

Statement of: Morningside Cemetery Association
East Charlotte, VT

17-Jan-22

RE: **V.S.A. Chapter 121. Cemeteries**
Paragraph 5309 – Investment of Funds
H-367. Management of Perpetual Care Funds

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1. EXISTING LAW

Following is the statutory language that governs how Vermont cemeteries *must* invest endowment or “perpetual care” funds. It was last amended in 1979.

(Emphasis added.)

*The principal sum of funds **shall be invested in bonds** of the United States or the state of Vermont, or in the bonds or in notes issued in anticipation of taxes and authorized by vote of any town, village, or city in this state, or loaned upon the first mortgage on real estate in this state a sum not in excess of sixty percent of the value of such real estate, or upon collateral of any of the above securities of equal value with the loan, **or in shares of a savings and loan association** of this state or share amounts of a federal savings and loan association with its principal office in this state and to the extent to which the withdrawal or repurchase value of such shares or accounts may be insured by the Federal Savings and Loan Insurance Corporation, **or stock in a federal bank** or a safe deposit company or a national bank or state bank or trust company organized and doing business in the United States.*

*Up to **thirty-five percent** of the association’s assets may be invested in **common or preferred stocks of corporations** organized and existing under the laws of any state of the United States of America, or may be invested in the manner required for the investment of trust funds, unless otherwise authorized by the donor. No assets of the association may be loaned to a member, officer, trustee, or director of any such cemetery agency.*

2. KEY ELEMENTS OF EXISTING STATUTE

The statute requires that no less than 65% of endowment funds be invested in:

1. *Government Bonds*...U.S. Treasuries or Vermont state or municipal bonds;
 2. *Real Estate Mortgages*...not to exceed sixty percent (60%) loan-to-value;
 3. *Vermont S&L Shares*...if insured by the Federal Savings and Loan Insurance Corporation (“fiz-lick”); or
 4. *Commercial Bank Stocks*.
- For two-thirds [65%] of cemetery assets, no corporate stocks, not even “blue ribbon” companies. No corporate bonds, even those that are designated as “investment grade.”
 - As for the other third [35%] of reserve funds, they may be invested in common or preferred stocks of corporations.

3. MAJOR FLAWS

- ***These Chapter 121 regulations were enacted 43 years ago. They are not applicable in today’s investment marketplace.*** We do not know why the constraints were imposed on nonprofit cemeteries’ perpetual care funds. Safeguards against risky investing in turbulent financial times was a likely motivator. Markets were unstable in the late-1970s, with the prime interest rate soaring and reaching above 20% in 1979-80. Today it is a steady 3.25%.
- ***The statutory investment rules are not just harmful. They are impossible to adhere to today.*** Vermont’s requirements were nullified by federal law in the 1980s. Corrupt practices in the savings and loan industry had caused a national crisis. New rules were designed to correct the problems. They erased most distinctions between S&Ls and commercial banks. FSLIC, which provides

deposit insurance and which the Vermont statute still insists *must* insure S&Ls, was dismantled in 1989.

- ***Banking and investment tools have changed dramatically in recent decades.***

Mutual funds, for example, are widely used today for retirement and other conservative investments. They barely existed in the 1970s, and they are not identified as eligible for the majority of perpetual care funds under state law. Chapter 121 effectively prohibits investments in mutual funds for two-thirds of the cemetery endowments.

4. FINANCIAL CONSEQUENCES

Calendar Year 2021 saw record highs in the stock market. Revenues generated by Morningside's reserves—the funds that were invested in stocks—increased by nearly 17%. On the other hand, the majority of investments were limited to government bonds. They yielded only between 1% and 2%. This isn't enough to keep up with inflation.

Using the rough benchmarks for comparison purposes, the restrictions imposed by state law cost Morningside more than \$16,000 in potential earnings. That is enough money to pay for operating and maintaining the cemetery for at least four years.

5. AMENDED LANGUAGE

The amendment to Chapter 121 sponsored by Representative Mike Yantachka is fully supported by the Morningside board of directors.

A key provision specifies that portfolios be “well diversified with instruments and allocations that are prudently selected.” Legislated proscriptions are replaced with encouragement for cemetery associations to adopt investment policies and to hire professional financial managers to guide and oversee investment decisions. The new statute is thoughtful and clear in its intentions:

“A cemetery association that holds funds in trust for perpetual care may invest these assets in accordance with investment policies adopted by the cemetery organization. The investment policies shall specify the purpose and objectives for managing and administering the perpetual care funds. Portfolios must be well diversified, using instruments and allocations that are prudently selected and intended to achieve short- and long-term objectives. Cemetery associations may delegate management to investment managers that are registered with the U.S. Securities and Exchange Commission (SEC) and have fiduciary responsibility for the management of the assets.”