



DONNA K. JACKSON  
CITY CLERK

February 18, 1999

Planning and Inspection Committee  
Ron Kelton, Chairman  
1700 Rosemond  
Jonesboro, AR 72401

BY FACSIMILE to 870/932-2613  
and BY FIRST CLASS MAIL

Re: Condemnation Ordinance  
Amendment

Dear Ron:

My office was provided a copy of the purposed condemnation ordinance for Monday's agenda. We have a problem in the wording of Section 3.

According to A.C.A. 14-54-902 before any action can be taken regarding a lien, an affidavit must be filed by the City Clerk. The ordinance your committee is proposing states the Mayor or his designee shall make an affidavit. I have enclosed a copy of this Statute.

Also, the ordinance does not make reference to placing it in the code book. It mentions repealing Sections 11.32.01 through 11.32.11 but says nothing about replacing it with this amendment.

This type of over-site creates loop-holes and could be a potential problem for the Council later on. It was important to let you know now instead of the middle of a meeting.

Thank you,

Executive Office  
City Hall  
P.O. Box 1845  
314 W. Washington  
Jonesboro, AR 72403

Phone: 501-935-0305  
FAX: 501-933-4619

cc: Mayor Brodell  
Phillip Crego  
Garry Tate  
Chris Moore  
Fred Rorex

References. Eminent domain for cemetery purposes, § 18-15-1401 et seq.

#### CASE NOTES

##### Corporate Limits.

Under this section, a municipal corporation is authorized to acquire land within the municipal limits for a public cemetery. City of Ft. Smith v. Wilson, 100 Ark. 587, 140 S.W. 733 (1911).

#### 14-54-803. Power to require burial outside municipal limits.

(a) Cities of the first and second class and incorporated towns shall have the power to prohibit the burial of the dead within their limits.

(b)(1) Where old and abandoned burial grounds which are no longer kept up or used as such are situated within the limits of any such city or incorporated town, it may, by suitable ordinance, require persons having dead buried therein to cause them, within some reasonable time, to be removed and buried beyond the limits of the city or incorporated town.

(2) In the event the bodies are not removed within the time specified in the ordinance of the city or incorporated town, after the ordinance has been published in the mode and manner prescribed by law, then the city or incorporated town may itself have the remains of all such persons as can be found removed and buried, as provided in this section. It may then and not before, by proper ordinance, vacate the cemetery or burial ground and declare that it is not any longer a cemetery exclusively used as such. Thereafter, the property shall become subject to taxation like other property.

History. Acts 1901, No. 102, § 1, p. 168; C. & M. Dig., § 7602; Acts 1929, No. 202, § 1; Pope's Dig., § 9697; A.S.A. 1947, § 19-2324.

#### SUBCHAPTER 9 — REGULATION OF UNSANITARY CONDITIONS

##### SECTION.

14-54-901. Municipal authority.

14-54-902. Notice to unknown or nonresident owners.

14-54-903. Refusal of owner to comply.

14-54-904. Enforcement of lien for clearance by municipality.

#### RESEARCH REFERENCES

ALR. Regulation of private landowner's disposal of solid waste on property. 37 ALR 4th 635.

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., § 455 et seq.

C.J.S. 62 C.J.S., Mun. Corp., § 265, 279-281.

UALR L.J. Survey, Property, 12 UALR L.J. 659.

#### 14-54-901. Municipal authority.

Incorporated towns and cities of the first and second class are empowered to order the owner of lots and real property within their towns or cities to cut weeds; to remove garbage, rubbish, and other unsightly and unsanitary articles and things upon the property;

and to eliminate, fill up, or remove stagnant pools of water or any other unsanitary thing, place, or condition which might become a breeding place for mosquitoes, flies, and germs harmful to the health of the community, after the town or city has provided therefor by an ordinance to that effect.

History. Acts 1943, No. 100, § 1; A.S.A. 1947, § 19-2325.

#### 14-54-902. Notice to unknown or nonresident owners.

(a) In case the owner of any lot or other real property is unknown or his whereabouts is not known or he is a nonresident of this state, then a copy of the written notice referred to in § 14-54-903 shall be posted upon the premises. Before any action to enforce the lien shall be had, the recorder of the town or the city clerk shall make an affidavit setting out the facts as to unknown address or whereabouts of nonresidents.

(b) Thereupon, service of the publication, as provided for by law against nonresident defendants, may be had. An attorney ad litem shall be appointed to notify the defendant by registered letter addressed to his last known place of residence if it can be found.

(c) Except as provided in subsection (b) of this section, notices required by this subchapter shall be published, mailed, or delivered by the municipal recorder or clerk or such other person as designated by the governing body of the municipality.

History. Acts 1943, No. 100, § 3; A.S.A. 1947, § 19-2327; Acts 1989, No. 239, § 2.

Amendments. The 1989 amendment inserted "he" before "is a nonresident" in the first sentence of (a) and added (c).

#### 14-54-903. Refusal of owner to comply.

(a) If the owner of any lot or other real property within an incorporated town or city shall neglect or refuse to remove, abate, or eliminate any condition as may be provided for under an ordinance passed by the city or town as provided for in § 14-54-901, after having been given seven (7) days' notice in writing to do so, then the town or city is authorized to do whatever is necessary to correct the condition and to charge the cost thereof to the owner of the lots or other real property.

(b) The town or city is given a lien against the property for the costs.

History. Acts 1943, No. 100, § 2; A.S.A. 1947, § 19-2326; Acts 1989, No. 239, § 1.

Amendments. The 1989 amendment substituted "seven" for "twenty" days' notice in (a).

#### 14-54-904. Enforcement of lien for clearance by municipality.

(a) The lien provided for in § 14-54-903 may be enforced and collected in either one (1) of the following manners:

(1) At any time within eighteen (18) months after work has been done, by an action in the chancery court; or