

**OPINION  
75-178**

May 7, 1975           (OPINION)

Mr. Robert P. Bennett  
Assistant State's Attorney  
Burleigh County Courthouse  
P.O. Box 1901  
Bismarck, ND 58501

Dear Mr. Bennett:

This is in response to your letter of April 28, 1975, wherein you request an opinion of this office relative to Section 23-21.1-03 of the North Dakota Century Code, as amended. You submit the following in your letter of inquiry:

"This office has recently received an inquiry as to the meaning of the term 'gross selling price' as utilized in Section 23-21.1-03 of the North Dakota Century Code which relates to the creation of a fund for perpetual care cemeteries. Section 23-21.1-03 of the North Dakota Century Code states as follows:

Any organization subject to the provisions of this chapter which is organized or commences business in the state of North Dakota and desires to operate as a perpetual care cemetery shall, before selling or disposing of any interment space or lots, establish a minimum perpetual care and maintenance guarantee fund of twenty-five thousand dollars in cash, except that the minimum perpetual care and maintenance guarantee fund for organizations in operation on the effective date of this chapter shall be five thousand dollars. The perpetual care and maintenance guarantee fund shall be permanently set aside in trust to be administered under the jurisdiction of the district court of the county wherein the cemetery is located. The district court shall have jurisdiction over the approval of trustees, reports and accounting of trustees, amount of surety bond required, and investment of funds as provided by chapter 59-04 as amended relating to the administration of trust estates. Only the income from such fund shall be used for the care and maintenance of the cemetery for which it was established. All such organizations shall submit at least annually, to the district court, such reports as are required. The clerks of each of the district courts shall transmit copies of all reports, and rules and regulations enacted by the organization, to the state department of health and the state bank examiner.

To continue to operate as a perpetual care cemetery, any such organization shall set aside and deposit in the perpetual care fund not less than the following amounts for lots of interment space thereafter sold or disposed of:

1. A minimum of twenty percent of the gross selling price with a minimum of twenty dollars for each adult space,

whichever is the greater.

2. A minimum of twenty percent of the gross selling price for each child's space with a minimum of five dollars for each space up to forty-two inches in length or ten dollars for each space up to sixty inches in length, whichever is the greater.
3. A minimum of twenty percent of the gross selling price with a minimum of one hundred dollars for each space or crypt in a mausoleum, whichever is the greater.
4. A minimum of twenty percent of the gross selling price with a minimum of ten dollars for each inurnment niche in a columbarium.
5. A minimum of twenty percent of the gross selling price with a minimum of one hundred dollars, whichever is the greater, for each interment space in crypt gardens or any other structure or device by whatever name, established or constructed wholly or partially above the natural surface of the ground, for the interment of any dead human body.

There is no required perpetual care fund deposit on spaces provided without charge for paupers and infants.

The initial perpetual care fund established for any perpetual care cemetery shall remain in an irrevocable trust fund until such time as this fund has reached fifty thousand dollars. When the perpetual irrevocable trust fund equals fifty thousand dollars, an additional special trust fund shall be established into which fifty percent of the deposits required to be made into the irrevocable trust fund shall be made until the amount deposited into such special trust fund shall equal twenty-five thousand dollars. Thereafter, one hundred percent of the required deposit shall again be deposited in the perpetual irrevocable trust fund. The funds in the special trust fund may be used for the purpose of repaying or recouping the initial twenty-five thousand dollar deposit, if such deposit were made. The administration of, and payments out of, the special trust fund shall be under the jurisdiction of the district court. Under special, unusual, or compelling circumstances and upon proper application to a district court, said court may in its discretion order withdrawals to be used only for permanent improvements.

The problem which has arisen in application of the statute is that a perpetual care cemetery organization has been selling lots in the cemetery for a price of \$150. This price has been broken down into a \$125 charge for the cemetery lot itself, and a \$25 charge for a perpetual care fee. As a result of this breakdown of the selling price, the 20 percent requirement of Section 23-21.1-03 of the North Dakota Century Code has been applied only to the lot charge, which is \$125, rather than the entire \$150 price. After applying this percentage, only \$25

has been set aside and deposited in the the perpetual care fund rather than the \$30 had the 20 percent been applied to the \$150 amount.

Based upon the applicable law and the facts as presented above, my question is whether or not the gross selling price for purposes of applying the statutory percentages includes the entire fee for the cemetery lots as charged to the ultimate buyer or just the price for the cemetery lot itself."

The basic question is whether the term "gross selling price" as set forth in the statute includes the amounts which are collected for the perpetual care fund. We note that the statute does not define "gross selling price" as applicable to Chapter 23-21.1 of the North Dakota Century Code.

Webster's New Twentieth Century Dictionary, Unabridged, Second Edition, defines "gross" as follows:

"GROSS. 1. The whole amount; the bulk; the mass;  
as the gross of the people."

Webster's New Collegiate Dictionary defines "gross" as follows:

"GROSS. 1. Amount, sum.  
2. An overall total exclusive of  
deductions." (Emphasis supplied)

It is our general understanding of that term that the same implies total, absolute or entire. As applicable to the "gross" selling price, it would appear that the same would include all charges or items of cost required in making a purchase.

We would note that this concept is further supported by the District Court of Cass County, First Judicial District, in its determination and Order entitled "IN THE MATTER OF THE ADMINISTRATION BY FIRST NATIONAL BANK OF GRAND FORKS, TRUSTEE, OF THE TRUST CREATED UNDER AGREEMENT BETWEEN MERCHANTS NATIONAL BANK AND TRUST COMPANY OF FARGO, FARGO, NORTH DAKOTA, TRUSTEE AND SUNSET MEMORIAL GARDENS, INC., DATED THE 6TH DAY OF APRIL, 1953." in which the Court found, among other things, the following:

"(3) That the respondent, \* \* \* (named corporation), hereafter make deposits for sale of interment space with the perpetual care fund established in the minimum amount of 20 percent of the gross sales price, which shall be deemed to include all compensation paid the corporation or its agents and employees by the lot purchaser with respect to his purchase." (Emphasis supplied)

Accordingly we are of the opinion that the term "gross selling price" as specified by the statute includes all charges with respect to the purchase of a lot and not the singular charge for the plot itself. This would include the fee charged for perpetual care as such is an

integral part of the price charged to the lot purchasers.

We trust that the foregoing observations and expressions will adequately reflect the opinion of this office upon the issues presented.

Sincerely,

ALLEN I. OLSON

Attorney General

State of North Dakota