VACATING CEMETERY IN CITY OR VILLAGE
Act 297 of 1929

AN ACT to provide for vacating private and public cemetery plats and cemetery grounds in the limits of incorporated cities and villages and to provide for the acquisition by said cities and villages of the cemetery grounds and plats vacated hereunder.

History: 1929, Act 297, Imd. Eff. May 23, 1929.

The People of the State of Michigan enact:

128.51 Circuit court in chancery; jurisdiction to vacate cemeteries.

Sec. 1. That, whenever the trustees of an incorporated village, or the common council of any city, shall, by a resolution adopted by them, determine that the dead bodies buried in any private or public cemetery located in such city or village should be removed therefrom for the reason that such cemetery shall impede the establishment, maintenance, development or enhancement of any public improvement by such city or village, the circuit court in chancery of the county in which such cemetery is located, upon such findings, and under the conditions hereinafter set forth, is hereby authorized to vacate the same, or any part thereof, on petition made to such court, as hereinafter provided.

History: 1929, Act 297, Imd. Eff. May 23, 1929;—CL 1929, 2668;—CL 1948, 128.51.

128.52 Contract for sale of private cemetery to city, village; contents.

Sec. 2. That, upon the adoption of such a resolution, it shall be competent for the board of directors, or board of trustees, of such cemetery association, as is the owner of such cemetery, to agree upon a contract for the sale of such cemetery to such city or village: Provided, however, That the validity and enforceability of such contract shall be conditioned upon the aforesaid circuit court authorizing the vacating of such cemetery under the terms hereof: Provided further, That such contract shall be approved by a 3/4 vote of the scrip holders or stockholders of such cemetery association, at a special meeting called for that purpose, notice of such meeting to be mailed to the last known place of residence of such scrip holders or stockholders: And provided further, That such contract shall provide that such cemetery association agrees to provide, within a reasonable distance from such city or village, a cemetery ground suitable for the reinterment of such dead bodies and remains as are ordered to be vacated: And provided further, That such contract shall provide that such cemetery association agrees to reinter such dead bodies and remains, except as to such as are interred in the lots of objecting lot owners or grave owners, as hereinafter set forth.

History: 1929, Act 297, Imd. Eff. May 23, 1929;—CL 1929, 2669;—CL 1948, 128.52.

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128.53 Petition of trustees or council to vacate; filing, notice.

Sec. 3. That, upon the execution of such contract, a petition shall be made in behalf of said village trustees, or common council, by an attorney, or agent, appointed by them for that purpose, who shall file a petition, signed and sworn to by him, in the office of the clerk of said court for the proper county, which petition shall set forth his authority, as attorney, or agent, the particular reasons for making and filing such petition, a copy of the aforesaid contract with the cemetery association, and a complete legal description of the premises on which said cemetery is located, which petition shall be filed as aforesaid, at least 30 days previous to the date for which such petition shall be noticed for hearing. That notice of the pendency and hearing of such petition shall be given by publishing the same in a newspaper circulated in the proper county, once in each week, for 4 successive weeks, prior to the date of the hearing.

History: 1929, Act 297, Imd. Eff. May 23, 1929;—CL 1929, 2670;—CL 1948, 128.53.

128.54 Compensation to objecting lot owners; credit on contract; condition precedent.

Sec. 4. That, should there appear at the hearing of such petition any objecting lot owner or grave owner of such cemetery, setting forth, by special petition, that he has not come to an agreement with said cemetery association in respect to the necessity for such removal under the terms of this act and in respect to compensation for the loss of burial rights, or for the removal of dead bodies interred on their lots, compensation shall be awarded to such lot owners and grave owners in the manner hereinafter set forth, and such compensation shall be paid by said city, or village, and shall, thereafter, be deducted from the purchase price theretofore agreed to be paid to said cemetery association: Provided, however, That as a condition precedent to the payment of such compensation, such objecting lot owner and grave owner shall remove and reinter the dead bodies and remains on his lot.

History: 1929, Act 297, Imd. Eff. May 23, 1929;—CL 1929, 2671;—CL 1948, 128.54.

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128.55 Court proceedings; order to vacate, contents, recording; recorded under complete bar.

Sec. 5. That the hearing of such petition may be continued from term to term, in the discretion of the court, without further notice; that all testimony may be taken in open court, or the taking of the same may be referred, in the discretion of the court, to a circuit court commissioner of the proper county; that, under direction of the court, proper issues may be made for the determination of all questions of law and fact, and all questions of compensation to any person, or persons, to be affected by such proceedings, and all issues of fact may be tried by a jury, if the court shall so order, and any person adversely interested may cause himself to be made defendant to such petition. In all cases where reference shall be made to a jury to determine the compensation to be paid to any person or persons, as aforesaid, the proceedings upon such reference shall, so far as practicable, be like those had in cases where a jury is empaneled to ascertain and determine the necessity of taking lands and other property as provided by the charter of the municipality or as provided in Act No. 149 of the Public Acts of 1911, as amended by Act No. 37 of the Public Acts of 1925, entitled "An act to provide for the condemnation by state agencies and public corporations of private property for the use or benefit of the public, and to define the terms 'public corporations,' 'state agencies' and 'private property' as used herein," being sections 353 to 373, inclusive, of the Compiled Laws of 1915, or such other appropriate provisions therefor as exist or shall be made by law, and to appraise the damages and compensation to be allowed therefor. If, upon the hearing of such petition, the petitioner shall produce satisfactory evidence to the court, that said trustees, or common council, have determined, as aforesaid, that the notice required by this act has been given; that the aforesaid contract between such city or village and said cemetery association has been executed in accordance with the terms hereof, and that such cemetery should be vacated, in whole or in part, as a place of burial, for the reasons given in this act for vacating cemeteries, such court shall thereupon order that such cemetery shall be vacated, in whole or in part, as a place of burial; upon this condition, however, that said city or village shall perform its obligations and agreements under the terms of the said contract. That a copy of such order certified by the register of such court under his seal shall be recorded by the petitioner in the office of the register of deeds of the proper county. That such order, when so recorded, shall be a complete bar to the rights of any person or persons, as lot owners and grave owners of such cemetery: Provided, however, That the rights of objecting lot owners and grave owners shall not be barred until the compensation awarded hereunder shall be paid by said city or village to the person or persons entitled to same or to the clerk of the county where such judgment was rendered.

History: 1929, Act 297, Imd. Eff. May 23, 1929;—CL 1929, 2672;—CL 1948, 128.55.

Compiler's note: For provisions of Act 149 of 1911, referred to in this section, see MCL 213.21 et seq.

128.56 Appeal; bond.

Sec. 6. Any lot owner or grave owner whose property may be taken, and any municipality or person, party to the proceedings under this act, considering himself aggrieved, may appeal from the order of the court confirming the verdict of the jury or order of the court made at the proceedings without a jury by filing in writing with the clerk of said court notice of such appeal within 5 days after the confirmation or order, and filing a bond in said court, to be approved by the judge thereof, conditioned for the prosecution of said appeal to judgment, and the payment of all costs, damages and expenses that may be awarded against him in case the judgment or confirmation shall be affirmed. Such appeal shall be perfected within the same time and prosecuted as far as practicable like an appeal in chancery.

History: 1929, Act 297, Imd. Eff. May 23, 1929;—CL 1929, 2673;—CL 1948, 128.56.

128.57 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.

Compiler's note: The repealed section pertained to removal and reinterment of dead bodies.

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