the thought in mind he might at some time realize a good profit. Would he have an opportunity to sell them again privately without the authorization or approval of the state body or would every sale be through the state body?

MR. BLUNY: I think that they ought to be through the state body. I think that is one way of controlling what is happening in this state where you have the sale of lots with the idea of investment. We found that to be true in our local situation. We found they went

to the extent of advertising that you could make a twenty percent profit on cemetery lots. That certainly was never the intent in this state or any other state - that anyone should do that, especially where they get a tax exemption and don't pay a thing.

MR. WILSON: That is the point I am trying to bring out. That is the evil that may exist if this isn't controlled from the top.

MR. DLUNY: I feel that that is one way of stopping it and I intended to make the point that the law that you contemplate submitting should include provisions which would prohibit the resale of lots for the purpose of profit and also to have a penalty of some kind imposed for doing so.

MR. SILBER: Is it not a fact that what you have been saying for the last twenty-five minutes is that you would like to see a commission of some sort, comparable to the New York Commission, set up so that they could do the things you have taken time to enumerate?

MR. DLUNY: Yes, sir.

MR. SILBER: I gather - so that there would be an authoritative body to regulate, shall we say, cemeteries - the procedure, sales, maintenance funds, rights of plot holders, punishments for cemetery associations that violated certain rules, etc. Isn't that what you are saying collectively?

MR. DLUNY: That is right. Before I go off this point, let me point out two incidents that I know of because I investigated them with the idea of bring^{ing} action in behalf of these people. It is a

shame that people who are lot owners in an association should be compelled to seek legal redress which costs them so much money, to accomplish what they want. In one case we had a situation where a party had made a deal to have a marker put on the plot, which they had, and then for some reasons of their own decided they would not do it through the cemetery, but through someone on the outside. This follows the principle that the lot owner should have the right to choose, within reasonable bounds, his own monument man. In that case we found they had changed the rules and regulations. Upon examination of the rules, I found this: 'You have got to get a permit.' You have got to show the marker to them and have it approved, and you must have a certificate, mind you, of a metallurgist, who must certify as to the metal content of that bronze marker. He must certify not only that it was made of a run that might, as I understand, be going through the mill where they might make a hundred of them, but he has to certify that that particular marker which was being offered to the cemetery has that particular metal content required by the association. Let's not go into the question of whether or not the first part of it about certain metal requirements are reasonable; they may be. But to impose an unreasonable restriction upon a lot owner so as to in effect prevent that lot owner from going outside and buying a marker at a cheaper price, mind you, seems to be unfair, and the state should protect the public against what I call gouging when it comes to getting these markers and monuments on cemetery plots..

THE CHAIRMAN: May I advise you that your time is running out. You did say you represented two parties. I have allowed you considerable latitude of time because of that. You have been allowed time because you represent the City of Clifton and also you have been given some time because of the monument builders. But we have ten other witnesses and we do want to conclude the hearing today.

MR. BLUNY: Now I am going to ask your group to consider what my thoughts are on the charges.

THE CHAIRMAN: You have a memorandum?

MR. BLUNY: No, I don't. In addition to that incident I cited, we had a case of a veteran who had been killed. His wife tried to put on his plot a marker that she gets from the government for free and she was denied the right to put the marker on only because, as I understand it, that marker did not contain a holder for flowers or something. That seems to be an unreasonable requirement. Regardless of whether it is a veteran or anyone else, there ought to be some norm or standard or someone who could oversee these things and prevent these violations.

Now, I wanted to say from the standpoint of the handling of cemeteries or the overall picture, we find in the cemetery statutes provision for condemnation. I can't see why a cemetery should be given the right of eminent domain, especially when they are being conducted as business or profit-taking ventures. Before the right of eminent domain should be exercised by these people, I think that they ought to have the consent of the local body - they ought to have the consent of the

state body - so that from those two angles we would then say, all right, there might be good reason for it.

Your chairman is familiar with the tax question from the standpoint of municipalities. I am not going into that. I think he is eloquent enough to present that to your committee and to the Legislature, and has had sufficient experience along that line - more so than I. I will leave that with the thought that from the standpoint of taxation, if you are to impose taxes, and I feel that there should be where the venture is a business venture, some thought should be given to a franchise tax which would be imposed upon the right to do business in the state. Have the franchise tax collected by a state agency and then distributed amongst the municipalities in some manner so that the municipality which is giving services to that cemetery in a particular town would get the benefit of it.

Incidental to the tax question, we find another situation where cemeteries because of the statute have been held to be free from the assessment for benefits. Now we have had that situation in Clifton and I have noticed it in other towns because there are cases on record. I can't see any earthly reason why a cemetery shouldn't pay an assessment for a sidewalk or an assessment for a street or an assessment for improvements which are beneficial to it. There are some from which we know they don't receive any benefit and therefore they shouldn't be made to pay. But there should be no difference between them and another business venture, which because of benefits received, pays, and

the cemeteries are exempt.

The last thing that I would like to talk about is the overall picture of cemeteries that have been formulated within recent years, which we know have been formulated and operated by these promoters who come into the state. They don't care about anything but making money. They take a tract of land and they get the permits. They form the cemetery and get it started to the point where they can put on a high pressure sales program, for which they pay up to 40 percent in some cases for sales. Now I don't think that that was ever contemplated by the statute. We find cases - I know of one - I have an ad which shows that they advertise free insurance, free funerals. I don't know how they do it. I know if I had to bury one of my loved-ones, I would have to pay for it. I am advised they even advertise free insurance to the point where, I understand, they arrange for an insurance policy payable on death. They must, of necessity, make some contribution toward insurance, either out of the sum they get from the person when they purchase the lot or an additional fund. I don't see the legality of it and don't see how they do it. But they get to the point where they sell out these lots. Then they move out of town, after taking the profit. That goes back to the perpetual care proposition.

Then we have another situation which your Chairman is quite familiar with, and I think it is happening in other parts of the state where they go into old cemeteries that have permits and then they chop up the cemetery into groups. I see no provision under the statute which would give them a right to exercise a franchise given

to one cemetery and use it under the name of three cemeteries. I see no provision in the statute that would give a cemetery the right to assign or transfer a cemetery franchise, and I don't see that it is good public policy to permit a cemetery that is formed with plot owners who are theoretically having an interest in the association and who are supposed to manage and run it, finding themselves worked out of it to the point where some other group comes in and gets control of the stock to the point where they could sell the stock out and give control to another group.

THE CHAIRMAN: Thank you very much.

MR. SILBER: Before Mr. Dluhy leaves, I want to ask a question. Where a cemetery may have existed fifty, sixty or seventy years in what was then just open fields, and subsequently in recent times a street might be put in or sidewalks, thus enhancing the value of that cemetery by its accessibility, you feel by the suggestion you made, do you not, that that cemetery association should be assessed part of the cost of the sidewalk and the roadway?

MR. DLUHY: Oh, I think so. We had a case in Clifton where we attempted to assess and did place the assessment against the lands of a cemetery - I didn't know about it until afterwards - for sidewalks and a curb.

MR. SILBER: On the theory, among other things, that the value per plot had been increased and they might be able to afford such an assessment because they are getting a real true benefit from the improvement.

MR. DLUBY: I think so.

THE CHAIRMAN: May I interject my opinion at this time? I think the Chairman is very familiar with that subject matter and I don't think it is necessary to take any further time and clutter the record. But, before you do get off the stand, I have one point in mind with respect to lands which may be sold by a cemetery to private enterprise. Do you have any thoughts as to whether or not that particular land which is sold should be taxed or some remuneration given to the municipality?

MR. DLUBY: I get your question.

THE CHAIRMAN: A cemetery may have 125 acres. Under the law it is exempt today from taxation. That cemetery is a dormant cemetery. Perhaps in time it develops 25 acres. That leaves 100 acres of probably valuable land along an industrial site, and it turns around and sells this 100 acres to a large manufacturing concern, free of taxation for the last 20, 30 or 40 years. Do you have any thought on that?

MR. DLUBY: I don't see why a cemetery, set up as it is now-a-days should be any different than any other venture. I think that there ought to be some mode for taxation, especially in a situation of that nature.

THE CHAIRMAN: That is all. Thank you very much, Mr. Dlubý, for your time. Now, as long as we touched these important points, particularly the perpetual care fund — I suppose many of you want to talk about the same thing — if the speakers who are to be called have anything new to add or to contradict statements, giving your version as

As why a perpetual care fund should not be set up by the state, we would appreciate hearing from you.

We have with us Charles J. Milton, who represents the New Jersey Association of Cemetery Officials. Mr. Milton, do you want to take the stand?

MR. MC DONOUGH: Is this association separate from the New Jersey Association of Cemetery Companies?

MR. MILTON: This is the Association of Cemetery Officials.

MR. MC DONOUGH: That is a separate group.

MR. MILTON: Yes.

MR. CHARLES J. MILTON, representing the New Jersey Association of Cemetery Officials:

First of all, I would like to assure the committee that our purpose here is constructive. We are interested in the growth and planning of cemeteries. I would like to submit the code of ethics of this Association for the record.

THE CHAIRMAN: It will be accepted.

(Mr. Milton gives the secretary the "Code of Ethics" of the New Jersey Association of Cemetery Officials.)

MR. MILTON: Really, what I would like is an opportunity, after we have read the record, to submit a written memorandum to the committee of our suggestions, which will be constructive. We are not here in any destructive sense. I would also like, if permission could be granted --

THE CHAIRMAN: I might say, Mr. Milton, from our experience with previous hearings, I think we are limited to about six copies. So if there is anything that you would like to have, it would be to your interest to come to the Library and read the record. It is not available for publication. No funds have been set aside for this committee. We are here for free.

MR. MILTON: I understand, but if I might have that opportunity.

THE CHAIRMAN: You will have the opportunity, and may I suggest this: As soon as this hearing is typed up, I shall be happy to notify you and within ten days, may we have your memorandum?

MR. MILTON: Yes, sir. I would like to call the attention of the committee to the fact that it is our understanding that the New York Board has run into a deficit of about \$70,000 for the last year. This in addition to the fees that are charged under the New York Act. So I would like to call your attention to the fact that the taxpayers will be bearing in New York at least part of the cost of administering and supervising cemeteries.

THE CHAIRMAN: It wouldn't be too much different from New Jersey where the New Jersey Legislature appropriates funds and carries deficits to provide public services, would it?

MR. MILTON: I wouldn't say it is not different. I would say you are going to create another one perhaps. I would also like to call attention to section 8:2-37 of the statutes which speaks of authorized

investments.

THE CHAIRMAN: We will take judicial notice of that section of the statute. Is it your contention that you are in full agreement with that section or would you amend it to specifically set forth a type that might be invested? Here it says in this section of the statute that the investments may be made in such trust funds which are determined to be legal by the statutes of the State of New Jersey.

MR. MILTON: I see no objection to that. There are many things that I could say with respect to this. I would really rather wait until I have seen the record.

THE CHAIRMAN: You have no specific recommendations to make?

MR. MILTON: We will have after we have gone over the record.

THE CHAIRMAN: Mr. Milton, the opportunity will be afforded to you ten days after this hearing is typed up and we will expect to have your memorandum. If it is not here within ten days, just like the court, you will be barred.

MR. MILTON: We will have it in within ten days.

THE CHAIRMAN: Thank you. Judge Rafferty --

JUDGE RAFFERTY: Mr. Chairman, if it is agreeable to the committee, I would much prefer to defer my presentation until after I have listened to a few more speakers.

THE CHAIRMAN: I presume you speak for Mr. Cassert.

JUDGE RAFFERTY: Mr. Cassert also would like to speak.

MR. CASSERT: I can speak at the pleasure of the committee.

THE CHAIRMAN: If you wish to speak now, I would be very happy to have the committee listen to you.

MR. FREDERICK J. GASSERT, Counsel for the Roman Catholic Archdiocese of Newark:

Mr. Chairman and members of the committee, and Mr. Silber: The purpose of what I shall have to say is to request in the determination of the committee in recommending any legislation that it may recommend that religious cemeteries be exempted from the provisions of all of the regulations that have been discussed here today; so that we will have no misunderstanding, exempted from the provisions as to management of trust funds. The cemeteries in the Archdiocese of Newark are of two kinds. One may be called the parish cemetery, and some six or seven, I think, are archdiocesan cemeteries. Both of these in general content and in actual management are the present-day survivors of that type of cemetery which Mr. Bluhly seemed to describe with the sole happy comment that he made on cemeteries in general, and that is the church or parish cemeteries. The archdiocesan cemetery is a logical development of the same cemetery to meet the conditions created by enlarged population and the contraction of available area around the parish churches. The legal authority for the establishment and operation of both the parish and the archdiocesan cemeteries is not in the cemetery act, but is in the religious corporation act, Title 16. I may be a little bit off in my statutory reference.

THE CHAIRMAN: Do you think, Mr. Gassert, that so long as the

committee contemplates a complete revision -- that is my thought, at least -- of the cemetery act that perhaps some of your suggestions ought to be incorporated right in this act, and if the religious cemeteries are to be exempted, it ought to be specifically set forth so if you pick up the cemetery act you can determine all that is possible to be done under statutory authority?

MR. CASSETT: I do, Mr. Shershin, except that I don't know, but I assume that what you have just said does not mean that you would eliminate from the religious corporation act -- as you may know there are specific acts under that title applying to different religious faiths -- I don't know, but I didn't assume that what you said included removing the power to operate cemeteries from that act.

THE CHAIRMAN: I wonder if you wouldn't help the committee, Mr. Cassett, by preparing a memorandum indicating what particular sections under the religious act apply to cemeteries that you would like to have saved and submit that to the committee.

MR. CASSETT: I shall be glad to, Assemblyman. As a matter of fact, I intended to ask the committee if they cared to have such a memorandum when I was finished. I shall be very glad to do that in conjunction with Mr. Rafferty. I should like, however, if the committee will permit me -- and I will be as brief as I can; I intend to be that anyhow -- to make some observations as to the justification for what I have said in making the request. The parish legal corporation, provided for in the statute, that operates the parish cemetery, is specifically

run by a board of trustees. The archdiocesan cemetery, authority for which is provided by the statute, similarly is run by a board of trustees. In the case of the parish, it is three members of the church, three clergymen, and two lay trustees. In the case of the archdiocese, it is the same thing. In the case of the archdiocese and in the case of the parish in Newark -- the statute refers, of course, to bishop -- both the bishop and the vicar-general are members of the Board of Trustees of both corporations. The third clergyman in the case of the parish is the parish pastor. The third clergyman in the case of the archdiocese is the chancellor of the diocese. These cemeteries are therefore operated by religious corporations. I take it that it is rather obvious and hardly open to question as to the right to operate a cemetery being specifically in the power of the religious corporation in recognition of the right of freedom of practice of religion, and specifically in recognition of the fact that in our case, since I shall not be presumptuous to speak for any other religion, as well as in some others, the right of religious burial is an inherent and necessary part of religious practice. A Catholic, as part of the practice of his religion, is required to be buried in a Catholic cemetery.

Catholic cemeteries are, with some exceptions, and very limited as to those exceptions, solely for the burial of Catholics. The cemeteries are in no sense in business. They are in no sense in commerce. They are strictly non-profit.

Having stated our position, I think that it would be less

than objective were I to discuss some of the questions raised as to alleged errors and criticisms and complaints in the management of cemeteries. But I would not like this hearing and my appearance here for the people I represent to be without some comment in regard to what has been said so far as to possible changes in the statute in regard to new cemeteries and permission to set them up. You recall Mr. Blum spoke of the increasing burden of tax exemptions - freedom from assessment - in connection with the creation of a state body, which, as he described it, I gathered would be to restrict cemeteries because he made a comment to the effect that perhaps we have got as many as we need right now and shouldn't have any more. But I say that generally he didn't mean that, that he was talking of some state body that would either work in conjunction with the local board of health - the state board of health - or supersede both or either of them in the granting of permits for the establishment of cemeteries.

I make this suggestion, which I think has more weight - and perhaps it has had discussion in the welter of criticism that has apparently surrounded the operation of some promoted cemetery enterprises - that the right of burial still remains an absolute right for every individual and for his family. I have myself run into the criticism, steadily mounting from the citizens of one municipality about carrying the burden of burial for people who live elsewhere. I should just like to bring into this discussion the fact that the dignity of every human being, separate from any particular requirements of the religion that I represent, entitles

him to burial in a decent and proper manner. As our population increases, these conflicts against the interest of particular municipalities are bound to arise. Again in the welter of criticism and complaints that have come from commercial operation, I am inclined to think we forget that, at the same time, we all know that municipalities and their citizens have accepted many other burdens which have resulted in loss of assessments and loss of taxes and may be said to be for the benefit of the state and its citizens as a whole. I need only refer to water systems, county parks, the Port of New York Authority, and a tremendous number of other public projects created for the benefit of large areas of the population, where the municipalities have been forced to sacrifice taxes and accept burdens and there has been no serious objection to that form. This is not meant to be persuasive. I would not like the question as to whether there shall be additional cemeteries established and whether if there is to be any superseding body created or recommended by this committee -- this need for decent burial and the right of the member of a religion to be buried in a cemetery of his religious faith -- I should not like that in the question of taxes, in the question of assessments, to be solely judged on the basis of what seems to be the principal source of criticism, the improperly managed commercial cemeteries.

THE CHAIRMAN: Before you leave, may I ask whether you have from your experience and in your survey determined statistically what the policy of other states may be with respect to religious cemeteries?

MR. GASSERT: I am aware of the New York statute which exempts them, except to the management of trust funds.

THE CHAIRMAN: Would you for the committee be willing to do a little research of the states of the Union to determine what their views are with respect to cemeteries operated by religious groups.

MR. GASSERT: Judge Hefferty and I would be glad to do it, sir.

THE CHAIRMAN: One further question, what is your view with respect to this type of situation: cemetery A formed under the general corporation act owns 125 acres and sells 10 acres to the IXX fraternity, which may be a religious group or a religious society; would you say then that that little religious group which purchases a 10-acre tract for the burial of the members of its lodge should be exempted under the same terms as yours?

MR. GASSERT: One who is here asking for something shouldn't be critical. Obviously I am speaking for organized religious groups.

THE CHAIRMAN: Then that would exempt --

MR. GASSERT: That would exempt any group that was formed as a religious group for the purpose of buying cemetery land.

THE CHAIRMAN: Would that be in your opinion a method of circumventing the very thought we have here in this committee, that of a regulation of cemeteries?

MR. GASSERT: I think, of course, that the question to be answered there in assuming - I hope not presumptuously, that you would exempt religion corporations - would be whether the organization that

you described, organized for that purpose, was actually a religious corporation.

THE CHAIRMAN: It would be possible for a cemetery that has 125 acres, immediately after it acquires title, and develops it, to sell 125 acres to the XYZ lodge. Now this lodge is connected somehow with a religious enterprise.

MR. GASSERT: I guess I misunderstand your question. I misunderstood you, Mr. Shershin. I would not recommend any such thing. Everything that I have had to say and any force that there is to what I have stated as a matter of right is confined solely to the religious corporation, which is an established religion.

THE CHAIRMAN: Well then, within the religion there may be certain societies or lodges, and your thoughts do not carry over to that?

MR. GASSERT: No, they wouldn't, Mr. Shershin. What I have said wouldn't apply to that. I have said, without repeating it all, that the right was given in the statute in recognition of a constitutional right, also in recognition of the right to burial as a part of the practice of religion. Obviously to transfer to a group within that, completely defeats the definition that I gave.

THE CHAIRMAN: Mr. Gassert, from your experience with religious cemeteries, can you inform this committee, if any statistics are available, as to the number of non-Catholics buried within a Catholic cemetery?

MR. GASSERT: Do you want me to get you a figure on that?

THE CHAIRMAN: Is it the practice to sell lots to non-Catholics in a Catholic cemetery?

MR. GASSERT: No, sir; it is not.

THE CHAIRMAN: Are any sold to non-Catholics?

MR. GASSERT: So far as I know, none, and there is a strict regulation of the transfer in so far as lots are concerned. Strict control is kept over that, so there can be no trafficking in the sale of cemetery lots. Sometimes, but under strict regulation, a transfer to another member of a family, or in very few cases, to an outsider is permitted where there is one grave left or two graves in a particular plot, but there is no general selling of lots permitted.

THE CHAIRMAN: And is any commission charged for resale?

MR. GASSERT: By the archdiocese?

THE CHAIRMAN: Yes.

MR. GASSERT: No, sir.

MR. WILSON: Just a brief statement - Mr. Cassert, I think you gave us a very good picture of the religious situation. There is one thing which you said which impressed me immensely, and that is, of course, the element of the tremendously increased population, not anticipated when our father and forefathers laid out the old cemeteries in relation to the old churches. You see that presently gives us a problem of expansion that we didn't anticipate in the long years gone by.

MR. GASSERT: That is correct.

MR. WILSON: Therefore, in order to take care of the situation, it will be imperative that we have some form of expansion regulation.

That was a very significant statement and I simply wanted to emphasize it.

MR. GASSERT: The purpose of my comment on it was not that I was in disagreement with what had been said, nor am I in disagreement, and perhaps it would work out better in the light of better conditions if there was a transfer of the authority to grant a permit, because obviously the present requirement that you go to a local board of health brings you quite naturally and understandably up against the thinking of the local residents there -- all I wanted to have the committee consider was the fact that the problem would still remain here and that it is no different in essence from the problem that has arisen and will continue to grow, as well as the fact that municipalities have had to accept burdens - have had to turn over lands - have had to give up valuations from their assessment rolls for water systems and for many other things that are for the common good.

THE CHAIRMAN: We have that testimony on record. It is now becoming repetitious.

MR. GASSERT: I guess it is.

MR. SILBER: May I ask you one question? Mr. Gassert, are the rules the same for all Catholic cemeteries in this state?

MR. GASSERT: I couldn't know that the rules are the same for all Catholic diocese cemeteries in the whole state because there are four dioceses in the state and each operates its own.

MR. SILBER: You speak for one.

MR. GASSERT: I speak for the Archdiocese of Newark.

As to the Archdiocese of Newark, the rules are the same in all the Archdiocesan cemeteries as for the parish cemeteries. I don't know, but I believe they all operate on a fairly general basis.

MR. SILBER: Do you have any idea about how many cemeteries are included in the Newark area approximately?

MR. GASSERT: I frankly don't think I have those notes with me.

MR. SILBER: Could you guess at it?

MR. GASSERT: I would rather not guess on a thing like that.

THE CHAIRMAN: Thank you, Mr. Gassert.

JUDGE RAFFERTY: Perhaps I could complete this phase of it now.

THE CHAIRMAN: Before you go on, and I would be very happy to hear you, I want to make an announcement, and it concerns the timetable. It is now twelve o'clock. We shall continue this hearing until one o'clock, after which we will adjourn for lunch and come back promptly at two o'clock.

JUDGE JOHN J. RAFFERTY, New Jersey Legislative Council,
Roman Catholic Dioceses, Newark, Paterson, Trenton and Camden:

Mr. Chairman and gentlemen of the committee: I merely want to echo the statements made by Mr. Gassert. I desired that Mr. Gassert speak before me because he represents the Archdiocese in a special way and he had these several special points to make. Mr. Gassert has covered about everything that I would have stated, with this added word or two.

I would like the Committee to understand that within the Roman Catholic Church, the operation of the cemetery, whether diocesan or parochial, is an integral part of the religious organization and the religious life of those who are of the Catholic faith. So, therefore, the operation of a cemetery, and I am speaking, of course, only of the Roman Catholic Church - I know nothing of the other churches - but generally it is true, is a charitable enterprise. There is no profit made whatsoever. There is no profit motive. There is no resale of lots for profit. There is no traffic in lots, as Mr. Cassert has said. So, therefore, we are organized under Title 16. Provision is made for the establishment of the Roman Catholic Diocesan and the Roman Catholic Parishes. They are two separate sections of that statute. That statute gives us the express authority for the establishment and operation of cemeteries as part of our religious organization. With respect to the question raised by counsel as to the regulations within a diocese, it may be true that from diocese to diocese there may be some unimportant difference in diocesan regulation, but essentially and substantially the regulations in each diocese with respect to the management and operation and control of the cemetery is the same. There may be some small difference in one place from another, but they are substantially the same.

Now with respect to the matter of trust funds or perpetual care funds, generally speaking there is no such thing within any of the diocesan organizations or Catholic cemeteries. It may be true that

here and there, now and then, someone may desire to deposit with the pastor of a church a sum with the request that this sum be used for the care of a particular or individual grave or plot, but that is not the rule. It is the exception. Sometimes this money is accepted for that purpose. But even in such a case, these funds by diocesan regulation are kept separate and apart and they are subject to the regulations of the diocese. So, therefore, the matter of perpetual care is not important with us, nor are there trust funds in the sense which you gentlemen have inquired.

I might point out that the care of cemeteries within the Roman Catholic Church is the responsibility of either the diocesan authority or the pastor of a given parish. It is common knowledge that frequently the money to refurbish or repair a cemetery or to put it in some condition which responds to our sense of beauty and all that kind of thing, comes directly out of parish funds because there are no other funds for it. Sometimes it may be that a given parish organization, thinking the cemetery ought to be improved or cared for, will make a special drive for funds. But that is where the money comes for these purposes. Therefore, we have no dedicated funds or trust funds or perpetual care funds.

There is one other thing. Mr. Diney thought a lot owner ought to have some right to choose the kind of a monument he shall have and where he shall buy the monument and different things of that kind. So far as we are concerned, it is a matter of indifference. I only want to point this out: If the lot owner is to be given the right suggested by Mr. Diney, we might very well find ourselves in a position where

instead of having a manager of a cemetery, we will have as many managers as we have plot owners. It is like everything else. There must be order. There must be standards that must be adhered to. I only want to suggest to the committee that lot owners ought not to be permitted to indulge in their own private fancies with respect to what shall be done to their particular lot. Of course, it wouldn't happen in a Catholic cemetery because, as Mr. Gassert pointed out, they are all Catholics in those cemeteries and, of course, they are subject to the discipline of the church. There may be here or there a non-Catholic buried in a Catholic cemetery. That may well have happened. I personally don't know of any canon of the law of the church against it. It is an act of charity. People, as Mr. Gassert said, have the inherent right to be buried and buried in dignity and it may be that here and there, perhaps out of family ties or family relationships, an exception may have been granted where there was a non-Catholic buried. I don't know of any rule against it. Those who accept the Catholic faith and those whose lives are governed by the Catholic faith have the obligation to be buried in consecrated ground, as we call it.

Gentlemen, I will be glad, in accordance with the suggestion of the Chairman to join with Mr. Gassert in presenting a memorandum on the two points which you have outlined.

THE CHAIRMAN: Thank you very much. Any questions?

MR. WILSON: No.

THE CHAIRMAN: Mr. Hugo Mueller —

MR. HUGO MUELLER, Secretary, New Jersey Association of Cemetery Officials:

Mr. Chairman, there are a few comments I would like to make. Your attorney stated something in reference to foundations and monuments and malicious vandalism in some of the cemeteries. Over a period of years, there has been quite a bit of that. Most of our cemeteries have been looking somewhere where we could perhaps insure ourselves against such vandalism, and only recently we came in contact with an outfit in Chicago who does that, because prior to that we found our premiums entirely too high. I think that we can get it for somewhere around six dollars per acre where the acreage is developed. Many of the cemeteries have done just that.

As to foundations, I happen to be the Secretary of the Association and we have always advocated that where a monument dealer came in there for a certain size foundation, it had to go down to the depth that the individual was paying for. That has been our policy and we certainly get to the cemetery to see that that is carried out. In my mind, in all fairness, I might say that there have been some cemeteries that haven't gone down to the proper depth, but members of our Association have carried out what we thought was good policy, both for public relations and the people.

Another thing I would like to call your attention to is our trust funds. In most cases today our trust funds are governed by the trustees who are the lot owners of the cemeteries. Only recently

under the Prudent Man Law, we got a little more leeway in investing a certain amount of our funds in common/^{stock} which bring a larger return.

I say this because personally I'm not in favor of putting all my eggs in one basket and I am hoping that under this setup today that most cemeteries will be very cautious about investing too much in common stocks and will have good conservative investments.

Cemeteries today are up against meeting their bills and their obligations due to just such trust funds bringing a small income, probably 2½ or 3 percent. You may get the mistaken idea that cemeteries are making money. I find it somewhat different because today with the increased maintenance cost due to the labor and material situation, we find that most cemeteries are either breaking even or going in the red. That goes for big cemeteries too. We are trying to mechanize as much as possible to overcome this labor problem and I am sure in time cemeteries will find themselves in a better position.

We spoke of perpetual care and the New York State legislation in reference to that. Now I am speaking for myself personally. I think that most perpetual care funds aren't large enough to take care of maintenance of a cemetery over a period of years. We find that putting aside 10 percent for perpetual care is not enough and I say that advisedly. But in most cases it was all that the average cemetery could put aside, although I know of cemeteries that put so much a square foot away for perpetual care purposes.

THE CHAIRMAN: What, sir, would you recommend be set aside

for the perpetual care fund?

MR. MUELLER: I am rather inclined to go along with the New York State law after they have shown me that it has been enough -- or maybe it is too much; I don't know. The 15 percent current maintenance fund in a number of cases that I know of gives them quite a lot of leeway. They find that they have got a surplus - that is over the first year. There are others that probably because of the method of their maintenance find it insufficient.

MR. SILBER: How many cemeteries come under your supervision or jurisdiction?

MR. MUELLER: Personally I have two cemeteries that I am manager of. Under the Association we have, I think, around 51 cemeteries.

MR. SILBER: Are these 51 located throughout the state?

MR. MUELLER: Throughout the state.

MR. SILBER: Do you know what the current sale of plots - the average sale - would be today per plot? Can you give us a vague idea?

MR. MUELLER: Well, I would say in the northern section of the state -- I must divide this up -- the average lot would run -- Not "lot", "grave."

MR. SILBER: I meant per grave.

MR. MUELLER: In the neighborhood of \$85.

MR. SILBER: So that I gather from your early statement, if 20 percent or 25 percent, which would be \$17 and \$20, were set aside,

you feel from your large experience that would adequately take care of the maintenance of that one plot?

MR. MUELLER: Twenty percent?

MR. SILBER: Against the sales price.

MR. MUELLER: Well, I would still think that if you are talking about current maintenance or perpetual care that you would have to set that up somewhat differently. In other words, we can only use the interest or the earnings on the perpetual care fund for that purpose. But your current maintenance, I think, should be at least 10 percent.

MR. SILBER: Outside of cutting the grass and seeing that the streets are repaired, what other features do you incorporate in what you call perpetual care?

MR. MUELLER: There are many things. Most of the old-time cemeteries have a great many trees that must be taken care of. There is the water line - the sewage to take care of. There is the filling of sunken graves. There is the tearing out of old trees - when I say old trees I mean evergreens - embellishments and things of that sort, the raking of leaves in the fall, which is quite a problem. All these things come under maintenance.

MR. SILBER: Do you think 25 percent of the purchase price would adequately take care of the current maintenance and perpetual care?

MR. MUELLER: I would say that, but I am just wondering where some of the cemeteries are going to get that to set aside. There are

cemeteries that are not making lot sales. They are either sold out or they are in a community where the sale of ground is almost at a minimum. I am speaking now mostly for cemeteries that have no sales. We find where they have a sales force or just one salesman out and their current sales should run anywhere, let's say, from \$20,000 to \$30,000 a year, ~~that~~ the 25 percent wouldn't affect them so bad.

MR. SILBER: You observe, of course, that the price of a cemetery plots has varied with the increased cost of maintenance; isn't that so?

MR. MUELLER: Well again, I must say from my own viewpoint, we haven't raised one nickel on any of our plots.

MR. SILBER: In how long?

MR. MUELLER: I am fourteen years with one and six years with another and we haven't varied the price. Oh, yes, in the single grave section we raised it \$5. That was because we had to pay a certain portion of that to our trustee for his clerical work. Mr. Wilton, who is representing the Association at the hearing, will give you a memorandum on many of the things that I have spoken about.

THE CHAIRMAN: He will probably cover the other points you would want to make. Thank you very much, Mr. Mueller.

Mr. Schiffman, do you wish to testify please?

MR. DAVID SCHIFFMAN, lot owner in King Solomon Cemetery, Clifton, N. J.:

I am very much interested in having all cemeteries in the

State of New Jersey protect all the citizens and all the people and that the money that an individual pays for a plot takes care of perpetual care and is put up with the Banking Department in trust. The State lives on forever. These individuals who own cemeteries keep this money in their own names. As they die, it goes to their estate and who is going to carry on?

THE CHAIRMAN: Mr. Schiffman, do you concur in the views given by Mr. Blahy. Just to keep this thing going a little faster, if it is just merely repetitions, you may say you concur in the views expressed by so and so concerning the perpetual care fund.

MR. SCHIFFMAN: That is right.

THE CHAIRMAN: That is your testimony?

MR. SCHIFFMAN: Yes, thank you.

THE CHAIRMAN: Thank you very much, Mr. Schiffman. I have attempted in calling the witnesses to call those who registered in the order in which they registered, and those who came a little later, who are registered on the second page, will be given an opportunity to be heard later. Now, I am particularly saving Judge Carey for this afternoon's session for a special reason. You will be the first witness this afternoon at 2 o'clock, if you don't mind, Judge, unless you want to go sooner.

JUDGE CAREY: I can stay here all day.

THE CHAIRMAN: I would appreciate your reading your testimony before the committee at the second hearing and comparing that with the

memorandum you have submitted to the committee this morning, so that in giving your testimony, you may pick out new points set forth in the memorandum and you need not repeat what is already testified to.

JUDGE CAHEY: There are one or two things in the testimony that I will have to refer to because otherwise I wouldn't be down here.

THE CHAIRMAN: I thought during the luncheon recess you might avail yourself of the opportunity of comparing the testimony.

JUDGE CAREY: I wrote those documents. I know what is in them.

MR. CHAIRMAN: Mr. Ernest Kurzek. Mr. Kurzek, will you just sit down and tell us whom you represent?

MR. KURZEK: I represent myself - Ernest Kurzek - a lot owner.

THE CHAIRMAN: Give us your address.

MR. KURZEK: My address is 101 Cooper Street, New York, and I have an address at 2 East Monroe Street, Passaic.

THE CHAIRMAN: But your residence is at 101 Cooper Street, New York City?

MR. KURZEK: Yes.

THE CHAIRMAN: You likewise testified at the first hearing of this Committee. If you please, in your testimony today will you limit yourself to only new material not covered at the previous hearing?

MR. KURZEK: Yes.

THE CHAIRMAN: Proceed.

MR. KURZEK: First off, I would like to answer Mr. Schiffman, who is a lot owner in the same organization that I own a plot in, and I would like to stress to this Committee one of the major reasons for the chaos in the cemetery situation is the apathy of the lot owners who have failed in their duties, and not because the statutes are inadequate, because from my experience, and I have some 25 years of experience as a landscape gardener in cemeteries and I have sold considerable property for cemeteries in New York and New Jersey, I have found that the statutes we have in New Jersey are sufficient to cope

with any emergency or any indiscretion by any cemetery official.

MR. CHAIRMAN: In other words, you concur in the continuance of the present cemetery statutes?

MR. KURZBOK: With certain minor amendments. I appeared at the suggestion of the Attorney General of the State of New York at the time they were formulating the new cemetery act, and Commissioner Abe Wagman, who was responsible for considerable of the improvement, said that if they had had a set of statutes as we have in the State of New Jersey it would never have been necessary to go into all the research they had to go through at the time in the matter of the Kensico Cemetery--

THE CHAIRMAN: Let's get down to the amendments that you propose.

MR. KURZBOK: Now, Mr. Schiffman is an Exhibit A of what happens in a cemetery such as ours under the membership corporation act--

THE CHAIRMAN: Under the membership corporation act?

MR. KURZBOK: The cemetery act, a cemetery being a corporation and the lot owners being constituents thereof are members of the cemetery association.

MR. CHAIRMAN: We are familiar with the provisions under Title 8 dealing with cemeteries, so proceed.

MR. KURZBOK: Therefore, an annual meeting is incumbent under the statute.

THE CHAIRMAN: Do you wish to propose that there should be an amendment to that section which calls for an annual meeting?

MR. KURZBOK: We arrive at this stage: The cemetery consists

of lot owners who are members of an association, which is a charitable trust. Once a year they have an annual meeting to come in and voice their complaints and investigate the books and records of the cemetery. Mr. Schiffman to my knowledge has not appeared at any of these.

THE CHAIRMAN: Mr. Kurzrok, will you please limit yourself to the recommendations and suggestions that you wish to make and please do not go into personalities regarding any witness who is here. Just refer to the general lot owner.

MR. KURZROK: It was for the purpose of pointing to the situation. Now, the lot owner having the right to appear at these meetings has a right to examine the books if he has notice of a meeting.

THE CHAIRMAN: Our statutes require notice.

MR. KURZROK: By printing a notice in the newspaper once.

THE CHAIRMAN: Does the present statute require notice to the lot owners?

MR. KURZROK: Yes, which is insufficient.

THE CHAIRMAN: Do you wish to change that?

MR. KURZROK: Yes.

THE CHAIRMAN: Give me your change.

MR. KURZROK: I state this, inasmuch as most lot owners--

THE CHAIRMAN: Do you want to refer specifically to the title and the section and the paragraph of the act?

MR. KURZROK: Well, offhand--

THE CHAIRMAN: If you are not familiar with it--

MR. KURZROK: I am familiar with what the act provides.

THE CHAIRMAN: What is your recommendation with respect to notice to lot owners?

MR. KURZROK: That the lot owners registered with the cemetery shall receive a notice of the annual meeting.

MR. McDONOUGH: How?

MR. KURZROK: By mail.

MR. WILSON: Is this a non-profit organization you are referring to now?

MR. KURZROK: Mr. Wilson, according to the interpretation of the cemetery act of the courts, and we can go way back to 1911, cemeteries are not profitable.

THE CHAIRMAN: I think, Mr. Kurzrok - excuse me, Assemblyman - that part of the testimony you are now trying to give is covered on page 51 of the testimony given before this Committee at its first meeting. We have already noted your recommendations there.

MR. KURZROK: I wish to further emphasize--

THE CHAIRMAN: You want to change that?

MR. KURZROK: I want to emphasize the fact that the lot owners have not sufficient notice of such meeting.

THE CHAIRMAN: We have that in your testimony at the first meeting and we have noted that and we will give it due consideration. Do you want to amend that recommendation?

MR. KURZROK: What I have done now is, I have just enlarged on the recommendation and it stands as it was reported to your Committee.

THE CHAIRMAN: Proceed to your next point, Mr. Kurzrok.

MR. KURZROK: I have communicated with the Governor of the State of New Jersey with respect to the Attorney General's failure to prosecute cemeteries - or let me correct that: I have communicated with the Governor of the State of New Jersey and have expressed to him my belief that the Attorney General of the State of New Jersey has failed to carry out his duty to protect the public interest inasmuch as he has failed to prosecute.

THE CHAIRMAN: May I stop you right now. We are not concerned with any administrative problem that may be before the Governor or in your mind. We are concerned strictly with the cemetery act.

MR. KURZROK: I am coming to that.

THE CHAIRMAN: If you have any recommendations--

MR. KURZROK: I am coming to the recommendations now.

THE CHAIRMAN: Mr. Kurzrok, I give you the courtesy of speaking to this Committee without interruption. If you will give me the same courtesy, I will appreciate it. If you have any recommendation to this Committee as to what should be done upon complaint made by any citizen, we would be very glad to hear it, if that complaint is properly presented. As to the matter of making a change in the statute, what you said to the Governor or what he said to you we are not interested in.

MR. KURZROK: The change would be this: There has been recently enacted a provision for the appointment of a public defender with reference to the Public Service utilities, and from my knowledge of the flood of complaints to the Attorney General and

his failure to proceed on those complaints--

THE CHAIRMAN: I am going to ask that you confine yourself to the issue. You now accuse the Attorney General of failure to proceed.

MR. KURZROK: I state so with my knowledge--

THE CHAIRMAN: There is nothing before this Committee with respect to any failure and we are not interested. You were talking about a public defender for the Public Utility Commission.

MR. KURZROK: As a recommendation for the improvement of the present statutes.

THE CHAIRMAN: What is your recommendation with regard to the cemeteries?

MR. KURZROK: There shall be an office similar to that of a public defender, to hear and prosecute any malfeasance of any trustees of any cemetery, or any violation of the laws of the State of New Jersey.

THE CHAIRMAN: Violation of the laws of the State, or the cemetery laws?

MR. KURZROK: They are laws of the State of New Jersey.

THE CHAIRMAN: We are concerned with the cemetery law.

MR. KURZROK: It is still a part of the statutes of the State of New Jersey.

THE CHAIRMAN: Now we have that notation, any further comments?

MR. KURZROK: There was some comment by Mr. Bluhly with reference to taxing of cemeteries. Now, inasmuch as the courts have on numerous occasions, and particularly in the matter of West Ridgeland Cemetery,

held that the cemetery is a charitable trust, as Mr. Wilson has 58.
brought out through comments, that burial is an inherent right
and also the future need of cemeteries, and that a cemetery is not
used as a commodity for one day or one year,- Most cemeteries run
for ages,- The tax will eventually make it prohibitive for the lot
owner to purchase a plot, as eventually the tax will have to be added.
If such a tax is legal it will be added to the cost of the plot.

THE CHAIRMAN: I take it you are opposed to the taxation of
cemetery lands.

MR. KURZROK: As a charitable trust. And I say furthermore,
with reference to the perpetual care, there should be some provision
in the act for a fiduciary institution such as created under the
trust act, under the trustee provisions, to also take care of the
increment of the foundations and any other increment which may arise
from the maintenance of the cemetery.

THE CHAIRMAN: What do you mean, "increment of the foundations"?

MR. KURZROK: Well, there is a charge made for the building of
a foundation, of which the cemetery is the sole erector, and that
the fund from these foundations or from any other income which is
derived from maintaining the cemetery shall be under the supervision
of the fiduciary agency.

MR. WILSON: Is it not true that there is a stipulation for
your foundation charges that is generally prescribed? Individual
situations are not picked out and charged accordingly. There is an
overall picture that covers the charges, is there not?

MR. KURZROK: Mr. Wilson, that is quite true. The total increment of a cemetery for foundations runs into quite an enormous sum. It is not a petty cash proposition. It runs into a nominal sum. Where you figure a dollar per cubic foot or so, it runs into a tidy sum and that will go to perpetuate the cemetery and maintain it as a respectable place for the burial of the dead.

THE CHAIRMAN: Any further recommendations?

MR. KURZROK: I would recommend further that quo warranto proceedings—

THE CHAIRMAN: I might say we no longer have any quo warranto proceedings in the State of New Jersey.

MR. KURZROK: — or any equivalent act be taken against any corporate act contrary—

THE CHAIRMAN: That would be covered, would it not, in your proposition that there may be a public defender to prosecute in the event any cemeteries violate the act?

MR. KURZROK: Only that it was brought out by Mr. Dluhy in his recommendation.

THE CHAIRMAN: Do you have anything further, Mr. Kurzrok?

MR. KURZROK: Yes, I have. I would also say this: Now, if there be, and there has been some suggestion that a board be set up similar to the State of New York, where there are receivers appointed, and in place of receivers that the cemetery board shall act in that capacity— if they are going to do that, it also should be part of the act. I don't know where to fit it in there.

THE CHAIRMAN: Let us worry about that.

MR. KURZROK: -- that where the officers of certain cemeteries, a charitable trust, purchase or use their office for their own enrichment, it shall be a violation of law to do so. Thank you, sir.

THE CHAIRMAN: Mr. Kurzrok, before you leave the stand, I would like to ask a few questions. Do you mind, please? You are a lot owner, are you not?

MR. KURZROK: Yes.

THE CHAIRMAN: And you own lots in what cemetery?

MR. KURZROK: West Ridgelawn Cemetery.

THE CHAIRMAN: West Ridgelawn Cemetery. How many lots do you own?

MR. KURZROK: One lot.

THE CHAIRMAN: One lot. And do you represent anyone who owns more than one lot?

MR. KURZROK: Well, I represent the Lot Owners Protective Association of West Ridgelawn Cemetery. Not being a lawyer, I don't represent - I can't represent them.

THE CHAIRMAN: Do you speak for them?

MR. KURZROK: I speak for them, but I am the secretary of the Lot Owners Protective Association.

THE CHAIRMAN: Where is this Lot Owners Protective Association?

MR. KURZROK: 2 East Monroe Street.

THE CHAIRMAN: Where is it registered?

MR. KURZROK: It is not.

THE CHAIRMAN: Have you filed a trade name in the County of Passaic?

MR. KURZROK: We are a voluntary organization.

THE CHAIRMAN: And you haven't filed your list of officers or list of trustees?

MR. KURZROK: The courts of the State of New Jersey recognize us as such.

THE CHAIRMAN: How many lot owners are there in that association?

MR. KURZROK: There were originally about sixty.

THE CHAIRMAN: How many are there now?

MR. KURZROK: Now there are about seven.

THE CHAIRMAN: And how many lots do they own collectively?

MR. KURZROK: Collectively-- well, according to the act they own seven.

THE CHAIRMAN: How many do they own in their own right, by deed?

MR. KURZROK: To the best of my knowledge, about seven lots. And may I again call this to your attention, sir? There is a confusion there between lots and plots. The act says "lots or plots." We don't know which is which.

THE CHAIRMAN: You don't know which is lots or plots?

MR. KURZROK: That should be taken care of.

THE CHAIRMAN: When you say you represent the owners of seven lots, how large are these lots?

MR. KURZROK: They vary in size.

THE CHAIRMAN: How large?

MR. KURZROK: Well, they take an organization--

THE CHAIRMAN: Never mind the organization.

MR. KURZROK: Offhand-- you are asking me a question which has been in the records for some 20 or 30 years. I couldn't say offhand.

THE CHAIRMAN: How about the lot that you own?

MR. KURZROK: My plot is 32 by 210.

THE CHAIRMAN: Therefore, it covers more than one lot, doesn't it - 32 feet by 210 feet. That is space for how many graves?

MR. KURZROK: Well, it all depends--

THE CHAIRMAN: Give us the approximate number of grave lots you have in that plot that you own.

MR. KURZROK: Well, it might be about 200 graves.

THE CHAIRMAN: 200 graves. When did you acquire that property?

MR. KURZROK: I acquired that property in 1926, under these circumstances--

THE CHAIRMAN: I didn't ask you under what circumstances.

MR. KURZROK: I should explain to you. You asked me. I acquired that plot as an advancement of some money to the cemetery and the funds were never refunded to me, and I was given this plot in its place.

THE CHAIRMAN: How much money did you advance?

MR. KURZROK: I advanced about \$12,000.

THE CHAIRMAN: And in return for that \$12,000, you got this tract?

MR. KURZROK: 210 x 32.

THE CHAIRMAN: I see.

MR. KURZROK: That is offhand, the size of the plot.

THE CHAIRMAN: What do you propose to do with these lots?

MR. KURZROK: Any time the cemetery wishes to refund me the money they can have the lot. I stand in the same position as in the matter of Buckmaster, one of the decisions - it is a very fine case - by Vice Chancellor Stevens, where the court took into recognition that--

THE CHAIRMAN: Let's not worry about that decision.

MR. KURZROK: You asked me a question. I am going to answer you.

THE CHAIRMAN: I would be very happy to hear an intelligent answer, Mr. Kurzrok. You, yourself, don't need a plot 210 x 32.

MR. KURZROK: No, sir, a plot say 10 x 16 would be sufficient for my needs.

THE CHAIRMAN: Since 1926 until the present time you have not paid any taxes on this land, have you? You haven't paid any taxes on this land, have you?

MR. KURZROK: I don't own it. All I own is a burial right. I don't own the land. All I own is that burial right.

THE CHAIRMAN: And no taxes have been paid on this particular tract of land that you know of?

MR. KURZROK: I understand the cemeteries pay taxes.

THE CHAIRMAN: Has this land appreciated in value since 1926? Has the land itself appreciated in value?

MR. KURZROK: For my purpose, no, not for my purpose. And I will say again, any time the cemetery wishes to refund me the money.

THE CHAIRMAN: I am not interested.

MR. KURZROK: In view of the innuendo raised by you--

THE CHAIRMAN: I object to that, and you are out of order.

MR. KURZROK: I am not, because let me further add--

THE CHAIRMAN: I might say this is a legislative hearing, Mr. Kurzrok, and for your benefit, unless you conduct yourself as a proper witness, I shall exercise all the rights and privileges which are granted to me under authority of the Legislature.

MR. KURZROK: I appreciate, sir--

THE CHAIRMAN: Unless you give us the proper degree of respect, we shall exercise that right.

MR. KURZROK: Mr. Chairman, I fully appreciate your authority and I in turn--

THE CHAIRMAN: So conduct yourself, please.

MR. KURZROK: I in turn request the same privilege and give me the same opportunity. And I would also like to call to your attention the recommendation of the local paper, the Passaic Herald News, with reference to the question of cemeteries in our State.

THE CHAIRMAN: I am not interested in any editorial comment. Any further questions of the Committee?

MR. WILSON: None whatever.

THE CHAIRMAN: That is all, Mr. Kurzrok, thank you.

THE CHAIRMAN: Mr. Herbert Moore --

MR. HERBERT MOORE, Counsel for the Greenwood Cemetery Association:

I have nothing to say at this time.

THE CHAIRMAN: We will so mark the record.

Mr. Marius Grosso appearing for the Rosedale Cemetery --

MR. MARIUS GROSSO, for the Rosedale Cemetery in West Orange, Orange and Montclair:

Yes, Mr. Shershin, I would like to say something, if I may.

THE CHAIRMAN: Will your remarks be concluded by one o'clock?

MR. GROSSO: It will only take a few moments. The cemetery that I represent is an old established cemetery. It has been in existence for more than one hundred years. It has always been non-profit-making. It is run by able businessmen who are prominent in the community. We have a large perpetual care fund and I would say that as cemeteries go, we are a very rich one, possibly because we have been non-profit-making. Now, in spite of the fact that we do have a great deal of money that is being administered by very able men who have the assistance of expert investment counsel, it is impossible for us to maintain the cemetery, based on current labor prices, without resorting to the sale of lots. In other words, our income is insufficient without resorting to that.

THE CHAIRMAN: When you sell your lots, do you provide for the perpetual care fund?

MR. GROSSO: No one has ever gotten any profit out of the cemetery. We have a very large perpetual care fund. If a cemetery such as ours is unable to get along, it seems to me that the suggestion for taxing cemeteries in general will not be in the public interest, but will merely create a condition where cemeteries are more run down.

The other thing that I would like to say is that we at no time have indulged in any speculative sale of lots. We employ no salesmen. We prohibit the resale of lots. And if occasionally an owner is dissatisfied with the lot, we repurchase it from him at its fair market value. I want to say that to rebut the suggestion that cemeteries in general are run by promoters or people who are interested in profit motive. Thank you.

MR. SILBER: How large a cemetery is the one you speak of?

MR. GROSSO: It is the maximum size.

MR. SILBER: What proportion of that is developed?

MR. GROSSO: I can't give you the exact percentage - most of it is developed.

MR. SILBER: Are most of the plots sold or are there still a considerable number available for future sale?

MR. GROSSO: It depends on what you mean by considerable. There are considerable lots still left, but a minor part of the entire cemetery.

MR. SILBER: At the rate you have gone for the last ten or fifteen years, you could go a considerable number of years more?

MR. GROSSO: I am guessing, but I assume we could.

MR. SILBER: There will be additional income as years go on to this fund?

MR. GROSSO: Yes, Mr. Silber.

THE CHAIRMAN: Before you go, Mr. Grosso, what about the salaries that are paid to the officers of the corporation?

MR. GROSSO: So far as I know, no officers get any salaries other than the president and the office employees and the men who work on the grounds.

THE CHAIRMAN: What about the salary that the president gets? Can you tell us what it is?

MR. GROSSO: I would be glad to furnish you with that. I am unable to state it because I am appearing here for my law partner who actually represents the cemetery, who is ill.

THE CHAIRMAN: Is he a full-time employee?

MR. GROSSO: He is a full-time employee. I know he gets a very modest salary. What it is, I can't tell you, but I would be glad to submit it.

THE CHAIRMAN: How many lots in the cemetery does he own?

MR. GROSSO: To my knowledge he doesn't own any lots.

THE CHAIRMAN: He just operates the cemetery?

MR. GROSSO: Subject to the control of a non-salaried board of proprietors, who, for attending the meetings, get a ten-dollar director's fee. Most of them are wealthy men and don't attend the meeting.

THE CHAIRMAN: I didn't hear the answer to the question Mr. Silber propounded: What percentage of the cemetery has not been sold?

MR. GROSSO: I would like to be able to answer that specifically in writing to you and have the actual figure put in.

THE CHAIRMAN: Will you please submit that to the committee within the next five days.

MR. WILSON: Mr. Grosso, you stated that there were no resales made of plots. In other words, if an individual or a family owned a certain plot and they moved to a different locality, a different state -- let's say they moved to California -- what provision have you made in your organization for the resale of that plot for which they would have no future use?

MR. GROSSO: That situation to my knowledge has only come up once recently and the cemetery repurchased it from the person at its fair market value.

MR. WILSON: That is all.

THE CHAIRMAN: Thank you. Just before we adjourn for lunch, for the benefit of those who are to furnish memorandums or any information for the committee, will you please write to the committee, care of Roger McDonough, Director of the State Library, State House Annex, so that all these communications may be kept in a file together.

Is there anyone who might consume just about five minutes. We have five minutes more?

MR. FRANK: I would, sir.

THE CHAIRMAN: Give me your name.

MR. FRANK: Charles Frank is my name.

THE CHAIRMAN: All right, Mr. Frank.

MR. CHARLES FRANK, representing the Woodbridge Monument Works:

I would like to inform this committee that there are cemeteries who refuse to accept perpetual care payment on a plot. They insist on having it annually. The reason why I object to it is this: Assume that my father dies when I am 20 years old and I must pay perpetual care on that plot. If I have any respect for my father, I will pay that till I am fifty or sixty, after which time the cemetery doesn't owe that lot anything - has no obligation toward that lot. I am opposed to having annual care collected annually. It should be included when the lot is purchased as perpetual care.

I am also opposed to cemeteries not permitting outside landscapers to come in and landscape plots. And I am also opposed to cemeteries charging \$50 for a two by one foundation on one side of the road, which is a memorial park, and \$12 on the other side of the road because the granite marker is allowed. In other words, they charge \$50 for one side of the road for the same thing that is \$12 on the other side of the road.

Now we have a rule for foundations, lately some cemeteries have changed the rule. Instead of charging \$1 per cubic foot or \$1.50, they have changed it to \$5, \$8 or \$10^{for} superficial feet, in order not to be brought under the Weight and Measure Law.

THE CHAIRMAN: Will you explain that. That is not within my peculiar knowledge.

MR. FRANK: For instance, you order a foundation and the method is to charge you per cubic foot. A foundation four feet long and one foot wide at six foot depth would be twenty-four feet. So when they got caught not going down six feet deep and their attention was brought to it, immediately they changed the rule so that there would be no charge per cubic foot, but there be a charge for superficial feet.

THE CHAIRMAN: Or lineal, which do you mean?

MR. FRANK: Whatever you can see on the top. Therefore, you can't charge them with charging you for something that you didn't get.

THE CHAIRMAN: Have you found any occasion in which you paid for a six-foot depth foundation and didn't get it?

MR. FRANK: Positively. That happens every day.

THE CHAIRMAN: How long have you been in the monument business?

MR. FRANK: I have been in the foundation business twenty-five years; in the monument business, twenty-five years. I have paid for six feet and got sixteen inches.

THE CHAIRMAN: On how many occasions?

MR. FRANK: Then the monument goes crooked and we get it in the neck.

THE CHAIRMAN: On how many occasions?

MR. FRANK: Hundreds of occasions in the last twenty-five years.

THE CHAIRMAN: When you charge the family of a deceased person for the erection of a monument, you assume at the time you fix the price

that the foundation is a proper foundation six feet deep?

MR. FRANK: We give them the price for the monument plus the foundation charge, whatever the cemetery charges.

MR. WILSON: Is that charge for the foundation established by the cemetery association?

MR. FRANK: No established by individual cemeteries. It would vary from 75¢ a foot to \$2 a foot. And when the cemetery is in the monument business, they will keep on increasing it up to ten feet and only go to three or four.

MR. WILSON: Does the cemetery association have a yardstick whereby they prescribe the depth?

MR. FRANK: They usually do. The usual thing is to go down to the full depth of the grave.

THE CHAIRMAN: In order to protect the family of the deceased, where that family desires to erect a monument, the footing or the foundation should be a minimum of six feet?

MR. FRANK: The full depth of the grave, which is anywhere from five to six feet.

THE CHAIRMAN: Anything further, Mr. Frank?

MR. FRANK: I had one or two more things. I am opposed to any taxation of cemeteries, providing that we have a cemetery law that will keep the cemeteries in line and take the profits out of cemeteries. And I am opposed to salesmen going out selling cemetery lots. That is something you either need or you don't need. You have enough undertakers selling lots for commissions, let alone having salesmen going out and

getting as high as 60 percent commission on the lots.

THE CHAIRMAN: That has to do with the internal arrangements of a cemetery, and I don't know whether that is beyond our scope. I can say, and justly so, that the cemetery that wants to develop its property in order to get a decent and a goodlooking cemetery, would perhaps have to have a promotion system whereby they might get some income to develop a particular area. As I say, that may be beyond the scope of this committee.

Thank you, Mr. Frank; we will now adjourn until two o'clock.

(HEARING ADJOURNED FOR LUNCH.)

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missing

AFTERNOON SESSION.

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THE CHAIRMAN: The hearing will now come to order, please. Sorry to be about five minutes late, but it was not my fault I can assure you. I thought we would wait for the rest of the people to arrive.

If there are any people present who were not here this morning and who desire to be heard, I respectfully ask that you give your name to the secretary. I assume there are no new people present this afternoon.

We will now hear from Judge Robert Carey, East Ridgeland Cemetery. Judge Carey, just before you begin, I want you to appreciate the fact that we have testimony given by you at a previous hearing. I presume that you have read this testimony.

JUDGE ROBERT CAREY: The testimony that you sent me by mail, or someone did--

MR. SILSEN: I think I did.

JUDGE CAREY: That was not testimony. That is simply a report of a conference that the Attorney General and I had, and you left us in the middle of it because you had another conference, and you tried to leave us twice. I have no objection to it otherwise.

THE CHAIRMAN: I might say that your comments at that hearing are recorded. Now, when you say something which transgresses upon this testimony, you will permit me to stop you.

JUDGE CAREY: You were the only member there.

THE CHAIRMAN: I am the only member present now.

JUDGE CAREY: How can you talk to a committee when the members are not present? Now, I was told that the committee would be here at two o'clock to hear us. Now we come back and we find you sitting here alone - nobody else - no minds to contravert or get ahold of. You know most everything that I know. They don't.

THE CHAIRMAN: Judge Carey, everything is being taken down stenographically. Copies will be prepared and mailed to the committee.

JUDGE CAREY: That was not a hearing. That was simply an informal hearing broken up by you going to a conference.

THE CHAIRMAN: Will you proceed?

JUDGE CAREY: I never paid any attention to it other than that.

THE CHAIRMAN: Well, we did. Now, Judge, will you proceed?

JUDGE CAREY: What I want to say is a supplement to everything else that has been said to date. This is to my mind the only time I have ever had a so-called committee meeting and now find I am devoid of the presence of two-thirds of the committee, but I am ready to go on and state my views, because, after all, we are all here for the same purpose. We are trying to get a better cemetery law, I assume, in this State. Our cemetery law has been so far behind the age that nobody can understand a great many of its parts. I am a lawyer; I have been doing cemetery business for various associations for a great many years. I have been counsel for the New York Bay Cemetery, the oldest and best cemetery of its type in the entire State, with nearly 200,000 people buried in it. For over

45 years we have never had a law suit during that time or trouble of any sort, kind or character, and financially we are in shape to take care of the future. Now, I mention that because I have no ax to grind here.

I have been counsel in several matters for cemeteries up in your county, just as I think you have been too, in the past, so I know what the picture is up there at West Ridgelawn and East Ridgelawn and the other cemeteries up there. I think I know which are in the red and which aren't. We are in the red.

THE CHAIRMAN: May I ask you, so far as the history of the cemeteries is concerned, I think you and I and the people in this room are familiar with the history, and the other two members will read your report, which is part of the testimony--

JUDGE CAREY: I don't give the history of it in the report.

THE CHAIRMAN: Your history is given in the first paragraph.

JUDGE CAREY: Nobody is paying me for being here today.

THE CHAIRMAN: We appreciate that you have a wealth of information.

JUDGE CAREY: I have been through this for years. I have had to be in contact with the Governor and with the Attorney General's Office often. They have asked me to come in and help out on this program. I said willingly, "I will." It is costing me money. I even have had to pay for a lot of papers I have gotten from the New York Commission. I am not here as a representative of any cemetery company, even though I am associated with two or three of

them. I am not here to represent any organization. I took it up with the Chamber of Commerce and they said I could speak for them. I said, no, I am not going to.

We have our cemetery problems in our city. We have just found a dilapidated, run-down cemetery there, and we have had to call for public collection to put that cemetery in shape so anybody could look at it, only within the last four months. I mention that because we have these cemetery laws - I have them in my hand here now - the most complicated collection. Most of it has had to go through the courts a dozen different times and some of it is in the courts right at this moment. It was never prepared properly. It is a part of the revision of 1886. They never revised the law in 1886; they just collated the cemetery agency and the pecuniary profit laws. And that is all the law we have in this State today - that revision with two or three supplements and amendments passed in the last few years but which are of no real importance and not worth talking about anyhow. That is all we have got. I have tried case after case in later years and I have seen some very tough propositions. I have seen some cemeteries almost brought to ruin through the financial picture that should not have been. I found out why they were. I found their local problems came from the type of promotion that was permitted even under this law, the old law back as far as 1906-07, and you, Mr. Chairman, are familiar with that picture because it is right in your own town and the cases are still pending, several of them. You have had the tax case there. You have it partially

settled.

THE CHAIRMAN: I am familiar with that. Will you give us your recommendations on the basis of your experience?

JUDGE CAREY: Yes, I am going to. I have talked before legislative committees for 50 years. I have never had any trouble with one of them and I respect them, and I respect you as Chairman of this committee. Now, I do - and there we stop. But I didn't come down here to simply whittle at the heavens that god so and so was here. I am a citizen of the State and I have had to do with a lot of civic organizations. We have these problems right in my city and county right now, lots of them, and they have got to be taken care of.

When I was dictating the memorandum which I handed to you this morning - I dictated this yesterday morning - the young lady to whom I dictated it said, "Judge, can I ask you something?" I said, "Yes." She said, "Do I have to trim all the grass on our cemetery plot ever in Fairlawn Cemetery?" I said, "What do you mean do you have to trim it?" She said, "They won't take care of our plot. We have got to either pay money especially or we have to do all the work ourselves. I don't understand that." I said, "I don't either, so we won't talk about it." But they are the pictures that are all around all of us. Cemeteries are something that interest four million people in this State who are living right now. Where are we going to be buried? I have three plots myself and I don't know which one I am going to be buried in yet. I am thinking of getting one outside of Passaic and

one outside of Hudson, probably over in Bergen where the trees are still green and everything is quiet and sedate and pleasant. Now, we are all interested, although I have been interested in this thing for a couple of years down here. I have gone over to New York and have conferred with the New York authorities time and time again to study what their picture was, because it was the same as ours until they began to act over in New York. They finally determined, after the most thorough kind of investigation possible, directed by the Governor of the State of New York, in which some of the leading lawyers of New York State were put on a committee to consider the matter, that there was only one way to handle cemetery problems today and that was to have a cemetery board established in the State, composed of men not tied up politically in any way where their influence might be affected one way or the other - a limited board. They finally came to this conclusion: They made the president of the Board of Health of the State of New York a member of the board, they made the Attorney General of the State of New York a member of the board, and they made the Secretary of State a member of the board-- this board to serve without pay. The board as they set it up was permitted to have an advisory board which they would appoint from cemetery men all over the State. They appointed a board of eight men under the law that they enacted - eight men representing all the interested cemeteries of New York State, and these men do a lot of work. They don't vote in the board. They are simply consultants all the time, and they made the Attorney General's Office the legal

adviser of the board, he to have a representative delegated from his office to appear in every cemetery proceeding that comes up in the State in any phase of cemetery life. The result of it is that over in New York today, and that is why we have all been talking about it, they have this wonderful system.

I presented to each one of you a copy of the New York book this morning, with a copy of the last law, the law of 1949, in which they attempted to bring everything up to date. In that law they have tackled almost all the problems we have talked about here today, and it is working beautifully. I have been in constant contact with them for various reasons and know some of the officials who are members of the board there; I have talked with the Governor over there and he says it is running perfectly and they are bringing cemeteries where they belong and protecting the people of the State in the rights that they should enjoy in cemetery life and prospect. I look at it this way: I visited my father's grave in the New York Bay Cemetery. It is a beautiful place all through there, and as you go through there you wonder whether you will be buried there or some other place. We all know we are going to one of them if we live long enough, aren't we? We won't go until we cease living. After you have been Attorney General you will try to find a resting place too, in one of these places.

I was tremendously interested today in the attitude of the gentleman who represented the Catholic Church here. I am a Protestant. I can talk plainly about them, can't I? They were here as Catholics;

they painted a beautiful picture as to how the dead should be taken care of in a religious way, and we pretend in our law to take care of them but we don't take care of them at all. When the Constitutional Convention was held just four years ago we had a serious fight on that problem-- the question as to whether cemeteries should be taxed. Finally, by the unanimous vote of that Convention, it was adopted by the people at election day - we decided that all exemptions existing at the time of the adoption of that Constitution affecting cemeteries should be continued in the future. We classified them with religious societies, and the arguments made here by the Catholic Church carry that out. I am an Episcopalian. I don't know that we have any cemeteries. We have hospitals, but I don't think we have cemeteries. The Methodists have cemeteries, some of them pretty old.

THE CHAIRMAN: Is that why they live so long?

JUDON CARRY: They make good legislators. Now, to come back, I want to recommend a cure for the present picture, and that is what you are after, but you are not going to get it by just adopting a few amendments to the cemetery act. I have studied all that. I have studied that over at the Attorney General's Office. We are both agreed on that, aren't we? We have to revise our law just as New York has practically done. We can take New York as a basis. We don't have to follow it completely. You are getting the experience of men who have tried and have made a success of it to date. Now they have ended all this speculating by promoters ever in New York absolutely.

They can't make a dollar, and it has been working out perfectly. If we had that system in New Jersey 20 or 25 years ago, I would have been much happier and so would some of the enterprises I have represented since then. The courts are full of it. We have a court case now pending in the Court of Errors and Appeals, in the Superior Court, involving this whole problem. In that case - let me give you a little illustration. This will help you. Not far from here, up in the upper part of Monmouth County or the lower part of Middlesex is a cemetery. The manager and president of that cemetery was a witness in the last case tried in your county before Judge Grimshaw, and he testified on cross-examination as to the value of the cemetery property. He said he knew what he was talking about because he had sold property to the cemetery that he was president of. He was president of the cemetery and a couple of his friends were the trustees. Right next to him is a farm. He bought the farm and organized a little corporation and the farm became owned by the corporation. I think they paid about \$18 or \$19 an acre, at the most, for the farm and then they entered into a contract. Right today this is going on; now, this very minute. He may be getting a check today; I don't know. Whenever they need an extra acre of land for the cemetery they figure they can beat the law. They convey one acre to the cemetery that they paid about \$18 an acre for, for \$28,000, and that \$28,000 has got to come to the cemetery from the sale of that acre before they ever get a dollar for cemetery purposes. That goes to the other company. They are the same - same

trustees, same officers. There isn't a board in this State today constituted to tackle that problem, not a board, not a court. What can we do? I say if we had a board like they have in New York and would give them the power New York State has given them, the power that I have suggested in the memorandum I have just filed with you - give them that power, all of it - it is all good - you would not find anything there you don't agree with because I have listened to you talk and I know I am talking the very same language that the attorney for the Town of Clifton talked today. I agree with practically everything he has said with the exception of a few matters of no great importance. He made a fine presentation of what he thought ought to be done.

I want to see first this committee of the legislature say that the cemetery laws of this State should immediately be thoroughly revised and brought up to date and if a committee is necessary to bring that about you can recommend the committee, but I would do it quicker than that. I would have a meeting of your committee and have your committee determine that is necessary, and have them send it to the committee that is revising the laws of New Jersey today. Senator Clapp, a fine man, is chairman of that committee. They are going to revise all the laws. They have just finished revising two or three tremendous statutes, big problems, just put through by the Governor. They can take this up next. The Attorney General will ask the Governor to direct them to take this cemetery matter up and they will prepare a revision with such facts as you can give to them

and you will have a revision ready for submission at the coming session of the Legislature, and we will have half the cemetery troubles in the State settled because you can cover every one of them. You take the matter of the perpetual care fund. Of course there must be a perpetual care fund in most cemeteries. There doesn't have to be any certain religious cemeteries that are dominated in another fashion than we dominate them in the ordinary things of life. That can all be taken care of. Have a special provision in the law covering all religions, not merely the Catholic Church, but all religions, because they all stand alike. Take the Jewish religion or any of them. They all stand alike, don't they? Absolutely! We can take care of them all to the advantage of the State and everybody in it. Our troubles don't come as a rule from the religious cemeteries; they come from the cemeteries that have been developed by a lot of promoters cooking up wild schemes of all sorts and kinds.

In the last year I have had five propositions submitted to me to be put to the East Ridgeland Cemetery for lot-selling programs by outside men. You know how much they want? They want 50 per cent of every lot that is sold, and then two of them said, "Then the cemetery can use what is necessary of what is left to run the cemetery." That would be nothing, because it would not run the cemetery. But they can do that and if there is anything left, then we get that too. In other words, they run the cemetery for profit, and just as you said and others said here today - what happens? As soon as that

cemetery gets crowded so it is not large enough to maintain it, then what happens? They have gotten their money; they have sold all their lots, haven't they? You take in your town of Clifton today - you have one cemetery there with six private companies owning it - six of them. Mr. Samuel Kessler is president of three of them and his business associate is president of the other three, all organized under the general corporation act of this State. They are the people that have been making all the trouble for you in Clifton on taxes during the last two years. You have just settled that tax case with them. I don't know how, but you have settled it anyhow. That is all wrong,- six private companies all operating under the general corporation law, running six separate cemeteries in one cemetery and using the franchise that was granted to that old cemetery as the basis for its right to sell lots at any kind of a price they can sell them for, and the minute they get all their money they will look for other cemeteries. That is their business. They ruined West Ridgeland right in your town.

I say we want a board with power, with teeth in its head. The act can provide for a delegation of their powers. We should have a law which says that anybody who makes an application in a cemetery matter should be heard by that board. and the people who are not satisfied with the result can appeal - in New York to the Supreme Court and here to our Appellate Court in the Superior Court. Now, these things could not be arranged now. I talked to them about the makeup of the board over in New York. They said, "Don't make the

mistake that we made twice. We have now three of the highest State officials making up the board." I talked to them about putting members of the Legislature here on the board, and they said, no, they will be in conflict with the board all the time.

THE CHAIRMAN: They are usually in conflict.

JUDGE CAREY: Don't you have them? I said, "We don't want them." Most of them are pretty decent fellows but I can't trust them to run the cemetery board on the side. If you get that board, gentlemen - listen, if you get that board you will settle all the problems of everybody in this room. This man has a problem. All he has to do is to go down before the board. They send for you. You have been trying to get reports about the cemeteries, haven't you?

THE CHAIRMAN: Yes.

JUDGE CAREY: A lot of them haven't given you any yet?

THE CHAIRMAN: Yes.

JUDGE CAREY: With a board developed like they are, you know what they do? If a cemetery didn't file the reports within 30 days, they would have its president down before them the following Monday and the report would be there. I have tried for years to find out how many cemeteries there are in the State and I can't find out yet.

THE CHAIRMAN: Close to 900.

MR. McDONOUGH: We have returns from 1143 and there are that many again, possibly.

THE CHAIRMAN: 1143.

JUDGE CAREY: That is a lot, isn't it? And they are all

organized today differently. Each one is a boss, each one is a boss right to itself. See what I mean? Let's have a system. You couldn't run the United States without the Supreme Court, could you? No, not for an hour. You couldn't run the State of New Jersey without government in the State House, could you? Not for an hour.

THE CHAIRMAN: Not without the Legislature.

JUDGE CAREY: Not while Hudson and Passaic are a part of it. We would run it between us. Now, that is one thing I want done. I want the perpetual care fund so made that it will be sufficient to maintain the cemeteries.

THE CHAIRMAN: What is your recommendation as to percentage?

JUDGE CAREY: As to the amount?

THE CHAIRMAN: Percentage, yes.

JUDGE CAREY: As to the amount that should be paid, I don't know. That would have to be determined by a state board. They would have their experts check up and determine what is necessary in any cemetery. Today we have no one to check up, have we? There isn't a cemetery in this State that is checked up by anybody for its requirements and nothing in our cemetery law that provides for it, and nobody cares. I think they all care or are beginning to. You folks are making the people care. It's about time they did. I have been, as I say, in cemetery litigation for over 40 years and I know what they all are - the most unsatisfactory things in the world. You can change all that now. We will call you "Assemblyman Blank and "Assemblyman Blank" for the purpose of having a full committee. Now,

you three - your two associates being in absentia - you three can determine that that is all going to change, and do you know what I would do? I would see some man like Senator Clapp, who is Chairman of the Revision Committee, and ask him if, when he revised the other laws the Governor wants revised, he would include this. You can change it to suit yourselves. Give him the ideas you want. I would put in this provision making it a crime for a man to violate deliberately the cemetery laws. I would put in there the provision that no suits can be brought against the trustees of cemeteries that are being properly run, simply for alleged neglect. The claims, if there are any, should be made against the cemeteries and should be presented to the cemetery board of the State. The claims should go to the cemetery board of the State. Cemeteries should not be permitted to enlarge their territory without the consent of the State board. Cemeteries should not be allowed to borrow money beyond a certain amount without the consent of the State board. Cemeteries should fix prices on their lots and submit them to the State board and should not sell lots until the State board has approved the price, and then there won't be the robbery there has been by some of these commercial cemeteries in our State within the last few years, where they are getting all they can and get out and get away. I don't represent any of them so I can talk plainly about them.

Then I would go further: I would see to it that in all cemeteries, lot owners should only have, for instance, one vote. A man who owns 10 lots should not have ten votes. In ordinary

elections where we elect a Governor, you and I each have one vote. Suppose you had ten thousand dollars and I had only one. Should you have ten votes to my one? I would borrow some and get more than you. We don't do it in regular life and we shouldn't do it in cemetery life - nothing like that. And we should have it provided that all cemetery books should be open for inspection by representatives of this State board at any and all times, and then we should go further than that. There has been talk about investing the funds of cemeteries. In religious cemeteries they have a system you would have to meet, and it is perfectly proper. As a matter of fact, I would rather have the endorsement of some of these religious corporations back of my obligation come to me than even a bank, wouldn't you? Sure. My experience teaches me that is correct, but we should provide that all commercially-operated cemeteries should keep all their funds and securities constituting future funds and things of that sort, and any trust funds they have, in a financial institution approved by the State board. They would approve any financial institution that would be approved by the Banking Commissioner, of course. Now we don't do that. Now we have right in our county a fund in the East Ridgeland Cemetery of \$65,000, belonging to East Ridgeland, a perpetual care fund that is being held now by two lawyers. They may be reputable but they may die tomorrow, and then God only knows whether their successors would be reputable or not. Until then, we have two lawyers, trustees of that fund. Now we had that fund in the Passaic Trust and Bank Company. It was taken out

of that by a judge's orders and now is in the hands of two outside lawyers. That should never be. Moneys of a cemetery, what they are not using, should be in a financial institution that doesn't die. Don't you think that is true? It must be true. I wouldn't want any cemetery to trust me with all their funds.

Now, in my cemetery you wouldn't find that done. We have every dollar in the bank where we know where it is. We don't have to think of it overnight. We don't have it under the law; we don't have to. That law should be changed.

There were three or four other things, but I am not going to talk any more.

THE CHAIRMAN: It is quite interesting. Go right ahead.

JUDAS CAREY: I wanted to give you some of my views on this matter. I think the most important thing - not the perpetual care fund. That is important. That is going to run forever. The important thing is to get a system here that speaks for something represented in law by the Attorney General's Office. How lovely and wonderful that would be for all the cemeteries in the State. Now, the adoption of such a plan will probably kill some of the commercial cemeteries that are being threatened here, there and wonder. Just as one of the witnesses here today said, men go buy acreage at \$5.00 an acre so they can sell it - get a franchise and sell it and get out. Something is wrong about all that. They don't sell it for \$5.00. Remember that item I told you about, \$28,000 an acre? And that is only 20 miles from here, and it is going on now

while I am standing here, and nobody in the world is around to say no. Why? Because the trustees of the cemetery and the trustees of the company that gets the money are both the same. Now, that has happened in many, many instances throughout our State. You haven't begun to cope with them. They are just beginning to show up. A lot of cemeteries are in the red today. These are hard times for cemeteries today. People can buy television sets but they don't like to buy, as a preliminary investment before death, a cemetery lot. Now they are hard to sell and we have got to devise a scheme as to how they should sell them and how they should be paid for, and it all should be within reason, in the interest of whom? Three persons - (1) the cemetery as a cemetery; (2) the dead who are buried in that cemetery. In my own cemetery in which I am interested up in East Ridgewood, we have 28,000 people buried there right this minute - 28,000, almost every family in the community is represented up there. We have every nationality, every religion, because we are not a religious corporation and we have to take everybody who comes. We even have a Chinese plot. It is getting pretty full. The Chinese are even dying. You have pictures like that everywhere. I am speaking generally though, for the people of the State of New Jersey who have a right to see this scandalous condition terminated for all time, and you gentlemen have got a wonderful chance to do a beautiful job. In doing it, don't pay any attention to the fellows who are operating the companies that want to make money out of cemeteries. Let them make it somewhere else, the

come as you and I have to do. Let them come down and practice law in Jersey City. They wouldn't get much chance; but here the Attorney General's Office is ready for you any minute. I know; I have talked to the Attorney General and to the Deputy. I have talked to nearly all of them there and I know. If you and I don't talk for the rest of the people of the State, we can ask them to talk for us at any time. We are all a part of this great entire State of New Jersey. You are a member of the Legislature and the two representing those in absentia are also members for just today, completing the committee. You are representing the people of the State of New Jersey, not the cemetery associations, not churches, not lodges, not anything - you are representing the State that embraces them all, doesn't it? You do represent them all. You represent every religion in the State in operating cemeteries and every lodgeroom over the State when you are dealing with cemeteries - every member of every family in the State who is going to find a resting place. There may be one tomorrow. Yes, one of my fine friends in your county, Judge Devaney, said goodbye to this world, didn't he? Judge Devaney died yesterday. Now, he will be buried soon and we will all be buried soon - sooner or later. I am older than most any of you. I know that maybe I have talked too long on that account.

THE CHAIRMAN: Judge, I have a question, if I may ask you.

JUDGE CARRY: Any time at all.

THE CHAIRMAN: You refer to commercial cemeteries in your talk. Do I take it that you approve of commercial cemeteries so long as

they comply with a pattern or a system under a State board?

JUDGE CAREY: If a commercial cemetery should be recognized by a State board, properly set up as a commercial cemetery, and come within all the provisions of the cemetery law, you probably could not object to that as a business arrangement, but you won't find that they will do that. They don't want to do that. They don't want to own a cemetery, any of them. They only become owners under compulsion. They want to operate and sell the land, get the money, and kiss everybody goodbye and go to Keshawkin or Allentown or Philadelphia and start another one there the next day. That is all they do. I haven't found a single body of them who are local.

THE CHAIRMAN: Your cemetery in East Ridgelawn - that is a cemetery with 125 acres, isn't it?

JUDGE CAREY: 125.

THE CHAIRMAN: How long have you been in existence?

JUDGE CAREY: We have been in existence - New York Bay has been exactly 100 years.

THE CHAIRMAN: The East Ridgelawn?

JUDGE CAREY: East Ridgelawn has been in existence since 1909 - 1908. It didn't really get started until 1909.

THE CHAIRMAN: What percentage of the land still remains to be sold in East Ridgelawn?

JUDGE CAREY: We have developed pretty fully about 55 acres of East Ridgelawn - a little more than that.

THE CHAIRMAN: You still have about 75 acres?

JUDGE CAREY: We have over half our land yet to develop for sale. We have to go slow with the final development. It is awfully expensive. We find that has been costing us \$40,000 an acre just for development.

THE CHAIRMAN: Judge, from your experience in the past 40 years of dealing with cemeteries - and we are informed at this hearing that there are over 1100 cemeteries that we presently know of - do you feel that perhaps there ought to be some inquiry made as to whether or not we have sufficient cemetery lands in the State now dedicated for cemetery purposes?

JUDGE CAREY: I think it would be a good time to go ahead and do it. You can't do it as a committee because you have no power; you have no power to determine that. If you had a board you could give them that power.

THE CHAIRMAN: We have power to recommend to the Legislature.

JUDGE CAREY: You can recommend legislation. You would never get the legislation through. There would be a riot before you got it through.

THE CHAIRMAN: We can do nothing but recommend.

JUDGE CAREY: You can recommend, but a board given power to make regulations, etc., could cover all that. That is what they are doing in New York. They have got a good many extensions in the upper part of New York that have been permitted by the New York Board that could not be taken care of before because the prices wanted for the property were too heavy. I think they have gotten even the right to take

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property by eminent domain once they have condemned it as cemetery property.

THE CHAIRMAN: The only right we have in our law, when it is under certain circumstances you may be able to get ten acres, but that doesn't come under eminent domain.

JUDGE CAREY: Now, ordinarily where the commercial cemetery is established it is all worked out. They are a pretty clever lot and they are well organized all over. We had some good talks from the officers of our State association of cemetery men.

THE CHAIRMAN: We had a good talk by you.

JUDGE CAREY: I have just talked to you, but, listen, I didn't mean any indirect reference to you when I attempted to ask a question. I thought you had said I could do that. He answered my question and said he was absolutely in favor of the same system as they had in New York for regulation and control. That is what I was going to ask him for. You see, you folks here can legislate; you three can recommend a bill and the whole three of you may be in a cemetery before next week. That wouldn't help anybody.

THE CHAIRMAN: You might be with us, Judge.

JUDGE CAREY: And I will promise you this: If you don't prepare a good bill, by golly I'll pray to the Lord to see that you do go to a cemetery. I'll promise you this: If any of your committee - you two are only substitutes here - if any of your committee should die before you get this bill through, I promise to be honorary pallbearer.

THE CHAIRMAN: Thank you very much.

JUDGE CAREY: I want to thank you for letting me talk this way. I want you to read what I have written, though.

THE CHAIRMAN: Your memorandum will be incorporated in the minutes as part of the hearing today.

JUDGE CAREY: You make your two associates solemnly swear they will read what I wrote.

THE CHAIRMAN: I will not swear that they will read it. I will see to it that they get a copy of your report as well as a copy of the minutes of this hearing, and I assure you, sir, that when we go into executive session all the comments made by you and the other gentlemen at this hearing and the previous hearings will be given full consideration.

JUDGE CAREY: I can't ask more than that, can I?

MR. SILBER: Does your memorandum provide for the arrearages of charges which many of the cemeteries have?

JUDGE CAREY: Yes, I have submitted a suggestion in my memorandum that the State board be given power to wipe out any and all arrearages in any cemetery after investigation so that there will not be that burden continuing upon the heads of people who thought they had everything just as it should be. They didn't think they would have to cut the grass every week, for instance.

MR. SILBER: Does it also make any provision about the commercial sale - brokerage commissions?

JUDGE CAREY: I am absolutely against it. I say, as New York

says, that is where the scandals originate in New York, on account of the sales. The New York Commissioners say there can be commissions paid for sales provided they are paid to regular employees of the cemeteries appointed for that purpose and with the approval of the State board.

MR. SILBER: I see.

JUDGE CARRY: That cures it.

THE CHAIRMAN: Thank you very much. It was very enlightening, and we appreciate that you have spent so much time on this. The committee is indebted to you for the time and effort you have given to this problem. We will take all your memorandums and notes and comments under consideration and give them a great deal of thought.

JUDGE CARRY: I want to thank you for your courtesy to me, in listening to me as you have. I want to say to you if you want me to do anything for you, if I can be of any service in any direction from now until the last vote is filed in the Assembly, let me know.

THE CHAIRMAN: You haven't been around here. You should have said, until the Governor signed the bill. I say this in a facetious manner.

JUDGE CARRY: The Governor knows this picture. I think he is heart and soul with this whole problem. Thank you very much.

THE CHAIRMAN: One question before you go, and this is in a little facetious vein: You have been mixed up with cemeteries for 40 years. You have been representing cemeteries. You have been in the cemetery business for 40 years, haven't you?

JUDGE CARRY: I represented the New York Bay Cemetery pretty near 50 years, ever since I began practicing. I lived a block from there.

THE CHAIRMAN: Has it been a lucrative practice?

JUDGE CARRY: For the first 12 years, I'll tell you - let me answer that. I worked for 12 years for the East Ridgeland Cemetery and never got a ten-cent piece for expenses or anything during the 12 years. I was forming a new law partnership and they wanted me to get the record cleaned up, so the cemetery people said, "How much do we really owe you? Make up a bill. We ought to pay you." I finally made up a bill of \$8500 covering 12 years' work, and I had done real work. I had four receivership cases right up to the Court of Appeals. Now, did I get the \$8500? The Secretary of the Cemetery took me aside one day and said, "We are ready to pay and we are going to pay you \$6500." I said, "Pay the \$6500 and it is all right." "Here is the check," he said, "endorse it. Endorse it here, because we haven't got the money in our treasury until you put it there. You are going to take \$6500 worth of certificates of indebtedness." I said, "I am?" That was 24 years ago and I have got them yet.

THE CHAIRMAN: All right, Judge. Thank you. The next witness will be Russell J. Zesch, representing the Mt. Hebron Cemetery, Upper Montclair.

MR. ZESCH: No testimony to offer at the moment.

THE CHAIRMAN: Louis Locker, representing the Washington Cemetery, Deans, New Jersey.

(No response)

THE CHAIRMAN: Mrs. E. Prudence Jancouneau, of Irvington.

(No response)

THE CHAIRMAN: Virgil J. Zucchi, representing the New Jersey Marble and Granite Works, of Merchantville, New Jersey.

MR. ZUCCHI: Every point is covered very well. I have nothing to say at this time, Mr. Chairman.

THE CHAIRMAN: Is there anyone else who has failed to submit his name and would like to speak before the Committee?

MR. BLUHY: I just wanted to ask the Committee if I could be given an opportunity to submit a written memorandum. There are some matters that I didn't want to take the Committee's time with that I might make some suggestions about in a written memorandum after going over the record, if I may.

THE CHAIRMAN: Mr. Bluby, you have the privilege of submitting a written memorandum. I suggest that the memorandum be turned over to Mr. McDenough for the Committee within five days so that he may compile all the information for the Committee, since we want to get to work before the end of the year.

MR. BLUHY: I would like to leave with the Secretary this article that apparently was taken out of one of the newspapers about what New York did. There is an opinion that might be of some help to you, and also an article that appeared concerning what Illinois is doing on the perpetual care fund. I also have a letter that I would like-- not to submit the original, with your permission - I can

give you a copy.

MR. McDONOUGH: Will you send a copy?

THE CHAIRMAN: Send a copy, if you will.

MR. BLUNY: This has to do with the tie-up of some of the cemeteries in connection with bronze markers and monuments, to show there is unfair competition.

MR. McDONOUGH: Do you know the date?

MR. BLUNY: I took that out of the papers within the last three months.

MR. SILBER: It might interest you to know that the resolution which you prepared and forwarded to the Governor-- I think everything you mentioned in the resolution is incorporated not alone in the memorandum filed by Judge Carey but in the many conferences that Judge Carey and I have had on the subject.

MR. BLUNY: I am glad that you said that, because I have the certified copy of the resolution with me in case you need it.

MR. SILBER: I have the copy which you sent to the Governor.

THE CHAIRMAN: This concludes our hearing. I wish to thank all of you for coming to the hearing and I want to thank you for the suggestions that you have made. I want to assure you, as Chairman of the Committee, that all of the recommendations, suggestions and comments that have been made, together with the complaints, will be given full consideration by the Committee, which will retire into executive session and hold closed meetings to discuss every report, and recommendation will be made to the Legislature for action at its

session next year.

Thank you very much.

(HEARING CONCLUDED)

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