

**OPINION
52-162**

June 5, 1952 (OPINION)

STATE DEPARTMENT OF HEALTH

RE: Registration of Cemeteries

Reference is made to your letter of May 28, 1952, requesting an opinion from this office as to the jurisdiction of the Health Department and procedure to be followed by the Health Department in enforcing the laws relating to the regulation of cemeteries.

It is our opinion that the State Health Department is concerned primarily with the health aspects relating to the burial of the dead and the regulation of cemeteries. It need not concern itself with the financial structure of the cemetery organizations requesting registration beyond the point of ascertaining whether or not the organization's structure is such that the laws relating to the regulation of cemeteries will in all probability be carried out.

Section 23-0621 of the North Dakota Revised Code of 1943 concerning the regulation of cemeteries provides in part, "All persons, corporations, municipalities, associations, and organizations owning, conducting, or maintaining a cemetery or plot for the burial of dead human bodies shall:

* * *

4. Register with the state department of health the name and location of the cemetery or place of burial, the name and address of the sexton, and the name and address of other officers of the cemetery association, corporation, or organization.
5. Furnish such information and reports as the state health department may require."

Section 23-0623 N.D.C.C. provides: "The state department of health shall make and enforce such rules and regulations as are necessary to carry out the laws relating to the regulation of cemeteries."

From the above it is apparent that the State Department of Health is charged by the Legislature with more than merely carrying out the clerical functions of registering the cemetery organizations. Since the State Department of Health is to make and enforce rules and regulations as are necessary to carry out the laws relating to cemeteries and all cemetery organizations are obliged to furnish such information and reports as the State Health Department may deem necessary and require, it is our opinion that a regulation adopted by the Health Department to require all cemetery corporations to file articles of incorporation and their by-laws as one of the conditions of registration would be a reasonable request, an advisable regulation and legally proper. We believe, however, that the regulation should be so phrased as to make the requirement of filing

the by-laws discretionary on the part of the Health Department as there no doubt will be and have been many instances where such a requirement would be unnecessary. From the by-laws of a corporation the Health Department would be able to ascertain to a greater extent as to whether or not the corporation would fulfill the rules and regulations adopted by the Health Department and the laws of the state concerning the regulation of cemeteries, and therefore the requirement that the corporation submit their by-laws would certainly not be unreasonable.

ELMO T. CHRISTIANSON

Attorney General