

CEMETERY REGULATION ACT (EXCERPT)
Act 251 of 1968

456.529 Commissioner; hearings; investigations; oaths; testimony; witnesses; production of books and records; subpoena; abandoned cemeteries; failure to obey subpoena; perjury; violation of act, rule, or order; powers of commissioner; injunction or restraining order; appointment of receiver or conservator; powers; sale of cemetery; notice to creditors and filing of claims; denial of application; suspension or revocation of permit or registration.

Sec. 9.

(1) The commissioner may hold hearings, conduct investigations, administer oaths, take testimony under oath, and request in writing the appearance and testimony of witnesses, including the production of books and records. The commissioner may petition the circuit court for Ingham county for an order to issue, as part of the commissioner's general investigative and enforcement authority, a subpoena or a subpoena duces tecum relating to any person's appearance and testimony and for the production, examination, or copying of books, papers, or other documents pertaining to an investigation or hearing that is within the scope of the commissioner's authority under this act. The court shall issue an order for the issuance of subpoenas when reasonable grounds are shown.

(2) The commissioner has the authority to control, manage, and dispose of or transfer abandoned cemeteries or to require acceptance of responsibility for an abandoned cemetery according to law. The commissioner may promulgate rules that are necessary for the department to carry out its powers and duties under this subsection.

(3) Failure to obey a subpoena issued to any person by the commissioner through an order of the circuit court may subject the person to punishment by the circuit court as a contempt of court.

(4) Any person required by this act to take any oath or affirmation and who knowingly makes any false oath or affirmation is considered to have committed the crime of perjury.

(5) When it appears to the commissioner that a person or registrant has engaged in, or is about to engage in, any act or practice constituting a violation of this act or a rule promulgated or order issued under this act, the commissioner may do 1 or more of the following:

(a) Issue a cease and desist order.

(b) Accept an assurance of discontinuance of the violation.

(c) Bring an action in the circuit court for the county in which the person resides or in the circuit court for the county of Ingham, to enforce compliance with this act or a rule promulgated or order issued under this act.

(6) Upon a proper showing regarding an action brought under subsection (5)(c), a permanent or temporary injunction or a restraining order may be granted and a receiver or conservator may be appointed by the court. A receiver or conservator appointed by the court shall receive compensation from the cemetery as determined by the court. The receiver or conservator may operate the cemetery and take possession of the assets. The receiver or conservator shall have the rights and obligations of the cemetery as to all trust and escrow accounts and may sell, assign, transfer, or convey the cemetery and any of the assets to a municipal corporation or other person other than the holder of a license for the practice of mortuary science or a person who owns, manages, supervises, operates, or maintains, either directly or indirectly, a funeral establishment, under conditions prescribed by the court, in order to discharge outstanding contractual obligations. A receiver or conservator appointed under this section or section 2926a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2926a, has all the powers, authority, and remedies of an assignee for the benefit of creditors under chapter 52 of the revised judicature act of 1961, 1961 PA 236, MCL 600.5201 to 600.5265. The court may allow the receiver or conservator to file for protection under the bankruptcy code.

(7) Subject to court approval, a receiver or conservator may do any of the following:

(a) Take possession of the books, records, and assets of the cemetery or cemetery entity.

(b) Employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as he or she considers necessary.

(c) Fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers, and consultants with the court's approval.

(8) In the order of sale of the cemetery, the court shall make provision for notice to creditors and the filing of claims against the receivership or conservatorship. Money held by the cemetery in trust or in escrow shall not be distributed to the general creditors of the cemetery. This section does not prohibit the court from allowing the sale of the cemetery to a person other than the holder of a license for the practice of mortuary science or a person who owns, manages, supervises, operates, or maintains, either directly or indirectly, a funeral establishment, or from allowing the sale of the cemetery to a municipal corporation.

(9) In addition to an action taken under this section, the commissioner may deny an application or may suspend or revoke a permit or registration after an administrative hearing as provided for in this act.

History: 1968, Act 251, Eff. Sept. 15, 1968 ;-- Am. 1978, Act 102, Imd. Eff. Apr. 6, 1978 ;-- Am. 1982, Act 132, Imd. Eff. Apr. 20, 1982 ;-- Am. 2002, Act 550, Imd. Eff. July 26, 2002 ;-- Am. 2003, Act 289, Imd. Eff. Jan. 8, 2004 ;-- Am. 2004, Act 22, Eff. Jan. 1, 2005 ;-- Am. 2008, Act 478, Imd. Eff. Jan. 12, 2009

Compiler's Notes: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.