

News

Michigan Alleges \$70 Million Missing from Cemetery Funds

April 27, 2007

Michigan Attorney General Mike Cox has charged Clayton Ray Smart of Okmulgee, Oklahoma, with 39 felony counts in connection with the alleged embezzlement of up to \$70 million in cemetery trust funds affecting 28 cemeteries in Metro Detroit and throughout Michigan including racketeering and embezzlement.

"The defendant's actions are appalling - embezzling trust funds that were set aside to care for cemeteries and burials," said Cox. "The citizens of Michigan and, most importantly, the families with loved ones in these cemeteries should rest assured that this conduct will be prosecuted to the fullest extent of the law."

Charges filed against Smart, 67, include 1 count of Racketeering, a 20-year felony; 10 counts of Embezzlement, each a 10-year felony; and 28 counts of Failure to Trust Cemetery Proceeds, each a 5-year felony, for allegedly embezzling as much as \$70 million in cemetery trust monies to fund the purchase of 28 Michigan cemeteries and other improper purposes.

These 39 counts account for \$38 million of the \$70 million that should be placed in cemetery trust funds. The remaining \$32 million remains under investigation.

There are only 152 cemeteries in Michigan required to place funds into a trust under the law. Therefore, the 28 cemeteries that were owned by Clayton Smart account for more than 18%, or roughly 1 in 5, of all regulated cemeteries in Michigan.

In addition, according to the most recent figures (from 2005), all non-Smart cemeteries in Michigan that were required to place monies into a trust had trusted \$150,560,209.50.

In 2005, it is estimated that Smart should have had \$70,000,000 in trust for these 28 cemeteries. Therefore, as much as 31% of all trust dollars in regulated Michigan cemeteries are involved in this case.

The criminal charges are the latest in a series of steps taken by the Attorney General in his investigation into Clayton Smart and the cemetery trust funds:

- In December 2006, Attorney General Cox, in partnership with the Department of Labor and Economic Growth, sought and obtained the court appointment of a conservator to take over control of the cemeteries and protect their continued operations.

- In January 2007, Cox obtained a court order freezing \$22 million in a bank account belonging to Craig Bush that is alleged to consist of trust monies Smart paid to Bush. Litigation to transfer this money back to the cemetery trust accounts is continuing.

Clayton Smart acquired ownership of 28 Michigan cemeteries in August 2004 from Craig Bush of Bloomfield Hills, Michigan. Under Michigan law, all cemeteries of 10 acres or more are required to maintain trust accounts to insure the future operation of the cemeteries.

At the time Smart acquired these cemeteries, approximately \$61 million was held in trust. Since then, an estimated \$9 million should have been placed in trust, for a total of \$70 million.

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The investigation revealed that, after owning the cemeteries for several weeks, Smart, or others acting on his behalf, diverted these funds for improper purposes. It is specifically alleged that Smart wired at least \$21 million in trust money to Bush after the transfer of ownership.

The 39 charges have been filed in the 36th District Court in Detroit. If convicted as charged, Smart could face up to 20 years in prison.

Smart is also the owner of cemeteries and funeral homes in Tennessee, Arkansas, and Oklahoma. State officials in Tennessee and Oklahoma are examining Smart's business dealings in their state as well.

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