

## 2020 REPORT FROM THE TENNESSEE HISTORICAL COMMISSION'S HISTORIC CEMETERY ADVISORY COMMITTEE

### INTRODUCTION

The Historic Cemetery Advisory Committee at the Tennessee Historical Commission is pleased to offer this report, along with recommendations for protecting Tennessee's historic cemeteries. Because Tennessee's 30,000 cemeteries can enrich the history of our state and are fundamental to the foundation of community, the committee is committed to preserve and protect them for generations to come.

### HISTORICAL PERSPECTIVE

Recognizing that early cemeteries were becoming lost or destroyed, the Tennessee General Assembly created **Tennessee Code Annotated, Title 46 Tennessee Cemetery & Burial Site Laws (1911)**. This code was bolstered by precedent established by *Walter Hines v. State of Tennessee (1911)*. With exceptions, cemetery protection laws have remained unchanged since 1911. Tennessee cemetery code has not always kept pace with forces of progress. Economic development and cultural identity--both of which contribute to our state's uniqueness--have not always been compatible. For this reason, the *Family Burial Grounds Protection Act* was passed and added to **Title 46 as Chapter 8** in 1996. In 2018, **Title 46** was amended, authorizing and requiring the Tennessee Historical Commission to post all cemetery relocation petitions, maintain an Historic Cemetery Preservation Specialist position, and form the Historic Cemetery Advisory Committee to examine current law for the purpose of recommending any necessary changes.

*For a Summary of Current Tennessee Laws by Issue (See Appendices for full text of TCA laws)*

### EXISTING DEFINITIONS RELATED TO GRAVES AND CEMETERIES (TCA 46-1-102)

**Cemetery** - means any land or structure in this state dedicated to and used, or intended to be used, for interment of human remains

**Cemetery Purposes** - Any and all things requisite or necessary for or incident or convenient to the establishment, maintenance, management, operation, improvement and conduct of a cemetery, the preparation of the premises for interment and the interment of the human dead, and the care, preservation and embellishment of cemetery property.  
(TCA 46)

## CEMETERY VANDALISM

Cemetery vandalism is a common problem since most of Tennessee's 30,000 cemeteries cannot be effectively monitored. While vandalism can easily occur in small secluded rural cemeteries, it is just as or perhaps even more likely to occur within an easy-to-reach, large cemetery in the center of town. Vandalism is rarely reported because people often believe that nothing can be done about it. When witnesses do not report vandalism to local law enforcement, no public record is created, and police--who have the duty to enforce state law--cannot understand the scale of the problem in the area. (See Appendix)

## CEMETERY DESTRUCTION

Destruction of cemeteries, most often in the form of gravestone clearing, is also common problem. Sometimes it occurs due to acts of unscrupulous developers, construction crews, or farmers who see the land as potential for profit. Ignorance of the law is also a probable cause. Whatever the reason, diverting a "destroyed" cemetery is not "gone." Rather, the potential for human remains discovery increases, and time and resources must be spent by law enforcement and the Tennessee Department of Archeology, both of which are required to investigate by state law. Even if during construction a crew were to "accidentally" come upon a, it is against both state law and moral norms to continue the cemetery's destruction. (See Appendix)

## RECORDING IN OFFICIAL RECORDS

The Department of the Treasury requires counties to report tax information on cemeteries over ¼ acre, but smaller cemeteries are more difficult to report. Adding to confusion is that cemeteries on the Tennessee Property Data site commonly list the cemetery itself as the owner. According to the Treasury Department, every cemetery in Tennessee is owned by someone, but counties are supposed to keep these records, which are often incomplete. Deed information can lapse over the decades, and sometimes a cemetery was never shown on a deed to begin with. A county can never really be certain of how many cemeteries there are. Individual state departments keep their own cemetery records, which have not been shared on a grand scale. In 2019, THC began compiling this fragmented data along with information provided by the public to create a comprehensive database and map that can be used to solve some of these mysteries.

## TERMINATION OF USE OF LAND AS A CEMETERY

In the 1950s as a result of increasing development, **Title 46** was amended to allow for landowners to petition to have a cemetery relocated so that land could be rezoned for another use. However, relocating a cemetery is extremely costly, meaning that it is cheaper for a landowner to secretly make the cemetery "disappear." The **Family Burial Protection Act** (1996) was passed to address this problem, but cemeteries were still being destroyed. So, in 2018, **Title 46** was amended to require THC to post all removal petitions. This update has showed promise, since interested parties appear to be actively monitoring THC's petition postings. Even so, there remains little incentive for landowners to follow the law, and cemetery destruction continues to occur.

## **VISITATION BY RELATIVES OF THE INTERRED**

Tennessee law recognizes that a family forever has the right to visit a cemetery in which their ancestor is. As land ownership changes, inevitably there are conflicts between family members wishing to visit a cemetery and landowners who often do not understand that these visitors legally have the perpetual right to visit. THC has fielded many such calls and has worked to help opposing parties to resolve their differences; however, more can be done. Often, local law enforcement has little desire nor the resources to get involved in such disputes, which can be continual and can lead to community confrontation. But it is precisely this type of interdiction that the state counts on to enforce **Title 46**.

## **UNMARKED AND UNKNOWN CEMETERIES**

People tend to identify a cemetery with its visible markers; however, cemeteries are usually larger than visible markers might indicate. Many cemeteries have no remaining markers, making it difficult to identify at all even though hundreds of graves may be present. Unmarked African American cemeteries are especially vulnerable, because they are often forgotten and sometimes the victims of racism. The discovery of unmarked and previously unknown cemeteries will persist, especially due to economic development. THC is committed to recording these cemeteries when discovered, but these cemeteries are especially prone to destruction. Regardless of whether cemeteries have visible markers or not, they are still recognized as cemeteries and protected by Tennessee law.

## **PREHISTORIC ARCHEOLOGICAL CEMETERIES**

Like historical cemeteries, the identification and preservation of prehistorical archeological cemeteries is of critical importance. The Tennessee Department of Archeology oversees matters involving these, not the THC, but data is shared between the two organizations. Historic cemeteries can exist near important archeological sites and cemeteries, and for this reason, some cemetery data will not be made public.

## **RECOMMENDED LEGISLATIVE CHANGES**

1. The committee recommends the amending **TCA 46-1-102** with definitions for the following terms: **Monument, tomb, tombstone, headstone, footstone, gravestone, grave marker, cemetery structure, desecration.** (Appendix A)

2. The committee recommends amending **TCA 46-2-105 (a)** by adding the following terms to those listed after the words “destroy, deface, or injure”: *Tombstone, Headstone, Footstone*
3. The committee recommends amending **TCA 46-2-105 (a)** by adding the following term between the words “deface,” and “or”: “*relocate*”
4. The committee recommends amending **TCA 46** by making it *illegal* to deny *reasonable access* of any family member or relative who by legal precedent established in *Walter Hines v. Tennessee (1911)* have the perpetual right to access a cemetery in at least one family member is interned.
5. The Committee recommends that the precedents set in *Walter Hines v. Tennessee (1911)* that are not already incorporated be added to **TCA 46 Chapter 8 Family Burial Grounds Protection** to further clarify and codify the duties of landowners regarding cemeteries and family visitation and maintenance with the sole exception
6. The committee recommends establishing specific “*rules of conduct*” for landowners on whose property a cemetery is located and family members and relatives who by legal precedent established in *Walter Hines v. Tennessee (1911)* have the perpetual right to access the cemetery where at least one family member is interned. (**Code of Virginia § 57-27.1**)
7. The committee recommends giving the Tennessee Historical Commission authority to maintain, share, and publish a database recording historical cemetery information and the authority to place a notice concerning each cemetery’s existence in the chain of title of the property on which they are located. The notice will clearly alert a present or future property owner or other interested parties of their duty to “protect” the cemetery, cite the penalties for violation of the law, and inform family members and relatives of their legal right to access, maintain, and preserve the cemetery.
8. The committee recommends giving the Tennessee Historical Commission authority to institute and maintain an Historic Cemetery Register Program in which each successful applicant will receive a cost-effective sign, complete with Tennessee Historical Commission logo, specifically for the purpose of placement at or reasonably near the cemetery. The number of awards will be limited annually, based on the level of funding awarded each year to the program. (**Arkansas Century Farm Program**)
9. The committee recommends allowing the Tennessee Historical Commission to set up and manage a grant program specifically for the maintenance, preservation and protection of historical cemeteries. The program will be available only to those cemeteries that are successfully added to the Historic Cemetery Register and funded through a combination of state funding, fines and/or cash donations. (**North Carolina General Statutes, Section 12 § 65-91, Arkansas Historic Cemetery Preservation Grant**)

10. The Committee recommends that a state law be created to regulate the establishment of private cemeteries in order to eliminate apparent confusion among county and local authorities whose responsibility it is to regulate the process in their own jurisdictions. **(Arkansas Code Annotated 16-66-207)**
11. The Committee recommends establishing attractive incentives of cash or other types to encourage landowners to report cemeteries on their properties for the purpose of adding them on the property deed, already a part of their duty as established in the precedents set in *Walter Hines v. Tennessee*. **(Arkansas Code Annotated 16-66-207)**

Tennessee Century Farms Program

### **Tennessee Century Farms Program**

The Tennessee Century Farms Program was created in 1975 by the Tennessee Department of Agriculture as part of our nation's bicentennial celebration. In 1985, the Center for Historic Preservation at Middle Tennessee State University assumed the responsibility for the program. The program was originally designed and continues to be a recognition and documentary effort. The Tennessee Century Farms Program has a farm in all of Tennessee's 95 counties.

The primary focus of the program is to continue honoring and recognizing the dedication and contributions of families who have owned and farmed the same land for at least 100 years. Since its inception, the statewide and ongoing program has more than 1800 certified farms. That number includes Pioneer Century Farms (farms founded in or prior to the year 1796, the year Tennessee became a state), farms on the National Register, farms that are a part of the Land Trust for Tennessee, farms with African American founders, and farms founded by women.

Secondly, it is a documentary program that collects and interprets the agrarian history and culture of the state. The collection has supported the 1985 book, *Tennessee Agriculture: A Century Farms Perspective*; a traveling exhibit that toured the state from 1988-89; articles in journals and magazines; county displays; local museum exhibits; brochures and booklets; and web sites.

Families choose whether or not to submit an application and be a part of the program. The Century Farms Program places no restrictions on the farm and offers no legal protection.

Successful applicants will Signs are provided by the Tennessee Department of Agriculture and funded through the Ag-Tag program.<sup>1</sup>

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<sup>1</sup> \_\_\_\_\_. "Tennessee Century Farms." Murfreesboro: MTSU Center for Historic Preservation. Accessed Nov. 11, 2020. < <http://www.tncenturyfarms.org/about/>>

## APPENDIX A

### SUGGESTED TERMS AND DEFINITIONS TO BE ADDED TO TCA 46-1-102

**Monument** – A statue or other structure, placed in memory of the dead next to or over a grave.

**Tomb** – A vault for burying the dead, an enclosed space cut into the earth or rock specifically to hold human remains, or monument of remembrance, erected over the burial of a dead person.

**Tombstone** – A memorial headstone placed at the head of a grave.

**Gravestone** – A stone, inscribed or otherwise, marking a grave.

**Grave Marker** – An object, made of wood, stone or other material, marking a grave.

**Cemetery Structure** – A building, grave house, pavilion or other edifice constructed for cemetery purposes.

**Headstone** - A memorial tombstone placed at the head of a grave.

**Footstone** - a memorial stone placed at the foot of a grave.

**Desecration** - To violate the sanctity of or to treat disrespectfully, irreverently, or outrageously by destroying, defacing, **removing** or injuring any monument, tomb, **headstone**, **footstone**, **gravestone**, or other structure placed in the cemetery, or any roadway, walk, fence or enclosure in or around the same, or injure any tree, plant or shrub therein

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## RELEVANT EXCERPTS FROM TCA 46

The following sections of TCA 46 are those that would clearly be affected by the acceptance of the Committee's proposals:

### **46-1-102. Definitions**

As used in chapters 1 and 2 of this title, unless the context otherwise requires:

(1) "Cemetery" means any land or structure in this state dedicated to and used, or intended to be used, for interment of human remains;

(3) "Cemetery purposes" means any and all things requisite or necessary for or incident or convenient to the establishment, maintenance, management, operation, improvement and conduct of a cemetery, the preparation of the premises for interment and the interment of the human dead, and the care, preservation and embellishment of cemetery property;

### **46-2-105. Crimes and offenses**

(a) No person shall willfully destroy, deface, or injure any monument, tomb, gravestone, or other structure placed in the cemetery, or any roadway, walk, fence or enclosure in or around the same, or injure any tree, plant or shrub therein, or hunt or shoot therein, play at any game or amusement therein, or loiter for lascivious or lewd purposes therein, or interfere, by words or actions, with any funeral procession or any religious exercises.

(b) A violation of this section is a Class E felony.

## **WALTER HINES V. STATE 149 SW 1058-1060 (1911)**

Case argued and determined in the Supreme Court of Tennessee for the Middle Division. Nashville, December Term, 1911.

Cemeteries. Land devoted and used as a burial ground is held in trust for that purpose by the owner and his successors in title.

Where the owner of land definitely appropriated and devoted a small part thereof as a private family burial ground, and it has been used as such, the land cannot be conveyed or devised so as to interfere with such use, because such owner, his grantees, devisees, and heirs hold the title in trust for the benefit of those entitled to a right or easement of burial in it, who also have the right to visit the cemetery for the purpose of repairing, beautifying, and protecting the graves and grounds, and, for these purposes, they have a right of ingress and egress from the nearest public road, to be exercised at reasonable times and in a reasonable manner.

Cemeteries. Land... Descendants of landowner devoting land to family burial ground are entitled to burial therein.

Where the owner of the land definitely appropriated and devoted a small part thereof as a private family burial ground, and it has been used as such, the right of burial extends to all the descendants of the owner, and

they may exercise it when the necessity arises.

Cemeteries. Land... Descendants... Purchaser takes land subject to burial rights in a lot devoted to private family burial ground, though there be no express reservation.

Where a small part of a tract of land has been devoted to a private family burial use by the owner, those thereafter purchasing the land take it subject to the aforesaid burial rights, without any express reservation in the deed or will under which they take; for such reservation is implied, and purchasers are charged with notice of the fact that the particular lot has been dedicated to burial purposes, and of the rights of descendants and relatives of those there buried. Burial lots, whether public or private, are not the subject of trade and commerce, and it is always presumed that they are not included in the sale of land which surrounds them.

Cemeteries. Land... Descendants... Purchaser... Burial ground rights are not barred by statutes of limitations so long as graves are marked by monuments, gravestones, or otherwise.

The right to use a private burial ground as such is not barred by the statute of limitations, so long as it is kept enclosed; or, if unenclosed, so long as the monuments and gravestones marking the graves are there, or other attention is given to the graves, so as to show and perpetuate the sacred object and purpose to which the land has been devoted; for possession by the living is not required, in such case, to prevent the acquirement of title by the adverse possession of the owner of the fee, so long as the dead are there buried, their graves are marked, and any acts are done tending to preserve their memory and mark their last resting place.

Cemeteries. Desecration of private burial ground and graves therein, and wrongful obstruction of way thereto, are misdemeanors. The desecration of a private burial ground, and graves therein, and the wrongful obstruction of the easement of a right of way from the public road thereto, as against those entitled to use it, are misdemeanors, subject to punishment under the statutes applicable to offenses of that character. It is the responsibility of law enforcement personnel with jurisdiction over the location of the cemetery to enforce these laws. For an interpretation of any Tennessee legal matters, and to receive the most up-to-date laws, please contact an attorney licensed to practice in this state.

## **TENNESSEE CENTURY FARMS PROGRAM<sup>2</sup>**

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<sup>2</sup> \_\_\_\_\_. "Tennessee Century Farms." Murfreesboro: MTSU Center for Historic Preservation. Accessed Nov. 11, 2020. <http://www.tncenturyfarms.org/about/>



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## RELEVANT STATUTES FROM OTHER STATES

### ARKANSAS<sup>3</sup>

#### **ARKANSAS ACT 753 OF 1991 PROHIBITS THE DESECRATION OF HUMAN BURIALS.**

“An act to prohibit the desecration of human skeletal burial remains in unregistered cemeteries; to prohibit trade or commercial display of human skeletal burial remains or associated burial furniture; and for other purposes.”

Be it enacted by the General Assembly of the State of Arkansas: Whereas, the state and its citizens have an obligation to protect from desecration all human skeletal burial remains and associated burial furniture, including those from unmarked, unrecorded, abandoned, or

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<sup>3</sup> Tammy Trippe-Dillon, “Grave Concerns: A Preservation Manual for Historic Cemeteries in Arkansas.” Little Rock: Arkansas Historic Preservation Program. Accessed November 12, 2020 [https://archeology.uark.edu/wp-content/uploads/2014/12/Grave\\_Concerns-1.pdf](https://archeology.uark.edu/wp-content/uploads/2014/12/Grave_Concerns-1.pdf)

unregistered graves, burial grounds, or cemeteries: and Whereas, the skeletal burial remains and associated burial furniture of many Native Americans, European, Blacks, American settlers, and others were placed in burial grounds not presently known, recorded, or registered.

**A.C.A. Subchapter 4 – Offenses involving cemetery of grave markers (Criminal Offenses)**

**5-39-401. Destruction or removal.** It is unlawful for any person to destroy or carry away any cemetery marker or grave marker. 5-39-402. Penalty. A person who violates the provisions of this subchapter is guilty of a Class D felony.

**A.C.A. 5-39-212. Cemeteries/ Access/ Debris/ Disturbance**

a) It shall be unlawful for any person, firm, corporation, partnership, or association to: 1) Construct any fence on any property in such manner as to enclose any cemetery unless suitable access by automobile to the cemetery is provided by gate or otherwise. The word “cemetery,” as used in this subsection is not intended to apply to any private family burial plot which contains fewer than 5 commercial grave markers. Nothing in this section prohibits the placement of a fence around any cemetery for the purpose of defining boundaries or protection of grave sites; 2) Place any brush, tree tops, rubbish, or other unsightly debris on any cemetery grounds, or to disturb, damage, or carry away any marker in a cemetery. b) Any person, firm, corporation, partnership, or association violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than ten dollars nor more than 8 one hundred dollars, and every day that the violation shall exist shall be as separate offense.

**A.C.A. 5-71-215. Defacing objects of public respect.**

a) A person commits the offense of defacing objects of public respect if he purposely: 1) Defaces, mars, or otherwise damages any public monument 2) Defaces, mars, or otherwise damages a work of art on display in any public place; or 3) Defaces, mars, desecrates, or otherwise damages any place of worship, cemetery, or burial monument. B) 1) Defacing objects of public respect is a Class A misdemeanor if the value of repairing or replacing the damaged objects does not exceed five hundred dollars. 2) Defacing objects of public respect is a Class D felony if the value of repairing or replacing the damaged objects exceeds five hundred dollars, but does not exceed two thousand five hundred dollars. 3) Defacing objects of public respect is a Class C felony if the value of repairing or replacing the damaged objects exceeds two thousand five hundred dollars.

**A.C.A.16-66-207. Exemption- Family or public graveyards. (Execution of judgements).**

a) The clerk and recorder of deeds of the proper county, when any description of the metes and bounds of a family graveyard or public burial place shall be filed in his office, shall make a record of the description in the record of deeds, which shall be sufficient to exempt the land or burial place, not only from taxation, but also from execution. b) Not more than five acres shall be so exempted under this section

**Arkansas Historic Cemetery Preservation Grant Program<sup>4</sup>**

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<sup>4</sup> Arkansas Historic Preservation Program. “Grant Manual and Application Form.” Little Rock: Department of Arkansas Heritage. Accessed November 12, 2020  
<https://www.sos.arkansas.gov/uploads/rulesRegs/Arkansas%20Register/2015/august2015/012.02.15-001.pdf>

## **General Information**

Purpose The Arkansas Historic Preservation Program (AHPP) recognizes a lack of financial assistance as one of the largest obstacles to the preservation of historic resources in Arkansas. The purpose of the Historic Preservation and Restoration Grant program is to encourage and promote preservation of Arkansas's historic resources by providing financial assistance for restoration of historic properties.

## **Funding Source**

Grants awarded by the Arkansas Historic Preservation Program (AHPP) are funded through Special Revenues under the Real Estate Transfer Tax passed as Acts 729 and 818 of 1987, the Arkansas Conservation Tax established by Amendment 75, or by the National Park Service, United States Department of the Interior. All grant recipients must follow the policies and procedures of the Arkansas Historic Preservation Program, as well as regulations governing the expenditure of all state and federal funds. The regulations set forth in this manual must be strictly adhered to by both the Arkansas Historic Preservation Program and by all grant recipients.

## **State and Federal Regulations**

All grant recipients must agree to abide by and comply with applicable state and federal regulations and policies, including Fair Labor Standards, Title VI of the Civil Rights Act of 1964 [42 USC 2000 (d)] and Section 504 of the Rehabilitation Act of 1973 [29 USC Section 794], Title IX of the Education Amendment of 1973, and the Americans with Disabilities Act of 1991, as well as all other applicable state and federal laws, regulations, and executive orders dealing with public works, professional services, and bidding procedures.

## **NORTH CAROLINA**

### **North Carolina General Statutes, Section 22 § 14-149. Desecrating, plowing over or covering up graves; desecrating human remains.<sup>5</sup>**

(a) It is a Class I felony, without authorization of law or the consent of the surviving spouse or next of kin of the deceased, to knowingly and willfully:

- (1) Open, disturb, destroy, remove, vandalize or desecrate any casket or other repository of any human remains, by any means including plowing under, tearing up, covering over or otherwise obliterating or removing any grave or any portion thereof.
- (2) Take away, disturb, vandalize, destroy, tamper with, or deface any tombstone, headstone, monument, grave marker, grave ornamentation, or grave artifacts erected or placed within any cemetery to designate the place where human remains are interred or to preserve and perpetuate the memory and the name of any person. This subdivision shall not apply to the ordinary maintenance and care of a cemetery.

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<sup>5</sup> North Carolina General Statutes, 22 § 14-149. "Desecrating, plowing over or covering up graves; desecrating human remains.<sup>5</sup>." 2019.

- (a1) It is a Class H felony, without authorization of law or the consent of the surviving spouse or next of kin of the deceased, to knowingly and willfully disturb, destroy, remove, vandalize, or desecrate any human remains that have been interred in a cemetery.
- (b) The provisions of this section shall not apply to a professional archaeologist as defined in G.S. 70-28(4) acting pursuant to the provisions of Article 3 of Chapter 70 of the General Statutes.

**North Carolina General Statutes, Section 12 § 65-91. Money deposited with the clerk of superior court.<sup>6</sup>**

**Part 2. Trust Funds for Care of Cemeteries.**

For the maintenance and preservation of abandoned or neglected graves or abandoned or neglected cemeteries, any person, firm, or corporation may, by will or otherwise, place in the hands of the clerk of the superior court of any county in the State where such grave or lot is located any sum of money not less than five thousand dollars (\$5,000), the income from which is to be used for keeping in good condition the abandoned or neglected grave or the abandoned or neglected cemetery with specific instructions as to the use of the fund.

**N.C.G.S, 12 § 65-92. Separate record of accounts to be kept.**

It shall be the duty of the clerk of the superior court to keep a separate record for keeping account of the money deposited as provided in G.S. 65-91, to keep a perpetual account of the same therein, and to record therein the specific instructions about the use of the income on such money. The clerk shall see that the income is spent according to such specific instructions and shall place a copy of the accounting in the estate file.

**N.C.G.S, 12 § 65-93. Funds to be kept perpetually.**

All money placed in the office of the superior court clerk in accordance with this Part shall be held perpetually, or until such time as the balance of the trust corpus falls below one hundred dollars (\$100.00), at which time the trust shall terminate, and the clerk shall disburse the remaining balance as provided in G.S. 36A-147(c). Except as otherwise provided herein, no one shall have authority to withdraw or change the direction of the income on same.

**N.C.G.S, 12 § 65-94. Investment of funds.**

Money placed in the office of the superior court clerk in accordance with this Part shall be invested in the same manner as is provided by law for the investment of other trust funds by the clerk of the superior court.

**N.C.G.S, 12 § 65-95. Clerk's bond; substitution of bank or trust company as trustee.**

The official bond of the clerk of the superior court shall be liable for all such sums as shall be paid over to the clerk in accordance with the provisions of this Part. In lieu of the provisions of this section, the clerk may appoint any bank or trust company authorized to do

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<sup>6</sup> North Carolina General Statutes, 12 § 65-91. "Money deposited with the clerk of superior court." 2019.

business in this State as trustee for the funds authorized to be paid into his office by virtue of this Part; provided, that no bank or trust company shall be appointed as such trustee unless such bank or trust company is authorized and licensed to act as fiduciary under the laws of this State.

Before any clerk shall turn over such funds to the trustee so appointed, the clerk shall require that the trustee so named qualify before the clerk as such trustee in the same way and manner and to the same extent as guardians are by law required to so qualify. After such trustee has qualified as herein provided, all such funds coming into the clerk's hands may be invested by the trustee only in the securities set out in G.S. 7A-112 and the income therefrom invested for the purposes and in the manner heretofore set out in this Part. All trustees appointed under the provisions of this Part shall render and file in the office of the clerk of the superior court all reports that are now required by law of guardians.

**N.C.G.S, § 65-96. Funds exempt from taxation.**

All money referred to in the preceding sections of this Part shall be exempt from all State, county, township, town, and city taxes.

<https://archaeology.ncdcr.gov/programs/cemeteries>

**VIRGINIA<sup>7</sup>**

**Code of Virginia § 57-27.1. Access to cemeteries located on private property; cause of action for injunctive relief; applicability.**

A. Owners of private property on which a cemetery or graves are located shall have a duty to allow ingress and egress to the cemetery or graves by

- (i) family members and descendants of deceased persons buried there
- (ii) any cemetery plot owner; and
- (iii) any person engaging in genealogy research, who has given reasonable notice to the owner of record or to the occupant of the property or both.

No landowner shall erect a wall, fence or other structure or device that prevents ingress and egress to the cemetery or grave, unless the wall, fence or other structure or device has a gate or other means by which ingress and egress can be accomplished by persons specified in this subsection. The landowner may designate the frequency of access, hours and duration of the access and the access route if no traditional access route is obviously visible by a view of the property. The landowner, in the absence of gross negligence or willful misconduct, shall be immune from liability in any civil suit, claim, action, or cause of action arising out of the access granted pursuant to this section.

B. The right of ingress and egress granted to persons specified in subsection A shall be reasonable and limited to the purposes of visiting graves, maintaining the gravesite or cemetery, or conducting genealogy research. The right of ingress and egress shall not be construed to provide a right to operate motor vehicles on the property for the purpose of accessing a cemetery or gravesite unless there is a road or adequate right-of-way that

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<sup>7</sup> Code of Virginia; § 57-27.1. "Access to cemeteries located on private property; cause of action for injunctive relief; applicability." 2011.

permits access by a motor vehicle and the owner has given written permission to use the road or right-of-way of necessity.

- C. Any person entering onto private property to access a gravesite or cemetery shall be responsible for conducting himself in a manner that does not damage the private lands, the cemetery or gravesites and shall be liable to the owner of the property for any damage caused as a result of his access.
- D. Any person denied reasonable access under the provisions of this section may bring an action in the circuit court where the property is located to enjoin the owner of the property from denying the person reasonable ingress and egress to the cemetery or gravesite. In granting such relief, the court may
  - (i) set the frequency of access, hours and duration of the access and
  - (ii) award reasonable attorney fees and costs to the person denied such access.
- E. The provisions of this section shall not apply to any deed or other written instrument that creates or reserves a cemetery or gravesite on private property.

1993, c. 713; 2004, c. 831; 2008, c. 390; 2011, c. 257.

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**RECENT TENNESSEE EXAMPLES**

**DESECRATION**

**Hopewell Cemetery, Gibson County**



Vandalism of a Cash family monument at Hopewell Cemetery in Medina, Gibson County, 2020. Law enforcement was notified and is still working to find the perpetrators. By state law, the vandals will face Class E Felony charges if ever caught.  
(Courtesy WBBJ TV)

<https://www.wbbjtv.com/2020/06/08/police-seek-assistance-in-solving-graveyard-vandalism-case/>

### **Lexington Cemetery, Henderson County**



Another example from Lexington, Henderson County. In this case, the grave occupant is a World War II veteran. One wonders if this private fought so that the vandals could express their “freedom” on his headstone.

(Courtesy WBBJ TV)

<https://www.wbbjtv.com/2019/06/07/police-investigate-vandalism-of-wwii-veterans-grave-in-lexington/>

### **Warren Family Cemetery, Rutherford County**



(*Murfreesboro Post*, Photographer Jason M. Reynolds, October 21, 2019)

The William Warren family cemetery in Murfreesboro, established in 1832, was well known to local historians prior to its destruction by bulldozers during construction in the fall 2019. Its GPS coordinates were even posted openly on Find a Grave. In 1810, Warren was married to Catherine Thompson, the daughter of Colonel John Thompson, a veteran of the Revolutionary War from North Carolina who like many early Tennesseans, received a land grant here for his service. Intentional or not, the destruction rightfully upset the Warren's living descendants. Furthermore, US and state law recognize cemeteries as expressions of religious ritual. Thus they are protected by the 1<sup>st</sup> Amendment of the US Constitution.

[https://www.murfreesboropost.com/news/preservationists-rally-around-historic-cemeteries-on-construction-sites/article\\_cb19ecb4-ef85-11e9-b4cb-5f349c990e24.html](https://www.murfreesboropost.com/news/preservationists-rally-around-historic-cemeteries-on-construction-sites/article_cb19ecb4-ef85-11e9-b4cb-5f349c990e24.html)

## CEMETERY IDENTIFICATION

### Bartlett “Colored” Cemetery, Shelby County (AKA Major Taylor Cemetery)



(Courtesy ABC24 Memphis-WATN)

Does this look like a cemetery? It indeed is an historic African American burial ground. Due to socio-economic circumstances, many such cemeteries like this one exist. If not noted on a deed, how would a landowner, realtor, prospective buyer, or developer ever know unless a grave marker were evident? Nevertheless, it is still considered protected under **TCA 46**.

<https://www.localmemphis.com/article/news/local/memphis-family-community-members-to-clean-up-cemetery-where-ancestors-were-buried-in-1800s/522-dd64d92b-647c-4397-a8d2-bee8220be3ad>

## MAINTANANCE AND PRESERVATION



## Gower Family Cemetery, Davidson County



(Courtesy Historic Nashville)

Cemetery maintenance and preservation is a never-ending process. The cemetery pictured here is well-maintained. Turning forgotten cemeteries into picturesque places of natural beauty and personal reflection like this one can involve ongoing efforts from volunteers, family members, landowners, local government, “friends” groups, charitable organizations and others.


<http://historiconashvilleinc.org/event/historic-nashville-behind-the-scenes-tour-of-gower-cemetery/>



Energetic young volunteers cleaning headstones at Stones River National Cemetery in Murfreesboro, Tennessee in October 2018. (Courtesy National Park Service)

## OWNER IDENTIFICATION

This cemetery from the Comptroller of the Treasury seems to indicate that Nelson Cemetery in Lawrence County owns itself. No contact information is given. Only the basic cemetery location and established boundaries on the map. Since the Department of Treasury relies on information provided by each county, a county must be contacted to identify ownership. Often, counties do not know this information. As a result, it can be almost impossible to find contact information for the landowner to organize a visit. Fortunately, this cemetery is represented by a 501c13 that has been in contact with the new owner which in this case was known by the county.

State of Tennessee  Comptroller of the Treasury	
Real Estate Assessment Data	
<a href="#">Home</a>	<a href="#">About</a>
<a href="#">New Search</a>	<a href="#">Return to List</a>
County Number: 050	County Name: LAWRENCE
Tax Year: 2019	
<b>Property Owner and Mailing Address</b>	
Jan 1 Owner: CEMETERY NELSON RT 2 LAWRENCEBURG, TN 38464	
<b>Property Location</b>	
Address: NELSON RD	
Map: 108	Grp:      Ctrl Map: 108
Parcel: 003 00	Pl:      S/I: 000
<b>Value Information</b>	

## CEMETERY ACCESS

One unique and unforeseen situation involving the “blockage” of a cemetery that occurred recently at the Nelson Cemetery in Lawrence County. In this case, the county decided to officially abandon a county road that accessed a historic cemetery that was still used actively for burial. The county turned the cemetery and road over to the surrounding landowner, probably because it was not financially prudent to maintain a road that only accessed a cemetery and a single landowner’s property. Although the landowner and interested parties eventually established a temporary compromise, it seemed strange that a county could close an official road accessing a cemetery for the purpose of saving money without establishing an easement when the landowner received the transfer.

Under current Tennessee law, the landowner is within his legal rights to avoid spending money on a road that was now his property, even though the cemetery was still active and was managed by a 501c13 “friends” group. The landowner agreed that the 501c13 could spend its own money to maintain the road if it wanted to, a cost prohibitive action for the 501c13. The lack of road maintenance created a hardship to family members because it effectively blocked access to them at the very least for future burials. In addition, since the former county road was long, the likelihood of achieving adequate funding to maintain it was low, if not non-existent. Although this matter probably falls under the purview Tennessee Department of Transportation,

it nevertheless created confusion that could have proactively been corrected by the county. It should also be acknowledged that cemetery access could be effectively blocked in the future due to failure to maintain the road.

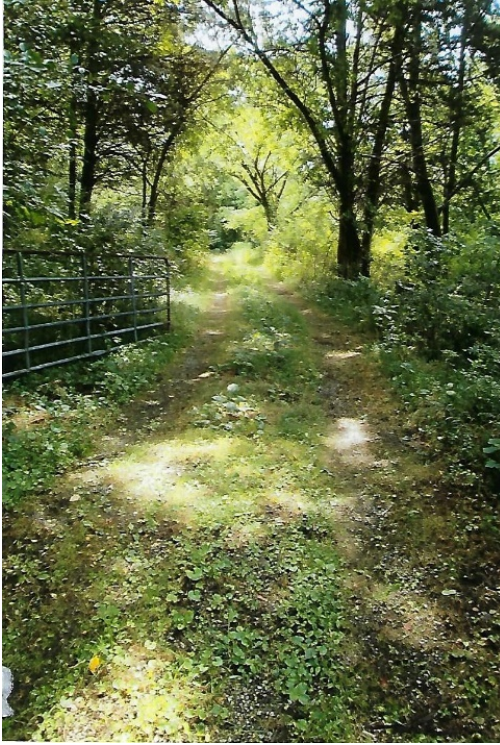


Image: Former county road providing access from highway to Nelson Cemetery. The current owner is not under any legal obligation to maintain the road or the cemetery, and what was recently a county road is no longer maintained by the county. (Betty Jo Ratcliff, 2018)

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