

Opinion 2002 - 10

This opinion represents the views of the Office of the State Comptroller at the time it was rendered. The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.

CEMETERIES -- Privately-owned cemetery (authority of town to acquire by gift as historic property)

HISTORIC PRESERVATION -- Privately-owned cemetery (authority of town to acquire by gift as historic property)

TOWNS -- Powers and Duties (acceptance of gift of privately-owned cemetery deemed historical property)

GENERAL MUNICIPAL LAW §§119-aa, 119-bb(2), 119-dd(3): A town, after due notice and public hearing, may accept a gift of a privately-owned, family cemetery that constitutes historical property within the town and provide for the upkeep and repair of such property.

You ask whether a town may accept a gift of a privately-owned, "family cemetery", established during the late eighteenth century, to ensure its upkeep and repair. We are informed that the town considers the cemetery property to be "historically significant" and ascribes importance to the preservation of such property for future generations.

Article 5-K of the General Municipal Law (§119-aa *et seq.*) relates to historic preservation in local governments. This article establishes a "framework ... intended to maintain and encourage the opportunity and flexibility for the counties, cities, towns and villages of the state to manage the historic and cultural properties under their jurisdiction in a spirit of stewardship and trusteeship for future generations..."(General Municipal Law §119-aa).

General Municipal Law §119-dd(3) specifically authorizes the legislative body of a town to acquire by purchase, gift, grant, bequest, devise, lease or otherwise, the fee or any lesser interest, development right, easement, covenant or other contractual right, necessary to achieve the purposes of the article, to historical or cultural property within its jurisdiction, after due notice and public hearing (see also Town Law §64 [8], [17-a]; 1978 Opns St Comp No. 78-497, unreported). General Municipal Law §119-dd(4) authorizes the legislative body of a town to, *inter alia*, restore and operate historic buildings and structures. The term "historic and/or cultural place or property" is defined for purposes of article 5-K to mean "any building, structure, district, area, site or object, including the underground and underwater sites, with significance in the history, architecture, archeology or culture of the state, its communities, or the nation" (General Municipal Law §119-bb[2]).

It is our opinion that, pursuant to this grant of authority to acquire historic property by gift and to restore and operate such property, a town board may accept a gift of a privately-owned, family cemetery and provide for the upkeep and repair of the cemetery, provided that such property falls within the definition of historic and/or cultural place or property in article 5-K and that requisite procedures are followed regarding due notice and a public hearing. Whether the property in question falls within that definition is a question of fact to be determined, in the first instance, at the local level.

Accordingly, pursuant article 5-K of the General Municipal Law, a town, after due notice and public hearing, may accept a gift of a privately-owned, family cemetery that constitutes historical property within the town, and provide for the upkeep and repair of such property.¹

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1. In view of the conclusion reached herein, we need not address whether the town is authorized to accept a gift of this cemetery property under any other law (see, e.g., General Municipal Law §162, authorizing the conveyance to a town of real property held for burial purposes by an unincorporated cemetery association under certain circumstances; see also Town Law §291, concerning a town's duties with respect to certain cemeteries and burial grounds).