

**OPINION
72-247**

August 2, 1972 (OPINION)

Mr. Walter R. Hjelle
Highway Commissioner
State Highway Building
Bismarck, ND 58501

RE: Chapters 23-21 and 23-21.1, N.D.C.C.

Dear Mr. Hjelle:

This is in reply to your request for an opinion, dated August 2, 1972, wherein you asked the following questions:

1. Does chapter 23-21.1 apply to an organization which is a charitable association or owned or controlled by a church or religious group?
2. Does section 23-21.1-03 require deposits in a perpetual care fund for cemetery lots which are sold to the Highway Department and are no longer available for interments?
3. Is the loss of anticipated profits from the sale and placement of headstones a proper item to be included in the purchase price?
4. Does section 23-21-17 apply to eminent domain taking of cemetery lots and, if so, what procedure should the Highway Department follow?

It is our opinion that the following answers explain the law of North Dakota on this matter:

1. Chapter 23-21.1 except organizations "which are churches or religious or established fraternal societies, charitable associations "
2. Cemetery lots which have been sold for use by other persons or organizations and are no longer available for interments are not included under the provisions of section 23-21.1-03.
3. No recovery can be had for loss of profits which are determined to be uncertain, contingent, conjectural, or speculative. If the records of the cemetery association show an annual net profit for the past few years from the sale and placement of headstones, loss of profit from this source is a proper item to be included in assessing value. Loss of anticipated profit is a proper item to be considered when determining value if there is a certain standard or fixed method by which profits sought to be recovered may be estimated with a fair degree of accuracy.
4. Chapter 23-21 deals with "Disinterment and Removal of

Bodies in Cemeteries." It may be argued that section 23-21-17 deals only with disposal of lands resulting from such disinterment. However, the broader view appears to be that the district court of the county in which the lands are situated shall confirm that the sale has been fair and reasonable. We recommend that the appraisals be submitted to one of the district judges, along with the final agreement and evidence of the price paid for the cemetery lots.

Sincerely yours,

Allen I. Olson

Attorney General