

Catholic CEMETERY

February 2018 Volume 57 Number 2

*"Angel Night"
Calvary Cemetery
Dayton, Ohio*

A Perspective on the Archdiocesan Cemeteries of Philadelphia & Catholic Burial Traditions

— by Lewis J. Hoch, Esq.

Our humanity is defined by the mortality that comes with life. We are born, we die, and in between we contemplate certain universal questions:

1. How do we deal with loss and with the grief that follows?
2. What happens to us after death?
3. How do we continue with our lives following the death of a loved one?

In 2012, my wife, Nadine, lost a five-year struggle with lung cancer. While I knew that Nadine's cancer was terminal, the grief and loss that followed was no less profound. How would I go on? How would I hold my family together and continue to nurture and direct my three twenty-something sons? How would I resume my life?

I did not know the answers to any of these questions or how to approach the overwhelming sense of loss that I felt. I, however, am an observant Jew and decided that I would be guided by Jewish law and ritual, the same law and ritual that has guided my people for over 2000 years.

Our home was prepared as a house of mourning, and final arrangements for Nadine were made consistent with Jewish law. My sons and I observed the week-long shiva and began the journey of dealing with loss. For the next 11 months, my sons and I saw to it that at least one of us attended synagogue each day and recited *Kaddish*, the mourner's prayer. At the end of the 11-month mourning period, we unveiled the stone that marks Nadine's grave, and we presented a lectern cover for the sanctuary at our synagogue as charity to mark the first anniversary of her passing.



Most importantly, ritual observance and religious belief bring comfort.

During my year of mourning, I came to understand the enormous comfort and support that religious observance and ritual can provide. Grief is a funny thing. It can grab you when you least expect it and can bring on an unimaginable emptiness and sense of loss. But ritual, with the time-honored traditions that they entail and the community with which you observe them, can lift you up and help you along when you do not think that you have the strength to go on alone. Ritual observance and community can also help you when the dark clouds of grief descend and can provide the hope and confidence that the dark clouds will clear and, when they do, that insight and even joy may follow.

Most importantly, ritual observance and religious belief bring comfort. I came to feel that as I mourned Nadine's loss, G-D was crying with me and as the year of mourning passed, Nadine was not only smiling upon her family but was being drawn closer to G-D. I have come to believe that one day I will see Nadine in the joy and laughter of the children to come—one of whom will be named for her. I understand this as faith.

According to our tradition, I returned to my legal practice the week following Nadine's death, and a few short weeks later, I was asked to work on a matter in which a client would take over operations of the diocesan cemeteries of the Archdiocese of Philadelphia. The assignment was an interesting one. For almost 14 years, I had been representing cemeteries and funeral homes. However, most of that involvement had entailed

for-profit, non-sectarian entities. My experience with Catholic cemeteries and Christian funeral rite was limited.

The goals of the Archdiocese in pursuing this matter were challenging. The finances of the Archdiocese were precarious. The Archdiocese was incurring annual operating deficits of at least \$5 million annually and had over \$300 million in unfunded liabilities. Both the Archdiocese and many parishes within the Archdiocese lacked the necessary funds to meet their current financial obligations and maintain the historic and current levels of religious and charitable activities. Addressing these challenges was formidable since the assets of the Archdiocese were mostly in the form of real estate, which by definition are illiquid, not readily convertible to cash and, therefore, not immediately available to meet these obligations.

Archbishop Chaput, who had recently been appointed archbishop, had taken on the challenge of fixing the finances of the Archdiocese. As one of his first steps to help in this effort, the Archbishop recruited several new board members, advisors, and employees, including a new chief financial officer. The new CFO came with experience as a CFO in private industry and in the nonprofit sector. Timothy O'Shaughnessy as the new CFO was pivotal in assisting the Archbishop attend to all of these issues.

Negotiation of the transaction with the Archdiocese extended over almost two years. In the end, my client, a private owner and operator of cemeteries throughout the United States

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entered into a 60-year lease in which it agreed to pay upfront rent at closing of \$53 million and additional rent through the term of the lease of \$36 million in exchange for the right to operate the diocesan cemeteries with financial responsibility for all aspects of operation, maintenance, and upkeep, including assumption and performance of all cemetery contracts. In exchange, the new operator retained all revenues derived from operation of the Archdiocese cemeteries. (In this transaction, I represented the new operator of the cemeteries.)

The lease payments received by the Archdiocese have helped to rebuild and restore a solid financial foundation to the Archdiocese for the future. Thirty million dollars has been applied to pay down an existing shortfall in an Archdiocese fund. In addition, the Archdiocese continued to reserve \$29 million to fund a perpetual care account for the upkeep and maintenance of the Archdiocese cemeteries after expiration of the lease. In the meantime, these monies will be invested and should grow significantly over the 60-year term of the lease.

During the negotiation of the lease, a number of issues came up which not only resonated with the loss of my wife and my desire to mourn her loss consistent with my religious tradition but helped me to understand the equally important role that the rite of Christian funeral and Catholic burial traditions play in the life and death of observant Catholics.

As a result, a number of steps, beginning with the Archdiocese retaining ownership of the diocesan cemeteries, were agreed upon to protect the sanctity and dignity of the Archdiocese cemeteries as well as to maintain respect for the departed and their surviving families and friends.

1. Transaction Structured as a Lease

Rather than structuring the transaction as a purchase, it was structured as a lease. This ensured that the Archdiocese would acquire the status of lessor with rights to take back the diocesan cemeteries upon expiration of the lease or if the operator breached the provisions of the lease. The parties also agreed that the Archdiocese could terminate the lease without cause in year 11 of the lease term. However, most importantly, a lease gave the Archdiocese a voice in operations in a way that ensured that the Catholic nature of the diocesan cemeteries would be maintained throughout the term of the lease as much as possible.

2. Authority of the Archbishop

Under the lease, the Archdiocese cemeteries continue to be operated as diocesan Catholic cemeteries consistent with the religious practices of the Archdiocese. The Archdiocese cemeteries also continue to be operated as a ministry with the Catholic Church. Burial services in accordance with Catholic traditions and other religious activities at the Archdiocese cemeteries continue as they did previously. The Archdiocese cemeteries remain under the religious control of the Archdiocese, for which the Archbishop has ultimate authority pertaining to religious operations.

3. Appearance of the Archdiocese Cemeteries

The lessee of the Archdiocese cemeteries is required to continue to maintain their existing character and keep them in good order, condition, and repair in a manner which is consistent with the current design and appearance of the cemeteries and with the Standards of Care for Catholic Cemeteries of the Archdiocese of Philadelphia.

Cell phone towers are an illustration of how these requirements are applied. Consistent with the foregoing requirements, the lessee may construct and maintain or license to construct or maintain cell phone towers with the approval of the Archdiocese. Cell phone towers must be constructed in a reasonable location and in a reasonable manner including use of cell phone trees or other desirable aesthetic style. Revenue from this activity is shared with the Archdiocese, which can be used to further financial stability and pursuit of the religious and charitable mission of the Archdiocese.

4. Activities within the Archdiocese Cemeteries

Activities within the Archdiocese cemeteries are required to be consistent with the religious practices of the Archdiocese and to conform to the funeral and burial traditions of the Catholic Church. Consistent with this, the Rules and Regulations of the Philadelphia Diocesan Cemeteries that were in place prior to the commencement of the lease have remained in effect essentially unchanged. Activities outside of normal cemetery operations are subject to the reasonable discretion of the Archdiocese with activities violating Canon Law or impinging on the dignity or character of the cemeteries prohibited.

Lewis Hoch, the author, wished to acknowledge and thank Msgr. Daniel Kutys, Moderator of the Curia, Archdiocese of Philadelphia, for his encouragement and suggestions in the writing of this article.

5. Promotion of the Rite of Christian Funeral and Catholic Burial Traditions

Under the lease, the lessee is required to operate the Archdiocese cemeteries consistent with the rite of Christian funeral and Catholic burial traditions. Both parties worked separately and in conjunction to foster these practices. To date this has taken various forms. In addition to a media campaign by the lessee, the Archdiocese has encouraged representatives of the lessee to speak with priests in order to foster good working relationships with them and local funeral homes in their parishes. The Archdiocese has also reserved the right to deny burial in an Archdiocese cemetery where the burial of the decedent would be inconsistent with Canon Law due to the notoriety or conduct of the decedent during his or her lifetime.

6. Burial of Non-Catholics

Under the lease, the lessee is required to maintain the practice that Catholic cemeteries are generally for the burial of Catholics because a Catholic burial place implies a sharing of common belief and the same community of faith. However, burial of non-Catholics has always been permitted in the Archdiocese cemeteries upon recommendation of a priest with the consent of the Archbishop or his designee. This practice continues during the first two years of the lease. After the passage of two years, Christian burials in Catholic burial gardens are permitted subject to consent by the Archdiocese which may not be unreasonably withheld.

7. Development of Non-Christian/Non-Sectarian Burial Gardens

Certain Archdiocese cemeteries possess ground which exceeds anticipated requirements during the term of the lease and beyond. Under the lease, the lessee has the right to develop non-Christian and/or non-sectarian burial gardens. The gardens are sold and conveyed to the lessee at a price determined in accordance with the provisions of the lease prior to the commencement of development. The lessee must establish a distinct and separate name, sign, internal roadways, and entrance, subject to the consent of the Archdiocese, which may not be unreasonably withheld, conditioned, or delayed.

While the Archdiocese cannot operate burial gardens of another faith, this provision of the lease recognizes the demand for burial gardens by other religious traditions and provides a mechanism to use excess ground at the Archdiocese cemeteries for this purpose. In so doing, this provision of the lease acknowledges the sanctity of burial gardens of other religious faiths as well as respect for these traditions.

8. Sale of Undeveloped Land

The lessee also has the right to request that the Archdiocese consent to the sale of excess ground at certain cemeteries, not to exceed agreed amounts of acreage with the net proceeds

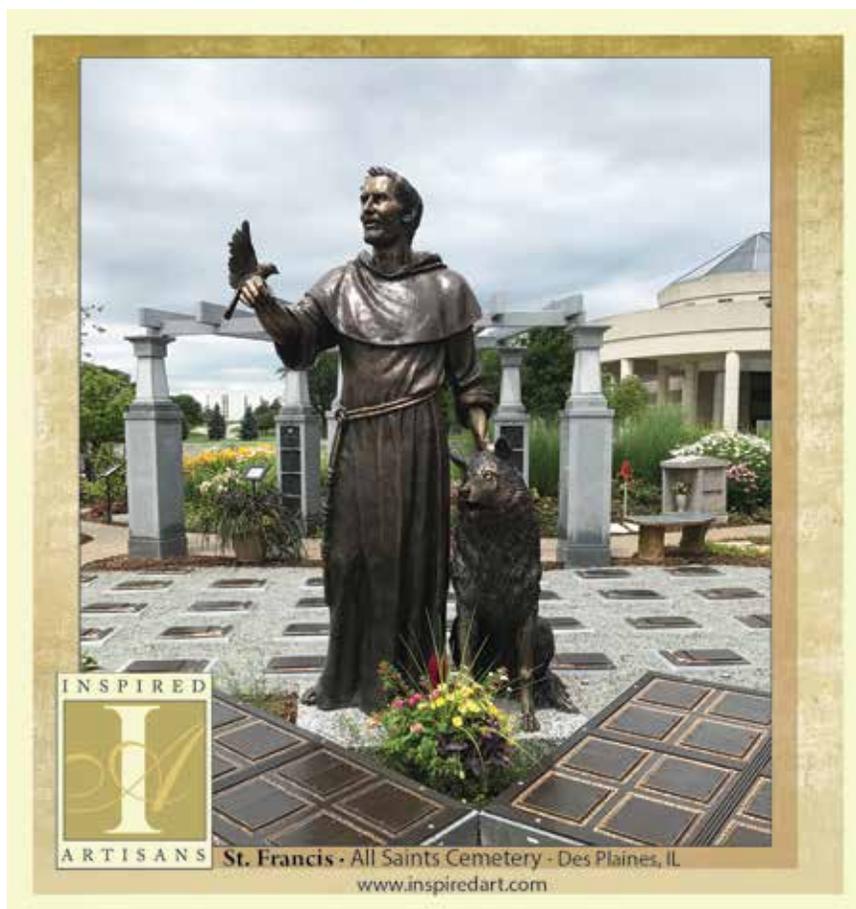
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Archdiocesan Cemeteries of Philadelphia, continued

shared by the parties. In this way the Archdiocese continues to participate in the monetization of its assets with proceeds applied to further financial stability and pursuit of the religious and charitable mission of the Archdiocese.

9. Employees of the Archdiocese Cemeteries

The parties also sought to protect the employees who had operated the Archdiocese cemeteries prior to the commencement of the lease. All current full-time staff members of the Archdiocese cemeteries were offered employment by the lessee in their current roles. As part of the arrangement, these employees were provided protection for a period of two years at their current pay scale. They also received health benefits comparable to what was currently provided by the Archdiocese. In addition, years of service were taken into account when determining the accrual of vacation time.

I learned enormously from this transaction and am grateful for the role that I was permitted to play. I am hopeful that the lease of the diocesan cemeteries of the Archdiocese accomplishes its purposes, and the Archdiocese derives the many benefits that this arrangement was intended to achieve. Involvement in this transaction has reinforced my belief that

following the loss of a loved one, the observance of the ritual of our respective religious traditions allows us to maintain our connection with those we have lost. As the souls of our loved ones are drawn closer to G-D, we are drawn closer not only to G-D but to family, friends, and community. We call this faith, and from faith, it is possible for comfort, insight, and even joy to follow loss and grief.

As for those we have lost, listen carefully and you will hear their voices providing guidance and unconditional love each day. Also, look carefully and you will see them in the children to come. Most importantly, honor and remember them in accordance with the rituals of your religious tradition. ■



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