

'Maverick Mortician' errors found

Editor's note: When Emerald Features Editor Jock Hatfield published his "Maverick Mortician" article in the April 28 Emerald, he assumed his story had been laid to rest. He was wrong.

Hatfield and the Emerald recently received letters from attorneys representing five Lane County cemeteries, pointing out errors in the "Maverick Mortician" article and demanding corrections or retractions.

Hatfield and Managing Editor Tom Wolfe have spent the last several days interviewing sources and sorting through documents to verify, explain or correct statements made by Hatfield in his earlier article.

The April 28 article did contain errors. The Emerald and Hatfield regret the publication of those statements and conclusions in the "Maverick Mortician" article that were not factually supported. Today's article results from Hatfield's recent investigation and corrects errors and retracts statements contained in his earlier report.

During the last nine years Mack Moore and the Lane County Cemeteries have had more than an average share of courtroom experience.

Apart from litigation in state courts, they have participated in two trials in Oregon federal court, dealing with Moore's claims that some Lane County cemeteries monopolized, attempted to monopolize and conspired to restrain trade in the Lane County grave marker business, and that they engaged in illegal tie-in arrangements in the marketing or installation of grave markers, violating some provisions of federal anti-trust laws. The statement in the original article that Moore had 10 years ago uncovered corruption in the cemetery industry should not have been made.

Federal courts have rejected all

Moore's claims except those dealing with alleged illegal tie-in arrangements. That issue awaits a third trial in the U.S. District Court for the District of Oregon later this year.

Moore brought his claims to public attention when he filed suit in Oregon Federal District Court against eight Lane County cemeteries and Jas. H. Matthews & Co., a manufacturer of bronze grave markers, in August, 1969. Moore's case came to trial in May, 1971.

After Moore's opening trial statement, and before his first witness had completed testimony, District Judge Robert C. Belloni invited the cemeteries and marker manufacturer to move for a directed verdict and summary judgment against Moore. This was because Moore's claim was then limited to a charge of conspiracy and Judge Belloni believed that the promise of evidence to support this claim was insufficient. The defendants so moved and the court granted the motions. Moore appealed to the U.S. Court of Appeals for the Ninth Circuit.

Late in November, 1972, the Court of Appeals reversed Belloni's decision, stating Moore was entitled to have his full case heard by the District Court. The Appeals Court sent the case back to Judge Belloni for trial.

Back at the District Court, after a non-jury trial in January, 1975, Judge Belloni again ruled against Moore. Again Moore appealed, claiming the District Court had applied incorrect principles of law in judging his case. The Appeals Court this time affirmed Judge Belloni's decision against Moore on all of Moore's issues save his claim of alleged illegal tie-ins, which remains to be tried. Again the Appeals Court found fault with Judge Belloni's handling of the tie-in issue:

"The record reveals that, contrary to the District Court's find-

ings, five cemeteries, Fir Grove, West Lawn, Springfield (Rhoden), Rest Haven and Rest Lawn had such (grave-marker purchase tie-in) restrictions." The cemeteries maintain those restrictions were never enforced.

The court further concluded that all of the eight named cemeteries required cemetery lot purchasers to use the grave marker installation services of the cemetery. In light of the Appellate Court's conclusions, it appears that Hatfield's original article was incorrect by asserting that all cemeteries required burial plot customers to buy their markers and marker installation from the cemetery.

Regardless of Moore's claims about monopoly and conspiracy as reported in the "Maverick Mortician" article, all defendants in the federal suit have been cleared of Moore's charges of conspiracy, restraint of trade, monopolization and attempts to monopolize.

Hatfield's original article contained several references to state court legal proceedings. These references were also incorrect. Although there are state court lawsuits pending between Moore and several of the defendant cemeteries, the references in the "Maverick Mortician" article were intended to refer to the tie-in matter still before the Oregon Federal District Court.

Hatfield also drew several conclusions in his article based on incomplete knowledge of legal procedure. In fact, the second Appellate Court decision did not send Moore's case to the District Court solely to determine damages. And the federal courts have not yet decided that the cemeteries have violated federal tie-in laws, as Hatfield reported. In fact, the issue of illegal tie-ins has yet to be finally decided. Only if Moore proves his charges of illegal tie-ins will Moore's damages, if any, be determined.

Hatfield stated in his original article that Moore had charged eight Lane County cemeteries with taking advantage of their position by making excessive tombstone profits. Although income from sales, installation and maintenance of grave markers produce profits for cemeteries, costs must also be taken into account in determining whether the cemeteries' prices are reasonable. The cemeteries have also advanced reasons other than income for resisting Moore's attempts to install his markers on their grounds.

Hatfield also bases his statements regarding profits on marker income on misinformation. The article incorrectly listed Rest Haven as having taken in \$1,400,000 from gravestone sales alone. Figures supplied by Rest Haven indicate that the gross receipts (not profits) for grave-marker sales, installation fees and marker-care fees, for the 12-year period from 1965 through 1976, were approximately \$329,500.

Similar figures also indicate that Springfield Memorial, West Lawn and Lane Memorial Cemeteries' tombstone income were considerably less than originally reported.

Springfield Memorial Cemetery reports gross receipts from sales of markers, liners, vaults, urns, mausoleum crypt plates and name bars for crematoriums of approximately \$374,100 for the 12-year period and West Lawn's gross markers sales for the same

sales period were approximately \$220,300. Officials of Lane Memorial chose not to reveal specific figures, but assured the Emerald that the sales figures were considerably less than were originally reported.

Marker installation and marker care charges vary. Rest Haven reports that its charge both for single and double grave-marker installations is \$15 and that the charge for future marker care is \$35 for a single marker and \$70 for a double marker.

Lane Memorial Gardens charged 14 cents a square inch for installation and an additional 10 cents a square inch for subsequent care. Thus, the 25 cents per square inch figure originally quoted for an installation at Lane Memorial was not accurate. It appears that Lane Memorial's installation fee is separate from its fee for subsequent care.

Moreover, it does not appear that cemeteries are throwing dirt over the consumers' eyes, as Hatfield originally claimed. All cemeteries will quote prices for products and services upon request. Cemeteries also state charges before commencing their work.

The "Maverick Mortician" article also stated that the cemeteries feared the entrance of outside gravestones onto their grounds. This was not correct.

All the cemeteries in the federal suit permit the installation of grave markers sold by Moore, although in some cases Moore is not allowed to install them himself.

In 1975, however, a Lane County Circuit Judge issued an injunction barring Moore from installing his markers in West Lawn Memorial Park. A 1977 suit by Moore to set aside the injunction was unsuccessful. In a 10-day period from May 31 to June 8, 1977, Judge Belloni entered similar court orders temporarily restraining Moore from entering other cemeteries to install grave markers. In 1974, criminal conviction arose from Moore's attempted installation of a grave marker at Springfield Memorial Cemetery.

Hatfield also claimed originally that eight of Lane County's cemeteries started preventing Moore from installing grave-stones. This claim is not correct. To the extent that the statement suggests the cemeteries conspired to keep Moore out, the U.S. District Court has found to the contrary. The validity of the rule requiring all grave markers to be installed by the cemetery remains to be determined in the federal suit.

The "Maverick Mortician" article claimed Fir Grove Cemetery had called out the state troopers to stop Moore. Upon further investigation, no record of state police being called by any cemetery in connection with Moore's activities could be found.

Hatfield's original article incorrectly maintained that Rest Haven Cemetery had parked a bulldozer on top of one of Moore's clients. Furthermore, the story said Rest Haven owner Chuck Whipple sent Moore a letter saying he would now "do anything" to stop Moore from making another installation at the cemetery. Both statements were wrong.

In fact, Chuck Wiper, Jr. is the manager of Rest Haven Cemetery. Wiper never made such a

statement in a letter to Moore, and a bulldozer incident never occurred.

On August 14, 1973, however, the manager of West Lawn Cemetery drove a wheeled tractor over a recent grave. The tractor was parked over the spot where Moore was to install several grave markers. His employees later moved the tractor by taking it out of gear and moving it away to install the markers.

The Emerald has also learned that cemeteries don't sell their markers at cost, so there is no "hidden profit" as stated in the earlier article. Rest Haven reports, for example, that their popular 24" x 14" bronze marker costs them \$84 and is retailed at \$135. Additional charges are made by cemeteries for installation of markers and for future marker care and maintenance.

The Emerald has also found that cemeteries don't install gravestones upside down, as the earlier article claimed.

The first article incorrectly reported that "only last week Springfield Memorial installed a corpse in the wrong grave." Cemeteries may occasionally make mistakes like the Emerald and everyone else, but the incident referred to never happened.

Moore and his attorneys have spent considerable time and money during the last decade gathering price examples as possible court evidence. Moore has also been receiving outside financial assistance since the commencement of his suit. In recent months, several cemetery associations have been soliciting money from their members in order to assist Lane County cemeteries.

Hatfield concluded in his original article that Moore had five Lane County cemeteries, four cemetery associations and most of the nation's corpses conspiring against him. He further characterized the cemeteries, in light of their vigorous defense against Moore's charges, as being belligerent. These conclusions are incorrect. All Moore's charges of conspiracy among local cemeteries have been found to lack substance by the courts. The fact that several national cemetery associations have requested their members to donate funds cannot be construed to be a conspiracy either among the associations or by individual local cemeteries.

Hatfield and the Emerald understand that charges brought in court are not considered true until they have been proven and that persons defending themselves in court against charges they believe to be false cannot be declared to be belligerent.

The "Maverick Mortician" article correctly quoted Moore as saying "I'm afraid with the money they've got, they'll be able to totally confuse the jury." When Moore made the statement, Moore's request for a jury trial was pending.

Moore and the Emerald have since learned there will be no jury trial on the tie-in matter to be decided by the District Court. Therefore, Moore's quote is inapplicable. By quoting Moore in the original article, Hatfield and the Emerald did not intend to imply that the defendant cemeteries would have tried to confuse the jury by improper tactics had a jury trial been allowed.

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