

HEYL ROYSTER

GOVERNMENTAL NEWSLETTER

Fall 2008

WELCOME LETTER

Dear Friends:

Welcome to the second edition of our quarterly newsletter. This edition touches upon two important issues for small units of government – repairing and restoring private cemeteries and whether you need to replace stop signs under the new retroreflectivity standards. The latter article, by local engineer Patrick Meyer, covers part of his presentation at our quarterly seminar that took place September 16th.

We recognize that local public officials are busy, frequently in more than one job. For that reason, we have begun this newsletter and a series of seminars – one per quarter – on issues affecting local governmental units. The seminars are intended to provide timely guidance for local officials through short programs in a convenient local setting. The seminars run about an hour and a half, are free, and take place here in our community. Our lawyers speak, but more important, we invite appropriate state and local government officials and employees, accountants, and engineers to address the issues which affect you. Our first seminar was on the little known problems and pitfalls of complying with the Illinois Prevailing Wage Law and featured the Illinois Department of Labor official who locally enforces the Act. Our second seminar addressed the Manual on Uniform Traffic Control Devices.

Our next seminar will be held on December 2, 2008 and will be directed at election issues – from caucus and nomination to the general election and beyond. (That's right – we have another election coming up right after this one!) The seminar will be held at the offices of Heyl Royster and will begin at 9:00 a.m. If you are interested in attending, please see the contact information in the adjoining box. We think you will find the seminar informative and useful. There will also be the opportunity to ask questions you might have on any aspect of local governmental law. Further, if you have an idea for a future program which you think would be valuable for others, please let us know.

Tim

Timothy L. Bertschy is a partner with Heyl, Royster, Voelker & Allen. He concentrates his practice in the areas of complex commercial litigation, employment, and local governmental law. He has litigated cases involving contractual breaches, business torts, partnership and corporate break-ups, stockholder disputes, ERISA, unfair competition, intellectual property, covenants not to compete, lender liability, fraud and misrepresentation, eminent domain (condemnation), computer and software problems, privacy, real estate disputes, zoning issues and business losses. He has represented clients in the business, banking, real estate, stock brokerage, accounting, legal, insurance, governmental, and religious fields.



UPCOMING SEMINAR

Heyl Royster is continuing its regular series in legal seminars for public officials. Join us on December 2, 2008, as we discuss an issue that does not end for local public officials on November 4: Elections.

While a major part of our seminar will be an effort to answer your questions, we also want to touch on several important subtopics. For example, we will focus on the nomination process (caucuses versus primaries, where applicable), Election Day concerns, and what is expected of both the winning and losing candidate after an election.

Our next seminar is being held at the offices of Heyl Royster. Those interested in attending should contact Sheri Kyle at (309) 677-9548 to reserve a place.

REPAIRING AND RESTORING PRIVATE CEMETERIES

By Andrew J. Keyt
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The shortcomings for care and maintenance of a municipal or township cemetery appear easy to resolve – appropriate the funds and fix the problems. Certainly, financial constraints may dictate the extent of repairs and ability to care for a governmentally owned cemetery, but the solution is a simple one.

However, what should you do if the dilapidated cemetery is privately owned? How do you fix the cemetery that has weeds growing higher than the grave markers, toppled stones, or even blocked entrances? Some cemeteries get to the point of no return. Relatives of the interred complain. Citizens complain. The surrounding property values may suffer, and it just looks bad on your community.

Below are the basic options to getting the cemetery back on track.

Option 1: Contact the Owner

If the property is not abandoned, the owner may be willing to clean up the property without a fight. This may mean digging through the County Recorder of Deed's Office to locate the name of the owner, subsequent searching for a phone number or address, but in the end it is the cheapest way to get the property back on track to being a respectable property in your community. You may get stonewalled or rejected in this effort to cordially work things out, but at least you tried and know where you stand with the owner before you have to move on to more costly remedies. Also, the owner may be willing to allow a local civic group (boy/girl scouts, church groups, fraternal organizations, student organizations) to enter the property to help clean it up. This may require leg work to gather up volunteers, but it is ultimately better than spending tens of thousands of taxpayer dollars.

Option 2: Contact the Illinois State Comptroller's Office

The Illinois State Comptroller (currently Daniel W. Hynes) is responsible for overseeing active, privately-owned cemeteries. Many cemeteries are exempt from the State Comptroller's authority (such as municipal, family, non-profit, or religious burial grounds). However, many cemetery issues arise from the private, for-profit cem-

eteries that attempt to cut costs to maximize profits, have become dilapidated due to a lack of income, or have been left to nature's will. The Illinois State Comptroller has the authority to remedy many of the dilapidation issues facing a cemetery. Even if the cemetery is one of those not falling under the State Comptroller's Authority, they may offer tips to helping restore the property to its intended state. To contact the Illinois State Comptroller, Cemetery Care and Burial Trust Division call 312-814-2451 or 877-203-3401. You can also write to the Cemetery Care and Burial Trust Division at 100 W. Randolph St., suite 15-500, Chicago, IL, 60601.

Option 3: Contact the Local State's Attorney's Office

While perhaps not always the optimum solution, there are criminal penalties for severely mishandled cemeteries. Remember, this is not the normal first option, but sometimes it is necessary one.

Option 4: Ask Your County for Assistance

"The county board of any county may appropriate funds from the county treasury to be used for the purpose of putting any old, neglected graves and cemeteries in the county in a cleaner and more respectable condition." 55 ILCS 70/1(a). A township may also use township treasury funds for cleaning up a cemetery under 50 ILCS 610/2c of the Public Graveyards Act. More importantly, the county may enter a property for the purpose of cleaning up the property so long as the cemetery is considered abandoned, and owner does not object in writing to the entry onto the property by the county. 55 ILCS 70/1(b). An abandoned cemetery is one which contains at least seven places of interment, no owner objects to entry onto the property and either (1) "no interments have taken place in at least 3 years; or (2) . . . there has been inadequate maintenance for at least 6 months." 55 ILCS 70/1(c).

While municipalities and townships have similar provisions within their codes (townships - 60 ILCS 1/130-5(b); municipalities - 65 ILCS 5/11-49-1), the county typically has more money in the county treasury.

Option 5: Clean Up the Property

Just as the Illinois Counties Code, the Illinois Municipal Code and Illinois Township Code provide powers to a municipality/township attempting to clean up an unkempt

cemetery. In particular 65 ILCS 5/11-49-1 and 60 ILCS 1/130-5 provides a governmental entity the right to enter an abandoned cemetery and cause the grounds to be cleared and made orderly. 65 ILCS 5/11-49-1 and 60 ILCS 1/130-5. One restriction, however, is that the corporate authorities may not remove markers, memorials or other cemetery artifacts from the cemetery. The corporate authorities are limited to attempting to clean and repair those items within the confines of the cemetery grounds. Also if the abandoned cemetery is dedicated as an Illinois nature preserve, any actions must be consistent with the rules and master plan governing the dedicated nature preserve. 65 ILCS 5/11-49-1, 60 ILCS 1/130-5 and 55 ILCS 70/1(b).

Option 6: Take Control/ Ownership of the Property

The Illinois Municipal Code allows for municipalities to take control of a property when so conveyed to the municipality by the owner. 65 ILCS 5/11-52-2. Many owners (particularly absentee or owners who inherit a cemetery) may find this an option ideal. The profits from the cemetery have run their course, the owners find themselves faced only with maintenance expenses (such as mowing and marker cleaning) and find themselves unable to find a suitable purchaser for the property. This is particularly the case with older cemeteries functioning at or near their capacity. Once approached by the municipality, they may be willing to sell their property to the municipality (or give it away) to avoid the mounting maintenance expenses. Once the corporate authorities (if less than a population of 25,000) accept the conveyance, they have the ability to levy a .025% tax for the purpose of “reconditioning and restoring neglected cemeteries. . .” 65 ILCS 5/11-5-1. Of note, the tax for restoration of neglected cemeteries requires a referendum vote of the electors. 65 ILCS 5/11-50-1. Townships have a similar ability under the Public Graveyards Act. 50 ILCS 610/0.01 *et seq.*

Option 7: Remove the Cemetery

A last resort may be the removal of the cemetery under the provisions of 65 ILCS 5/11-51-1. While certainly not ideal, and rare, such action may be taken in extreme circumstances. The end result is the removal of interred persons to other cemeteries either at the expense of the municipality or owner of the cemetery. 65 ILCS 5/11-51-1. Other options include condemnation or eminent domain. Either way, once you’ve chosen this path, the costs and expenses are tremendous and the results are permanent. Removal of

the cemetery is typically a last result after the failure of the above options to remedy the situation.

While results vary, the best solution is usually the one negotiated with the owner. Most cemetery owners are providing a valuable, noble service, and feel compelled to remedy any situation brought to their attention by the authorities. However, neglectful cemetery owners exist and occasionally more drastic action is necessary. This article is not intended to give you all the arrows you will need to fight dilapidated cemeteries, but to give you an overview of your options. As always, consult your legal counsel prior to starting any major clean up of a property.

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DO WE NEED TO REPLACE STOP SIGNS?

By Patrick Meyer, P.E., M.B.A.

Does my Government Agency need to replace the stop signs? The answer to this question for many government agencies is likely “Yes!” Many signs will need to be replaced in order to increase the nighttime visibility.

On January 22, 2008 legislation became effective mandating compliance dates for government agencies in regards to the retroreflectivity of roadway signs. *The “retroreflectivity” is the scientific term that describes the ability of a surface to return light back to its source. Retroreflective signs and pavement markings bounce light from vehicle headlights back toward the vehicle and the driver’s eyes, making signs and pavement markings visible to the driver.*

The compliance dates are as follows:

- By January 22, 2012 - implementation and continued use of an assessment or management method that is designed to maintain traffic sign retrore-

HEYL ROYSTER GOVERNMENTAL NEWSLETTER

flectivity at or above the established minimum levels;

- By January 22, 2015 - replacement of regulatory, warning, and ground-mounted guide (except street name) signs that are identified using the assessment or management method as failing to meet the established minimum levels; and
- By January 22, 2018 - replacement of street name signs and overhead guide signs that are identified using the assessment or management method as failing to meet the established minimum levels.

Additional information regarding these deadlines may be found at http://safety.fhwa.dot.gov/roadway_dept/retro/.

While these regulations may cause budget issues, non-compliance with the regulations may have serious ramifications from a liability standpoint. To avoid the budget crunch, and any potential liability from failing to update your signs, you should consider beginning the retroreflectivity process in the very near future.

The first step in meeting these requirements is a sign inventory. Depending on your government agency, this can mean hundreds of signs or even thousands of signs. The number of signs and the retroreflectivity of the signs may result in significant impacts to your budget. Proper planning will enable your agency to lessen the effect of a sudden budgeting commitment when the due dates approach.

Patrick N. Meyer earned a Bachelor of Science degree in Civil Engineering from Bradley University, magna cum laude. Mr. Meyer was able to perform a cooperative education program with the Illinois Department of Transportation during his undergraduate education at Bradley. He worked for a local consulting engineering firm for several years while simultaneously earning a Masters Degree in Business Administration, also from Bradley University. Mr. Meyer currently owns and operates his own engineering firm, Patrick N. Meyer & Associates, Inc. He is the designated Engineer for numerous municipalities and townships. Mr. Meyer is intricately involved in assisting local municipalities, townships, and counties in complying with various areas involving motor fuel tax funds, roadway improvements, storm water, sanitary sewer, water, traffic control signs, and erosion control.

FOR MORE INFORMATION

If you have questions about this newsletter, please contact:

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