

1975 WL 29168 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 4, 1975

*1 Mr. H. Michael Spivey
Messrs. Younts, Reese & Cofield
Attorneys at Law
512 E. North Street
Greenville, South Carolina 29601

Dear Mr. Spivey:

Thank you for your letter of October 30, 1975, concerning whether or not a church can relocate a cemetery which has not been abandoned as a cemetery.

In my opinion, this cannot be accomplished. The cases in this State clearly indicate that they pay due regard to the adage that 'once a cemetery, always a cemetery.' The only statutory expression of which I am aware is with respect to abandoned cemeteries and in some especial cases where statutes have been enacted to permit the Highway Department to remove cemeteries and to authorize Santee Cooper to remove graves at the site of its present reservoirs. In the construction of highways, there is a constant problem with respect to cemeteries and the highways are routed around them on frequent occasions. A special statute was necessary to be obtained to construct I-26 at Elmwood Cemetery in Columbia when it was found that some graves in an old paupers section would lie within the right of way.

A few years back, in excavating for the new Dantal College in Charleston, it was discovered that an old cemetery was located beneath the former Porter Military Academy grounds and extensive burials were found which were unknown at the time the project was designed. The result was that a lawsuit was necessary in order to secure the removal of these ancient graves with consequent high costs.

It is possible that securance of consent by all descendants might be a means of effecting removal but this procedure is so cumbersome and so difficult that it is almost futile to suggest it.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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