



CITY OF LE SUEUR
REQUEST FOR COUNCIL ACTION

TO: Mayor and City Council

FROM: Jasper Kruggel, City Administrator

SUBJECT: Cemetery Request

DATE: For the City Council Meeting of Monday, February 11, 2018

PURPOSE/ACTION REQUESTED

Review legal memo regarding request for the City to provide snow removal and tree trimming services to the cemeteries in Le Sueur.

SUMMARY

On January 14, 2019, City Council reviewed a request from Kolden Funeral & Cremation Services for the City to provide snow removal and tree trimming services to the three private cemeteries in Le Sueur. At that meeting, City Council requested that City Attorney Coryell research and provide a memo on the authority of the City providing these services.

A memo from City Attorney Coryell is attached and should be used to guide the discussion on this request.

Currently staff is providing these services as requested until formal direction is given by City Council on how to proceed.

PURPOSE/ACTION REQUESTED

Staff is requesting that City Council discuss the request for snow removal and tree trimming services from Kolden Funeral & Cremation Services and provide staff direction on how to proceed.

Kolden

FUNERAL & CREMATION SERVICES

529 Turril Street, P.O. Box 81
LeSueur, MN 56058
507-665-2226

P.O. Box 314
Arlington, MN 55307
507-964-2201

219 North Willow Street
Belle Plaine, MN 56011
952-873-6227

DIRECTORS
Karl Kolden, Owner
Rosemary Kolden, Owner
Darrell Kolden
Shawn Kirby
Greggory Borchert
Tonya Borth

December 19, 2018

City of LeSueur Administration
Attn: Jasper Kruggel
City Hall
LeSueur, MN 56058

City of LeSueur Administrator & City Council

RE: City policy regarding snow removal and minimum road and tree maintenance.
Mound Cemetery Association, Calvary Cemetery and St. Anne's Cemetery Association

At the request of the LeSueur City Administrator, on behalf of Mound Cemetery Board of Directors, and directors of the St. Anne's Church Cemetery Association as well as Kolden Funeral Home and any other funeral homes whose interest may appear, we are drafting a formal request to the LeSueur City Council as follows:

"The employees of City of LeSueur have plowed snow, done minimum road and tree maintenance in all 3 cemeteries in our community for decades. We hereby request that this policy be continued for the future. This is a public service to the families in our community who expect to be able to have winter burials and visit graves any time of the year and on special occasions."

Thank you for your consideration in this matter on behalf of your constituents.



Darrell Kolden
On behalf of those named below.

Darrell Kolden & Wayne Swenson (Officers of Mound Cemetery Association)
Leroy Pfarr, Geri Callahan & Shawn Kirby (Officers of St. Anne's Cemetery(s) Association)
Karl & Rose Kolden, owners of Kolden Funeral Home



Anderson, Skubitz & Coryell, PLLC

A PROFESSIONAL LIMITED LIABILITY COMPANY

ATTORNEYS AT LAW

ARTHUR E. ANDERSON
(1915 - 2007)

JAMES E. ANDERSON
(of Counsel)

JOHN M. SKUBITZ

TODD M. CORYELL

To: City Council

From: Todd Coryell, City Attorney

Date: 2/5/19

Re: Plowing of Cemeteries

The question posed by the City Administrator and City Council to this office is: Can the City of Le Sueur plow the private driveways/roads on the three cemeteries?

I answer in the negative. This memorandum is written with the understanding there is no dispute as to the following:

MAILING ADDRESS

108 South Main St.
Le Sueur, MN 56058

OFFICE LOCATIONS

108 South Main St.
Le Sueur, MN 56058
(p) 507-665-3349
(f) 507-665-6180

107 North Meridian St.
Belle Plaine, MN 56011
(p) 952-873-3343
(f) 507-665-6180

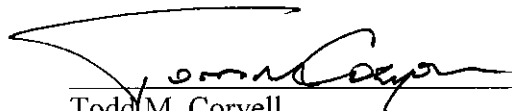
- City staff has over the years plowed the driveways and roads of the cemetery either in the course of completing the snow clearing of the City streets or at the request of the cemetery associations.
- The cemeteries are not "public" in that each is privately owned and each is governed by a Cemetery Association pursuant to Minnesota Statute Chapter 306.
- None of the cemeteries in town are abandoned nor neglected.
- The snow clearing of the cemeteries does not take a significant amount of time.
- City Code Chapter 92.015 states: "The owners and occupants of lots shall keep the sidewalks in front of or adjacent to their respective lots free and clear from snow, ice and other obstructions; and snow and ice shall be removed therefrom within 24 hours after the snow stops falling."
- City Code Section 153.197(D) states: "It shall be the sole responsibility of the operator and owner of the principal use [of property], uses and/or building to remove accumulations of ice and snow and to maintain in a neat and adequate manner the parking space and access ways."

A City is restricted from expenditures that do not qualify as a public purpose expenditure as set forth in the Minnesota Constitution. Minn. Const. Art. X §§ 1 and 2. It is well established law that in addition to defining an expenditure as a public purpose, in order for an expenditure to be made, there must be specific or implied authority for the expenditure in either the City's Charter or in Minnesota Statute. In answering the question posed in the negative, the analysis is complete upon a

determination there is no specific or implied authority in either the City Charter or in Minnesota Statute authorizing the City of Le Sueur to expend public funds in plowing a private cemetery.

Minnesota Statute § 160.21 gives “road authorities” the authorization to remove snow from public roads. However, 160.21, subd. 2, specifically provides the authority for only a County or Town road authority to remove snow from private property (and then only if the cost is reimbursed to the authority). Had the legislature intended a municipality to have the authority granted to the counties and towns to remove snow from private property, it would have specifically included that authority in this statute. There is nowhere else in State law or in the City Charter that gives the City of Le Sueur the authority to plow the cemeteries. A search by the City Administrator and City Attorney of our peers has produced no indication other municipalities take a different approach to whether a city can clear snow on private property.

Finally, it should be noted that Minnesota Statute Section 306.76 requires a cemetery association to establish and maintain a fund to be used for the “care, maintenance, and improvement” of a cemetery. In the event a cemetery is abandoned or neglected, it is first the duty of the County (rather than the City) to manage the cemetery and a County, Town or City *may* then disburse funds for the general maintenance. See MSA §§ 306.244-245. However, there is no evidence of abandonment or neglect of the local cemeteries.



Todd M. Coryell