

Memorial at William Ewing Cemetery, Nashville, TN

CEMETERY LAW

TENNESSEE HISTORICAL COMMISSION

African American grave outlined with cinder blocks
Mt. Olive Baptist Church Cemetery
Robertson County, TN

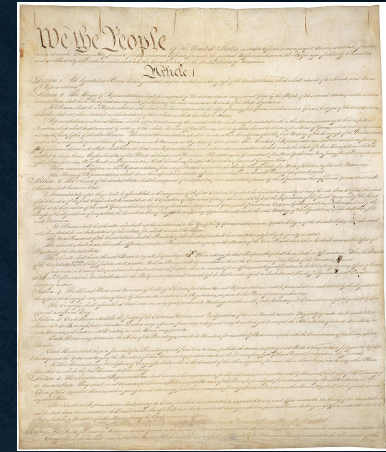


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William Blackstone (1723-1780)

TENNESSEE LAW OVERVIEW



US Constitution

STRONG POINTS

- Family Graves Protection Act (TCA 46-8)
- Relocation process is clear (TCA 46-4)
- Tax incentives exist
- Desecration law clear (TCA 46-1-313)
- Criminal Penalties (TCA 39 Ch. 17)
- *Hines v. Tn (1911)* strengthens law

WEAK POINTS

- Many don't read it before taking action
- Expensive: Noncompliance worth risk
- Benefits are tiny
- Enforcement depends on locality
- Defined in TCA 39, not TCA 46
- Not included in Title 46



Tennessee General Assembly

T.C.A. 46 CEMETERIES



Edmonson Cemetery (African American) Nashville, TN

TCA 46-4

- Termination of Use of Land as Cemetery
- 46-4-101: Abandoned or threatened
- 46-4-102: Interested persons (*Families*)
- 46-4-103: Process for termination
- 46-4-104: Provisions for reinterment

TCA 46-8

- Family Burial Grounds Protection Act
- 46-8-103: Duty to protect graves
- 46-8-103a: MUST be on deed if transfer
- 46-8-103b: Protection boundary defined
- 46-8-104c: Relocation petition duty

TCA 46-1

- 46-1-102: Definitions

- CEMETERY

- “any land or structure in this state dedicated to and used, or intended to be used, for interment of human remains”
 - 1 grave = cemetery
 - Cemetery can even have no graves. Intention of use is all that is needed

- 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”



John Hendrix “the Prophet of Oak Ridge” gravesite
Robertsville, Anderson County
(The Tennessee Magazine)



John Hendrix “the Prophet of Oak Ridge” gravesite
original marker, Robertsville, Anderson County
(Ed Westcott, Photographer, 1944)

TCA 46-4 TERMINATION OF USE OF LAND AS CEMETERY

- 46-4-101 Defines purpose of the act
 - Is Cemetery Abandoned/Neglected?
 - Is purpose of property surrounding a cemetery inconsistent with proper reverence?
- 46-4-102: Defines *interested parties*
 - Can be family members, relatives, and anyone having right of easement
 - Applies to ALL cemeteries in Tennessee
- 46-4-103: Actions and Proceedings
 - Step 1: Check to see if you really own the cemetery (you may not)
 - Step 2: Complainant MUST first publish notice of intent using press sources common to county.
 - Step 3: County chancery court MUST then be contacted to petition for termination
 - Remaining *Interested parties* are considered *defendants*
 - Step 4: Petition MUST be filed with THC and posted on the THC website
- 46-4-104: Judgments and Decrees; Termination and Removal
 - Circuit Court determines outcome based on evidence tied to 46-4-101



Steve Primm standing beside ancestor's Markers, bulldozed "accidentally" by developer. Rutherford County, TN (Jason M. Reynolds, *Murfreesboro Post*, 2019)



"So Why Did You Get Fired?"
Image by Mike Hoonigan



JORDAN FAMILY CREST

TCA 46-8 FAMILY BURIAL GROUNDS PROTECTION



Old Jordan Family Cemetery
College Grove, Williamson County

- TCA 46-8-101 Purpose
 - “intended to provide notice to buyers of property with *known* burial grounds and gravesites.”
- TCA 46-8-102 Definitions
 - Defines Crypt, Gravesite and *Human* Remains
- TCA 46-8-103 Duty to protect graves or crypt; Disturbances prohibited; Transfer of remains.
 - Cemetery owner has duty to protect known graves
 - Owner **MUST** ensure cemetery is on Deed prior to sale or transfer
 - Defines prohibited area: 10 ft. from grave, 5 ft. from crypt
 - Notifies owner that there is an option and a process for removal (TCA 46-4)

TCA 39-17-3 CRIMINAL OFFENSES

- TCA 39-17-311 Desecration; honored places or flags
 - A) Person may not desecrate a place of worship or burial
 - B) Class A Misdemeanor
 - 11 months & 29 days in jail
 - Fine of up to \$2500
- TCA 39-17-312 Corpses; abuse
 - Class E Felony (prison time 1-6 years; fine of up to \$3,000)
 - Oh, and you lose right to vote



Vandalism of Cash family monument at Hopewell Cemetery, Medina, Gibson County, 2020. (WBBJ Eyewitness News)



Ask yourself: Are these human remains ancient or current?
(University of Tennessee, Knoxville)

WHAT DO I DO IF?

- Desecration
 - Report it to local police ASAP
 - Contact County Court to notify them of desecration
 - These entities MUST uphold Tennessee Law
 - If they refuse, call regional DA (and notify me)
 - If regional DA doesn't act call me and/or call State DA
- Corpse Abuse
 - Accidental disinterment
 - Stop work immediately!!!
 - Call local police immediately!!!
 - Remember, you may have found a murder victim. Don't be an accessory to murder.
 - Call TN Dept of Archeology-They MUST be notified by law (615)-741-1588
 - If you see intentional disinterment
 - Call local police immediately!!!



Fayette County Sheriff Office Seal



Phil Hodge, State Archeologist

TCA 68-5-508 DISINTERMENT; REINTERMENT

- 68-5-508(a): “Authorization for disinterment and reinterment in cases of movement of cemeteries or parts of cemeteries or for reuniting families shall be required prior to disinterment of a dead body or fetus.”
- 68-5-508(b): “Such authorization shall be issued by the state registrar to a licensed funeral director or person acting as such, upon proper application.”
 - Who is allowed
 - Funeral Homes
 - Can use for graves after 1920s
 - Archeology companies
 - Can use for any grave

Archeologists remove coffin of Civil War soldier
Isaac Newton Mason for relocation, Giles County, 2003



WALTER HINES V. STATE 1. 1058-1060 (1911)

- Sets precedent in Tennessee and Across Nation
- Not technically a state statute...yet
- Defines Interested Party Rights
 - Right to maintain, repair and beautify
 - Right of visitation
 - Right of burial
 - Declares a cemetery is a cemetery forever (unless Title 46-4)
- Landowner CANNOT
 - Obstruct interested party visitation
 - Desecrate
 - This also means plowing up headstones and using land for something else (see TCA 46-4)



Cheatham County law enforcement office escorts Family member to visit ancestor grave , Belltown Cemetery, Cheatham County, 2017. (Courtesy of the *Tennessean*)

OTHER RELEVANT PRECEDENTS

- *Davis V. May* (Texas, 2003)
 - Confirmed right of ingress and egress
- *McCoy v. Barr* (Kansas, 2012)
 - County employees granted easement to maintain cemetery
- *Rhodes v. Nicklas* (Missouri, 1981)
 - Relatives granted right to restrain owner from interfering with cemetery's purpose
- *Stoker v. Brown* (Tennessee, 1979)
 - Cemetery area is same as it ever was, even though it “miraculously shrank”



WHY CAN'T I PLOW UP A CEMETERY? ITS MY LAND!

- It might not really be “yours”
 - Call register of deeds confirm
 - Even if it is yours, you still MUST leave it alone!!
 - See TCA 46-8
- There is a legal process for relocation
 - See TCA 46-4
- If the rules make you angry...
 - Blame English Common Law
 - Blame the 1st Amendment, US Constitution
 - Blame yourself for purchasing the land before you knew the law

TO THE HONORABLE COURT OF APPEALS
OF THE STATE OF TENNESSEE:

Pursuant to a decree entered in this cause on November 24, 1945, of record in Minute Book 11, at page 1000, of the Minutes of this Court, which order of sale was later revived by decree in this cause entered in Minute Book 11, at page 218, the undersigned was ordered to sell at public auction, upon the terms hereinafter set out, the following described property, to-wit:

Land in the Sixth Civil District of Davidson County, Tennessee, and more particularly described as follows:

Lots Nos. 2 and 3 and all of lot No. 1 except one-fourth of an acre constituting the family graveyard, now under fence, on the map of subdivision of the lands of P. A. Smith as surveyed on August 26, 1897, by Lyle and Batts, Surveyors, a plan of which is recorded in Plan Book No. 2, page 68, of the Chancery Court of Davidson County, Tennessee, which plan was made in the case of P. A. Smith against W. E. Smith and others, to which plan reference is hereby made for a more detailed description of said property.

Said property contains 204 acres and 126 poles and is the property set aside by decree in the case of Pleasant A. Smith against W. E. Smith and others entered in Minute Book 50, page 380 of the Chancery Court of Davidson County, Tennessee, as the part of certain property devised to Pleasant A. Smith for life with remainder to his children or their legal representatives surviving him by W. L. Ewing by will

Deed of Transfer to State of Tennessee from
Nashville Trust Co. et. al., 1945



WHAT I SHOULD DO IF I AM A...

- Landowner
 - Follow the law
 - If you don't, you're going to lose-its expensive and will take up your limited time on earth!
 - Be Nice!
 - Visitors may be annoying, but try to work something out if they request access.
 - Don't just do what you want and hope no one finds out
 - If you do, interested parties will call me, and I'll investigate
 - Trust me, my investigation will really annoy you.
- Visitor
 - Be Courteous
 - There are many reasons a landowner is reluctant to have you on his/her property
 - If landowner is a curmudgeon, be nice anyway (and document everything)
 - Follow the law
 - If you don't, you're only going to incur unwanted expenses and penalties



Graham Perry

FOR MORE INFORMATION



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