However, with respect to all transfers under subdivisions (a), (b), (c) and (d) of Burns' 7-2403, **supra**, your attention is again directed to the specific requirement, in order for eligibility to apply, forbidding officers, members, shareholders or employees of the corporation from receiving any pecuniary profit, other than reasonable compensation for services actually rendered, and forbidding the use of the corporation as a guise or pretense for directly or indirectly making for the corporation, or its officers, members, shareholders or employees, any other pecuniary profit. Thus, with respect particularly to not-for-profit cemetery corporations, it is impossible to give a specific answer to your question for the reason that each case can be determined only by strict proof on the part of the not-for-profit cemetery corporation involved that its officers, members, shareholders or employees do not receive pecuniary profit and that it is not a guise or pretense for directly or indirectly making for it pecuniary profit or profit for its officers, members, shareholders or employees.

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OFFICIAL OPINION NO. 8

February 3, 1964

Mr. B. B. McDonald  
State Examiner  
State Board of Accounts  
912 State Office Building  
Indianapolis, Indiana

Dear Mr. McDonald:

Your request for my Official Opinion, by letter December 31, 1963, has been received, presenting the following question:

"Does the following proviso in Section 1, Chapter 278, Acts of 1959, apply only to cities of the first (1st) class or is it applicable to all cities and towns?

"that at least seventy-five per cent (75%) of such fund shall be budgeted and spent for construction, reconstruction, repair, widening and/or grade separation; and all such funds so appropriated shall be budgeted as now provided by law: * * *""
The Acts of 1959, Ch. 278, Sec. 1, as found in Burns' (1963 Supp.), Section 36-2819, reads in full, with the proviso with which your question is concerned underlined, as follows:

"All funds allocated to cities and towns from (the) motor vehicle highway account shall be used by said cities and towns for the construction, reconstruction, repair and maintenance of all their highways, as herein defined, and including also, any curbs; the purchase, erection, operation and maintenance of traffic signs and signals, and safety zones and devices; the payment of not more than twenty-five per cent [25%] of the cost of traffic policing and traffic safety; the painting of structures, objects and surfaces in highways for purposes of safety and traffic regulations; the oiling, sprinkling and cleaning of such highways; and the purchase, rental and repair of street and highway equipment; and all thereof shall be budgeted as provided by law: Provided, that in cities of the first class the legislative bodies of such cities shall have the power, if the amount in such funds is in excess of other needs therefor, to appropriate an amount out of said motor vehicle highway fund for the payment of any such cities' share of the cost of the separation of the grades of crossing of public highways and steam or electric railroads, if such use of said funds shall be first determined by the board having jurisdiction thereover; and, Provided, further, that at least seventy-five [75] per cent of such fund shall be budgeted and spent for construction, reconstruction, repair, widening and/or grade separation; and all such funds so appropriated shall be budgeted as now provided by law: Provided, further, that the state highway commission and such cities of the first class shall by mutual agreement determine the dates upon which the state highway commission shall assume jurisdiction but in no event shall such jurisdiction be until after April 1, 1945. Provided, that any of the items of appropriation from such funds as set out in the annual budget may be changed by the common council by such increases or decreases in the total amount thereof as stated in the budget." (Our emphasis)
Upon a first reading of Burns' 36-2819, *supra*, it would appear through the use of the particular and unusual punctuation and the singular usage of the reference to grade separations, that the first and second provisos were intended to be read together as, in effect, two parts of one concept contained in a single sentence. These factors, while perhaps persuasive, do not present a clear demonstration of the legislative intent of the amendatory action of the 1959 General Assembly, and I have sought further to derive that Legislature's intent from an examination of the 1959 legislative history of Burns' 36-2819, *supra*.

In the case of County Department of Public Welfare of Allen County *et al.* v. Potthoff (1942), 220 Ind. 574, 585, 44 N. E. (2d) 494, the court quotes with favor a prior case and states as follows:

"In Edger v. The Board of Commissioners of Randolph County (1880), 70 Ind. 331, it was observed that where a statute has been enacted which is susceptible of several widely different constructions there is no better means for ascertaining the will and intention of the Legislature than that which is afforded by the history of the statute as found in the journals of the two legislative bodies * * *" 

Burns' 36-2819, *supra*, was introduced into the 1959 General Assembly as House Bill No. 152, containing the following digest:

"This bill limits the amount of money from motor vehicle distribution which cities may use for pay of traffic police costs."

That original amendatory Bill sought only to substitute the words "* * * the payment of not more than twenty-five per cent * * *" for the words "* * * the payment of any part * * *" as contained in the 1945 amendment to the section. The Bill was referred to the House Committee on Ways and Means, which reported it back to the House with recommendation that it be recommitted to the House Committee on Cities and Towns. The Committee on Cities and Towns reported H. B. No. 152 back to the House with the recommendation that the
Bill be amended by striking the words "* * * in cities of the first class * * *" from the second proviso, which gives rise to your question, the 1945 language of Burns' 36-2819, supra, having read, in part:

"* * * and, Provided, further, That in cities of the first class, at least fifty [50] per cent of such fund shall be budgeted and spent for construction, reconstruction, repair, widening and/or grade separation * * *" (Our emphasis)

Thereafter, Engrossed House Bill No. 152 was referred to the Senate Committee on Finances, which reported the Bill back to the Senate with the recommendation that the fifty [50] per cent provision in the second proviso be stricken and seventy-five [75] per cent be inserted in lieu thereof. As so amended, the Engrossed Bill passed the Senate and the House.

Thus, it becomes quite clear that the House Committee on Cities and Towns, and the General Assembly as a whole, deliberately intended that the second proviso, as set out in your question, be applicable to all cities and towns and not just to cities of the first class, despite the implication to the contrary presented by the peculiar form of the punctuation.

It is, therefore, my opinion that the second proviso contained currently in Burns’ 36-2819, supra, was intended by the 1959 General Assembly to be applicable to all cities and towns, and not only to cities of the first class.

OFFICIAL OPINION NO. 9

February 5, 1964

Mr. Robert R. McClarren
Director, Indiana State Library
140 North Senate Avenue
Indianapolis 4, Indiana

Dear Mr. McClarren:

This is in reply to your request of January 24, 1964, for an Official Opinion pertaining to the Acts of 1961, Ch. 168, Sec. 1, as found in Burns’ (1963 Supp.), Section 41-1101.