

"[T]he original sentence conformed to the statutory command for a first offense * * * ." 25 N.J. at 312. The court's holding is limited to instances in which a valid sentence has been handed down. The factual situation stated in your request for opinion is plainly distinguishable because of the illegal sentence imposing a fine less than the statutory minimum.

We therefore advise you that a magistrate, upon notice from the Director of the Division of Motor Vehicles, should correct a sentence imposing a fine to accord with the mandatory statutory minimum for the motor vehicle offense.

Very truly yours,

DAVID D. FURMAN
Acting Attorney General

By: WILLIAM L. BOYAN
Deputy Attorney General

APRIL 16, 1958

HONORABLE JAMES M. SULLIVAN
Chief, Consumer Credit Division
Department of Banking and Insurance
State House Annex
Trenton, New Jersey

FORMAL OPINION 1958—No. 7

DEAR MR. SULLIVAN:

You have asked for the opinion of the Attorney General as to whether the duty imposed by R.S. 8:2-38 and 39 upon the Department of Banking and Insurance to supervise and examine trust and special funds of "every cemetery association" applies to such funds of all cemetery associations or only to those of cemetery associations incorporated pursuant to the Rural Cemetery Act, presently embodied in R.S. 8:1-1 et seq.

R.S. 8:2-38 requires "every cemetery association" holding property in trust, or as a special fund, to file in the Department of Banking and Insurance, within 60 days after the close of each fiscal year of such association, a duly verified report of the principal and investments thereof. R.S. 8:2-39 requires the Department to inspect and supervise each fund at least once every two years.

Formerly, cemetery associations were created by special law or pursuant to the provisions of "An act authorizing the incorporation of rural cemetery associations," enacted in 1851. As part of the 1875 revision, the 1851 law was repealed and there was enacted "An act to authorize the incorporation of rural cemetery associations and regulate cemeteries." In 1918 there was enacted "A Supplement to an act entitled 'An act to authorize the incorporation of rural cemetery associations and regulate cemeteries, approved April ninth, eighteen hundred and seventy-five'" which, for the first time, required the Department of Banking and Insurance to supervise and examine the trust and special funds of "any cemetery association." The 1875 Act and 1918 Supplement were thereafter incorporated by the 1937 revision into what is presently R.S. 8:1-1 et seq., "Cemeteries."

It had been argued, prior to the 1937 revision, that the titles of the 1875 Act and 1918 Supplement were not broad enough to permit the regulation by the Department of Banking and Insurance of cemetery associations not incorporated pursuant to the Rural Cemetery Act. The phrase "and regulate cemeteries" was thought to be limited by the first portion of the title which reads "An act to authorize the incorporation of rural cemetery associations." Since a law is without force and effect unless the object thereof is expressed in the title of a statute, *Hendrickson v. Fries*, 45 N.J.L. 555, 563 (E. & A. 1883), there was uncertainty as to whether the 1875 Act could be construed to permit the regulation of a cemetery association not incorporated pursuant to the Rural Cemetery Act. However, in *Newark v. Mount Pleasant Cemetery Co.*, 58 N.J.L. 168, 172 (E. & A. 1895) the former Court of Errors and Appeals strongly suggested that the 1875 Act was applicable to a cemetery association not incorporated pursuant to the Rural Cemetery Act.

In arriving at its conclusion that the Rural Cemetery Act was intended to apply also to cemetery associations otherwise incorporated, the court noted that the act specifically refers to cemetery associations otherwise incorporated. This is still the case today. For instance, in the present statute R.S. 8:1-4 permits "any cemetery association incorporated under the provisions of this title, or under the provisions of any other law of this State, general, special or private . . ." to change its name; R.S. 8:1-6 entrusts the care and management: "of all cemetery associations incorporated under the authority of sections 8:1-1 to 8:1-5 of this title, or under any general law . . . to a board of managers or trustees . . ."; R.S. 8:2-18 deals with the streets and roads of "any cemetery association, however incorporated"; R.S. 8:2-27 exempts the "land and property of any cemetery association, however incorporated" from being seized under legal process, and R.S. 8:2-42 permits "any cemetery association, organized either under a general or special law" to sell its lands which are not used for burial purposes.

Thus, it is clear that the Rural Cemetery Act was intended to apply to any cemetery association regardless of how incorporated.

In any event, the 1937 revision, which enacted R.S. 8:1-1 et seq., is a wholly independent enactment superseding all existing general law, *Duke Power Co. v. Somerset Co. Bd. of Taxation*, 125 N.J.L. 431 (E. & A. 1940) and, since it is merely entitled "Cemeteries", it cannot be subjected to any narrow construction which could have been placed upon the former statutes. There is no valid reason why the phrase "every cemetery association" in R.S. 8:2-38 should be limited to "every cemetery association incorporated pursuant to this act". R.S. 8:1-1 merely sets forth one, and not the only method of forming a "cemetery association" (See Title 15; *Di Cristofaro v. Laurel Grove Memorial Park*, 43 N.J. Super. 244, 255 (App. Div. 1957)); the regulatory features of Title 8 on Cemeteries apply to every cemetery which is incorporated.

It is our opinion that the duty of the Department of Banking and Insurance to supervise and examine trust and special funds of "every cemetery association", as provided for by R.S. 8:2-38 and 39, applies to the trust and special funds of every cemetery association, regardless of how incorporated.

Very truly yours,

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