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STATE OF WASHINGTON
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No. 95237-0

THE SUPREME COURT OF THE STATE OF WASHINGTON

SOUTHWICK, INC., a Washington Corporation,

APPELLANT,

v.

WASHINGTON STATE, AND ITS DEPARTMENT OF LICENSING BUSINESS AND
PROFESSIONS DIVISION, WASHINGTON STATE FUNERAL AND CEMETERY BOARD,

RESPONDENTS.

PETITIONER SOUTHWICK, INC.'S SUPPLEMENTAL BRIEF

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I. INTRODUCTION

Southwick, Inc. (hereinafter "Southwick") submits this supplemental brief pursuant to RAP 13.7(d).

II. QUESTION PRESENTED

RCW 68.20.060 provides:

A cemetery authority may **make**, adopt, amend, add to, revise, or modify, **and enforce** rules and regulations for the use, care, control, management, restriction and protection of all or any part of its cemetery and for the other purposes specified in RCW 68.20.061 through 68.20.067, 68.20.070 and 68.48.080.

(emphasis added).

RCW 68.24.110 provides, in pertinent part:

[A] cemetery authority may sell and convey plots or rights of interment **subject to the rules in effect or thereafter adopted by the cemetery authority.**

(emphasis added).

RCW 68.56.060 [formerly RCW 68.48.080¹] provides:

The sexton, superintendent, or other person in charge of the cemetery, and such other persons as the cemetery authority designates have **the authority of a police officer for the purposes of maintaining order, enforcing the rules and regulations of the cemetery association,** the laws of the state, and the ordinances of the city or county, within the cemetery over which he or she has charge, and within such radius as may be necessary to protect the cemetery property.

(emphasis added).

¹ Re-codified by 2012 Wash. Laws, Ch. 117 §327.

A cemetery authority grants the local municipality an easement running under the cemetery. The municipality locates its main water line that provides the domestic water supply for most of the City's* residents within the easement.

The cemetery authority abandons the cemetery, and a new cemetery authority assumes control over the operation of the abandoned cemetery.

The new cemetery authority adopts rules wherein the authority "reserves the right to correct errors made by it in making interments . . . by conveying in lieu thereof other reasonably equivalent property" selected by the cemetery authority. These rules further state "in the event the error shall involve the interment of the remains of any person in such property, the [cemetery authority] reserves and shall have the right to remove and reinter the remains in the property conveyed in lieu thereof."

Acting without knowledge of the City's waterline easement, the new cemetery authority establishes an urn garden in the City's easement.

The cemetery authority incorporates these rules into every contract pursuant to which it sells the right to interment in the urn garden established by the cemetery.

The municipality later notifies the new cemetery authority of its easement, and demands that the cemetery authority remove any obstructions that would impede the municipality's emergency access to the aging

waterline. In response, the cemetery authority, acting under the authority of its rules, relocates the urn garden, and each of the encased, cremated human remains located within the urn garden the minimum distance necessary to relocate the urn garden outside the City's waterline easement.

RCW 68.50.140(4) provides:

Every person who removes, disinters, or mutilates human remains from a place of interment, without authority of law, is guilty of a Class C felony.

Did the cemetery authority act "without authority of law" within the meaning of RCW 68.50.140(4) when, acting under the authority of its rules, it shifted the location of the urn garden to re-establish it outside of the waterline easement?

Short Answer: Because the Legislature has specifically granted cemetery authorities the authority of a police officer for the purpose of enforcing its rules, and because the rules the cemetery authority adopted, and which it incorporated into every contract by which it sold a right of interment in the urn garden, specifically authorized the cemetery authority, in the event it discovered an error in the interment of the remains, to disinter and reinter the remains, the cemetery authority acted with "authority of law" in shifting the location of the urn garden the minimum distance necessary to relocate the urn garden outside the municipality's waterline easement. The cemetery authority therefore did not violate RCW 68.50.140(4).

III. STATEMENT OF FACTS

BASIC FACTS

Southwick operates Forest Memorial Cemetery, the oldest continuously operating cemetery in the state and the only cemetery located within the limits of the City of Olympia. AR 122.

Forest Memorial Cemetery began operating in 1857. Prior to 1989, Forest Memorial Cemetery was operated by Forest Cemetery Association. AR 279 (Finding #1).

In 1947, Forest Cemetery Association granted an easement to the City of Olympia to construct, operate and maintain the City's main municipal waterline under the cemetery. *Id.* (Finding #2).

In 1956, Forest Cemetery Association constructed a monument featuring the Lord's Prayer within the City of Olympia's waterline easement. *Id.* (Finding #3).

By the late 1980s, Forest Cemetery Association had become moribund. The cemetery was not being maintained. The cemetery was in danger of becoming dilapidated. AR 135.

In 1989, Southwick, acting pursuant to an agreement with the Washington State Cemetery Board, agreed to take over operation of the cemetery in order to prevent it from becoming derelict. AR 135. Because Southwick simply took over operation of the cemetery, without a formal

closing, Southwick never learned of the existence of the City of Olympia's waterline easement. AR 136.

By RCW 68.20.060, 68.24.110, and 68.48.080, the Legislature authorized cemetery authorities to adopt and enforce rules governing the interment of human remains within a cemetery. Southwick adopted such rules. AR 136; AR 152-72 (Southwick's rules).

Southwick modeled its rules on those adopted by Evergreen Washelli Memorial Park in Seattle. AR 136. Southwick had the rules reviewed and approved by an experienced cemetery law attorney before their adoption. *Id.* Southwick's rules specifically authorized Southwick, in the event of an error in the placement of human remains within the cemetery, to disinter and reinter the remains:

10(j) Correction of Errors

The Corporation reserves the right to correct errors made by it in making interments . . . by canceling such conveyance and conveying in lieu thereof other reasonably equivalent property selected by the corporation, In the event the error shall involve the interment of the remains of any person in such property, the Corporation shall have the right to remove and reinter the remains in the property conveyed in lieu thereof.

AR 163. This rule has been in place since at least 1997. AR 72, 86.

Nothing in its rules conditioned Southwick's authority on prior notice.

Southwick established the Devotion Urn Garden next to the existing Lord's Prayer monument. AR 125. Southwick sold small plots in the Devotion Urn Garden for the burial of cremated human remains entased in a sealed urn. *Id.* By 2011, 37 urns were located within the Devotion Urn Garden. AR 125; 280 (Finding #5).

Southwick sold each right to interment in the Devotion Urn Garden pursuant to contracts which specifically referenced and incorporated Southwick's rules. AR 174. Southwick provided each purchaser a copy of its rules. *Id.*

In 2011, the City of Olympia notified Southwick of the existence of the City's waterline easement, and of the fact that the City's main waterline was located in the easement. AR 179. The City demanded that Southwick remove any encroachments that might interfere with its emergency access to the waterline and easement in the event the aging waterline needed repair. *Id.*; AR 280 (Finding #6).

Southwick responded by asking the City to have a surveyor perform a survey to place monumentation so that the cemetery could determine the nature and extent of any encroachments upon the easement. AR 180; 280 (Finding #7). The survey showed that the Devotion Urn Garden was located within the City of Olympia's waterline easement. *Id.* (Finding #9).

Acting pursuant to the authority of its rules, Southwick shifted the location of the entire Devotion Urn Garden, including each of the unopened, encased, sealed urns, to a new location approximately nine feet from its prior location. AR 281 (Finding #11). Southwick shifted the location of the Devotion Urn Garden the minimum distance necessary to relocate it outside the City's easement. AR 138. After the move, all the plots in the Devotion Urn Garden retained the same plot numbers, and remained in the same relative location to one another. *Id.*

No one ever complained to Southwick about the fact that it had shifted the location of the Devotion Urn Garden; the only comments Southwick received complimented Southwick on the improved appearance of the cemetery. AR 138. In particular, Southwick received an email from Connie Thompson, a child of Orville and Louise Thompson, whose cremated, encased remains were buried in the urn garden. AR 138; 193. Ms. Thompson thanked Southwick for its actions. AR 193.

A more distant relative of Orville and Louise Thompson, and a person with no legal relationship over or authority with respect to their remains, later complained to the Washington State Cemetery Board (hereinafter, "Board") that Southwick had not provided prior notice of its intent to shift the location of the Devotion Urn Garden. AR 138-39. In

response, the Board initiated this administrative proceeding against Southwick.

PROCEDURE

The board initiated this proceeding by filing a statement of charges. AR 15-17. The statement of charges alleged that Southwick had violated two statutes,² RCW 68.24.060 and RCW 68.50.220. AR 16. Both of these statutes describe conduct persons "may" engage in. They do not purport to prohibit any conduct.

After conducting discovery, the parties filed cross-motions for summary judgment. AR 49-53; AR 122-37. The Board's presiding officer, Jim Letson, entered a written ruling. AR 278-83. Presiding Officer Letson found that Southwick had not violated either of the statutes, which he characterized as "authorizing statutes," mentioned in the statement of charges. AR 282 (Finding #5). But, even though Southwick had not been charged with violating RCW 68.50.140, and even though neither the Board's prosecuting authority nor Southwick had mentioned RCW 68.50.140 in their summary judgment briefing, presiding officer Letson, in his ruling, purported to determine that Southwick had violated RCW 68.50.140. *Id.*

² The original statement of charges alleged that Southwick had violated a third statute, RCW 68.50.200. However, the Board subsequently filed an amended statement of charges that withdrew this allegation. AR 379-381.

Southwick filed a motion for reconsideration/revision. AR 382-96. In that motion, Southwick argued, among other things, that because it had acted under the authority of its Legislatively-authorized and contractually incorporated regulations, Southwick acted "with authority of law" within the meaning of RCW 68.50.140(4) in shifting the location of the urn garden outside of the City's waterline easement. AR 390-91.

The Board entered a final decision. AR 1-7. Without squarely addressing Southwick's argument that it had acted pursuant to the authority of its rules and therefore "with authority of law," the Board incorporated by reference the summary judgment decision, and imposed penalties on Southwick. *Id.*

Southwick timely appealed the Board's decision, first to the Superior Court, CP 149-51, and then to the Court of Appeals, *Southwick, Inc. v. Washington State Funeral and Cemetery Board*, 200 Wn.App. 890, 403 P.3d 934 (2017).

The Court of Appeals held that Presiding Officer Letson's entry of summary judgment against Southwick based on the violation of a statute which had not been pled, or even mentioned, prior to the entry of the summary judgment order violated Southwick's right to due process of law. 200 Wn.App. at 898, ¶14. A judgment entered without due process of law is void, and without any force or effect. *Esmieu v. Schrag*, 88 Wn.2d 490, 497,

563 P.2d 203 (1974). However, the Court of Appeals held that Southwick's filing of a motion for reconsideration "cured" the due process violation. 200 Wn.App. at 898, ¶15-16.

The Court of Appeals also peremptorily rejected Southwick's argument that because it had shifted the location of the Devotion Urn Garden under the authority of its rules, that Southwick had acted "with authority of law":

Although Southwick may have statutory authority to enact its own internal rules and regulations, the rules and regulations themselves are not the law. Accordingly, Southwick's internal rules and regulations did not provide the "authority of law" required by RCW 68.50.140.

200 Wn.App. at 901-02, ¶26.

Southwick filed a timely petition for review asking this Court to accept review of the Court of Appeals' decision. By order dated March 7, 2018, the Court accepted review, but "only as to the issue whether Southwick acted with authority of law."

IV. ANALYSIS

The presiding officer of the Washington State Cemetery Board, in a summary judgment order entered in flagrant defiance of Southwick's right to due process of law, determined that Southwick, in shifting the location of the Devotion Urn Garden in order to move it outside the City of Olympia's waterline easement, had violated RCW 68.50.140, a statute enacted in

territorial times in order to criminalize what is commonly referred to as "grave robbery."

RCW 68.50.140(4) provides:

(4) Every person who removes, disinters, or mutilates human remains from a place of interment, without authority of law, is guilty of a Class C felony.

Nothing in this statute purports to address the issue of notice.

In its order granting review, the Court has limited the issue on review to whether Southwick, in shifting the location of the Devotion Urn Garden pursuant to the authority of its rules, acted without "authority of law."

A. The Legislature has authorized cemetery authorities to adopt and enforce rules governing the interment of human remains in a cemetery.

In RCW 68.20.060, the Legislature has authorized Southwick, as a cemetery authority, to adopt and enforce rules governing the interment of remains in the cemetery:

A cemetery authority may **make**, adopt, amend, add to, revise, or modify, **and enforce** rules and regulations for the use, care, control, management, restriction and protection of all or any part of its cemetery and for the other purposes specified in RCW 68.20.061 through 68.20.067, 68.20.070 and 68.48.080.

(emphasis added).

In RCW 68.24.110, the Legislature has authorized Southwick, as a cemetery authority, to sell rights of interment subject to its rules:

[C]emetery authorit[ies] may sell and convey plots or rights of interment **subject to the rules in effect or thereafter adopted by the cemetery authority.**

(Emphasis added).

In RCW 68.56.060 [formerly RCW 68.48.080³] the Legislature has provided that Southwick has the authority of a police officer for the purpose of enforcing its rules:

The sexton, superintendent, or other person in charge of the cemetery, and such other persons as the cemetery authority designates have **the authority of a police officer for the purposes of maintaining order, enforcing the rules and regulations of the cemetery association,** the laws of the state, and the ordinances of the city or county, within the cemetery over which he or she has charge, and within such radius as may be necessary to protect the cemetery property.

Southwick has adopted such rules. AR 152-72. They specifically authorize Southwick, in the event of an error in the interment of remains, to relocate and reinter the remains. AR 163 (Rule 10(j)). Nothing in these rules conditions Southwick's authority on prior notice. Southwick acted under the authority of these rules, and not under the authority of any separate statute, in shifting the location of the Devotion Urn Garden that minimum distance necessary to move it outside the City of Olympia's waterline easement. AR 138; 251 (Finding #11).

³ Re-codified by 2012 Wash. Laws Ch. 117 §327.

In proceedings before the agency, the agency never directly addressed Southwick's assertion that it had relocated the Devotion Urn Garden pursuant to the Legislatively-sanctioned authority of its rules, and therefore acted "with authority of law." AR 5 (Findings of Fact 4.4-4.6).

Addressing an issue that the agency itself had not addressed, the Court of Appeals held that, for purposes of RCW 68.50.140(4), Southwick acted "without authority of law" in relocating the Devotion Urn Garden:

Although Southwick may have statutory authority to enact its own internal rules and regulations, the rules and regulations themselves are not the law. Accordingly, Southwick's internal rules and regulations did not provide the "authority of law" required by RCW 68.50.140.

Southwick, 200 Wn.App. at 901-02, ¶26. The Court of Appeals' cursory analysis and dismissal of this issue was plainly in error.

The Legislature specifically authorized cemetery authorities like Southwick to adopt and enforce rules. RCW 68.20.060; 68.24.110; RCW 68.50.060. Southwick sold interment rights pursuant to contracts which incorporated these rules. AR 174. The rules which Southwick adopted, and which the Legislature gave Southwick police authority to enforce, cannot fairly be characterized as purely "internal."

The phrase "authority of law" has a clear legal meaning. It refers to any authority granted by a valid statute, common law, or rule of the court. *State v. Gunwall*, 106 Wn.2d 54, 68-69, 720 P.2d 808 (1986). Because

Southwick was acting pursuant to the authority of rules which the Legislature had specifically authorized it to adopt and enforce, and pursuant to its common law contract rights, Southwick acted "with authority of law" in relocating the urn garden outside of the City of Olympia's waterline easement.

The language in RCW 68.50.140(4) further underlines the legislative intent that that statute not apply to cemetery authorities. That statute prohibits the removal or disinterring of remains "from a place of interment" "without authority of law." The Legislature has defined "interment" as the placement of human remains *in a cemetery*. RCW 68.04.100 (defining "interment" as "the placement of human remains in a cemetery"). This language further reinforces the conclusion that the Legislature did not intend this statute to apply to cemetery authorities who do not disinter or remove human remains from a cemetery, but who merely, acting pursuant to the authority of their legislatively-authorized rules, relocate remains within it.

Further, Southwick's construction of the relevant statutes related to the disinterment of remains harmonizes all the various statutes. By RCW 68.20.060, RCW 68.24.110, and RCW 68.50.060, the Legislature has authorized **cemetery authorities** to make, enforce, and/or sell rights to interment in cemeteries subject to the cemetery's rules, and granted cemetery

authorities the power of a police officer to enforce those rules. In RCW 68.50.200, the Legislature describes the circumstances under which **relatives** may disinter remains. See *Braun v. Selig*, 194 Wn.App. 42, 51 ¶18, 54 ¶25-27, 376 P.3d 447 (2016). In RCW 68.50.210-220, the Legislature describes the circumstances pursuant to which **public officials** may disinter human remains. *Braun v. Selig*, 194 Wn.App. at 58, ¶33. Finally, in RCW 68.50.140, by prohibiting the disinterment of remains except by those operating "with authority of law" pursuant to the foregoing statutes, the Legislature has prohibited **all other persons** from disinterring human remains:

| Statute | Actor | Effect |
|---|-------------------------|--|
| RCW 68.20.060; 68.24.110; RCW 68.50.060 | Cemetery authorities | Authorizes cemetery authorities to disinter human remains if so authorized by their rules |
| RCW 68.50.200 | Relatives | Describes circumstances under which relatives may disinter remains. |
| RCW 68.50.210-.220 | Public officials | Describes circumstances in which public officials may disinter human remains. |
| RCW 68.50.140 | All other persons | Prohibits all other persons from disinterring human remains. |

The Court of Appeals' peremptory dismissal of Southwick's cemetery rules as being "purely internal," in contrast, mangles and disharmonizes these statutes. In particular, the Court of Appeals' refusal to give independent effect to RCW 68.20.060; 68.24.110; and 68.50.060

emasculates these statutes. Ignoring these statutes, by which the Legislature plainly and authoritatively conferred unique powers on cemetery authorities, the Court of Appeals' decision instead subjects cemetery authorities to statutes which the Legislature intended to describe the circumstances under which relatives and public officials, rather than cemetery authorities, may lawfully disinter human remains. See *Braun v. Selig*, 194 Wn.App. 51, ¶18; 54, ¶25-27; 58, ¶33.

Finally, the Court of Appeals' interpretation of RCW 68.50.140 threatens to undermine the efficacy of the rules issued by every cemetery authority in this state. The Legislature has specifically authorized cemetery authorities to make and enforce rules governing the interment of human remains within the cemetery they operate. RCW 68.20.060. The Legislature has specifically authorized cemetery authorities to sell rights of interment in the cemeteries subject to such rules. RCW 68.24.110. The Legislature has specifically conferred on cemetery authorities the power of a police officer for the purpose of enforcing those rules. RCW 68.50.060. These rules grant cemetery authorities authority independent of other statutes. Under the Court of Appeals decision, cemetery authorities throughout the state now have been deprived of the ability to enforce rules enacted pursuant to those statutes.

The Court of Appeals plainly erred in peremptorily dismissing Southwick's rules as "purely internal." The Court should reverse the Court of Appeals decision. The Court should hold that Southwick, when confronted with the City of Olympia's legitimate demand that it remove impediments to the City's easement right of access to its aging municipal waterline, had the authority under its rules to relocate the urn garden outside the City's easement. Therefore, Southwick acted "with authority of law" within the meaning of RCW 68.50.140.

B. The Court should award Southwick its reasonable attorney's fees under the Washington Equal Access to Justice Act.

Finally, assuming that the Court grants relief to Southwick, the Court should award Southwick attorney's fees under the Washington Equal Access to Justice Act, codified at RCW 4.84.340-350.

Under this statute, a "qualified party" that obtains relief on a significant issue by judicial review of agency action is entitled to an award of its fees and expenses, including reasonable attorney's fees:

Except as otherwise specifically provided by statute, a court shall award a qualified party that prevails in a judicial review of an agency action fees and other expenses, including reasonable attorneys' fees, unless the court finds that the agency action was substantially justified or that circumstances make an award unjust. A qualified party shall be considered to have prevailed if the qualified party obtained relief on a significant issue that achieves some benefit that the qualified party sought.

RCW 4.84.350(1). Under this statute, a "qualified party" includes a corporation whose net worth did not exceed \$5,000,000 at the time the initial petition for judicial review was filed. RCW 4.84.340(5).

A court awarding attorney's fees under the Equal Access to Justice Act may award fees at a rate of no greater than \$150 per hour unless the court determines that an increase to the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee. RCW 4.84.340(3). The total fee that a court can award is capped at a maximum of \$25,000. RCW 4.84.350(2).

Here, Southwick is prepared to certify, under penalty of perjury, that its net worth at the time of its filing of this petition for judicial review is under \$5,000,000. Therefore, Southwick is a "qualified party" within the meaning of the Act.

Assuming Southwick prevails on review, the Court should therefore award Southwick its attorney's fees. Southwick is entitled to recover for both the time it invested in litigating this matter before the Superior Court, and before the Court of Appeals.

In sum, assuming Southwick prevails, the Court should award Southwick fees under the Washington Equal Access to Justice Act.

V. CONCLUSION

The Court should reverse the published decision of the Court of Appeals. The Court should hold that Southwick acted "with authority of law" within the meaning of RCW 68.50.140 when, acting pursuant to the authority of its rules, it shifted the location of the Devotion Urn Garden the minimum distance necessary to relocate the urn garden outside the City of Olympia's waterline easement. The Court should also award Southwick attorney's fees under the Washington Equal Access to Justice Act, RCW 4.84.340-.350.

OWENS DAVIES, P.S.



Matthew B. Edwards, WSBA No. 18332
Attorney for Petitioner Southwick, Inc.

VI. APPENDIX

| | |
|-------------------|---|
| Appendix A | RCW 68.20.060 |
| Appendix B | RCW 68.24.110 |
| Appendix C | RCW 68.56.060 |
| Appendix D | RCW 68.50.140 |
| Appendix E | <i>Cemetery Rules and Regulations, Southwick, Inc.</i> (excerpted) |
| Appendix F | Published Opinion: <i>Southwick, Inc. v. Washington State, and its Department of Licensing Business and Professions Division, Washington State Funeral and Cemetery Board</i> , Court of Appeals Division Two, No. 49691-7-II, October 17, 2017 |

APPENDIX A

RCW 68.20.060

Specific powers—Rule making and enforcement.

A cemetery authority may make, adopt, amend, add to, revise, or modify, and enforce rules and regulations for the use, care, control, management, restriction and protection of all or any part of its cemetery and for the other purposes specified in RCW 68.20.061 through 68.20.067, 68.20.070 and * 68.48.080.

[1943 c 247 § 46; Rem. Supp. 1943 § 3778-46. Formerly RCW 68.20.070, part. FORMER PART OF SECTION: 1943 c 247 §§ 47 through 52 now codified as RCW 68.20.061 through 68.20.066.]

NOTES:

*Reviser's note: RCW 68.48.080 was recodified as RCW 68.56.050 pursuant to 1987 c 331 § 89.

APPENDIX B

RCW 68.24.110**Sale of plots or rights of interment.**

After filing the map or plat and recording the declaration of dedication, a cemetery authority may sell and convey plots or rights of interment subject to the rules in effect or thereafter adopted by the cemetery authority. Plots or rights of interment may be subject to other limitations, conditions, and restrictions as may be part of the declaration of dedication by reference, or included in the instrument of conveyance of the plot or rights of interment.

[2005 c 365 § 77; 1943 c 247 § 70; Rem. Supp. 1943 § 3778-70. FORMER PART OF SECTION: 1943 c 247 § 72 now codified as RCW 68.24.115.]

APPENDIX C

RCW 68.56.060**Police authority—Who may exercise.**

The sexton, superintendent, or other person in charge of a cemetery, and such other persons as the cemetery authority designates have the authority of a police officer for the purpose of maintaining order, enforcing the rules and regulations of the cemetery association, the laws of the state, and the ordinances of the city or county, within the cemetery over which he or she has charge, and within such radius as may be necessary to protect the cemetery property.

[2012 c 117 § 327; 1943 c 247 § 55; Rem. Supp. 1943 § 3778-55. Formerly RCW 68.48.080.]

APPENDIX D

RCW 68.50.140**Unlawful disturbance, removal, or sale of human remains—Penalty.**

(1) Every person who shall remove human remains, or any part thereof, from a grave, vault, or other place where the same has been buried or deposited awaiting burial or cremation, without authority of law, with intent to sell the same, or for the purpose of securing a reward for its return, or for dissection, or from malice or wantonness, is guilty of a class C felony.

(2) Every person who shall purchase or receive, except for burial or cremation, human remains or any part thereof, knowing that the same has been removed contrary to the foregoing provisions, is guilty of a class C felony.

(3) Every person who shall open a grave or other place of interment, temporary or otherwise, or a building where human remains are placed, with intent to sell or remove the casket, urn, or of any part thereof, or anything attached thereto, or any vestment, or other article interred, or intended to be interred with the human remains, is guilty of a class C felony.

(4) Every person who removes, disinters, or mutilates human remains from a place of interment, without authority of law, is guilty of a class C felony.

[2005 c 365 § 140; 2003 c 53 § 308; 1992 c 7 § 44; 1909 c 249 § 239; RRS § 2491.

FORMER PART OF SECTION: 1943 c 247 § 25 now codified as RCW 68.50.145. Formerly RCW 68.08.140.]

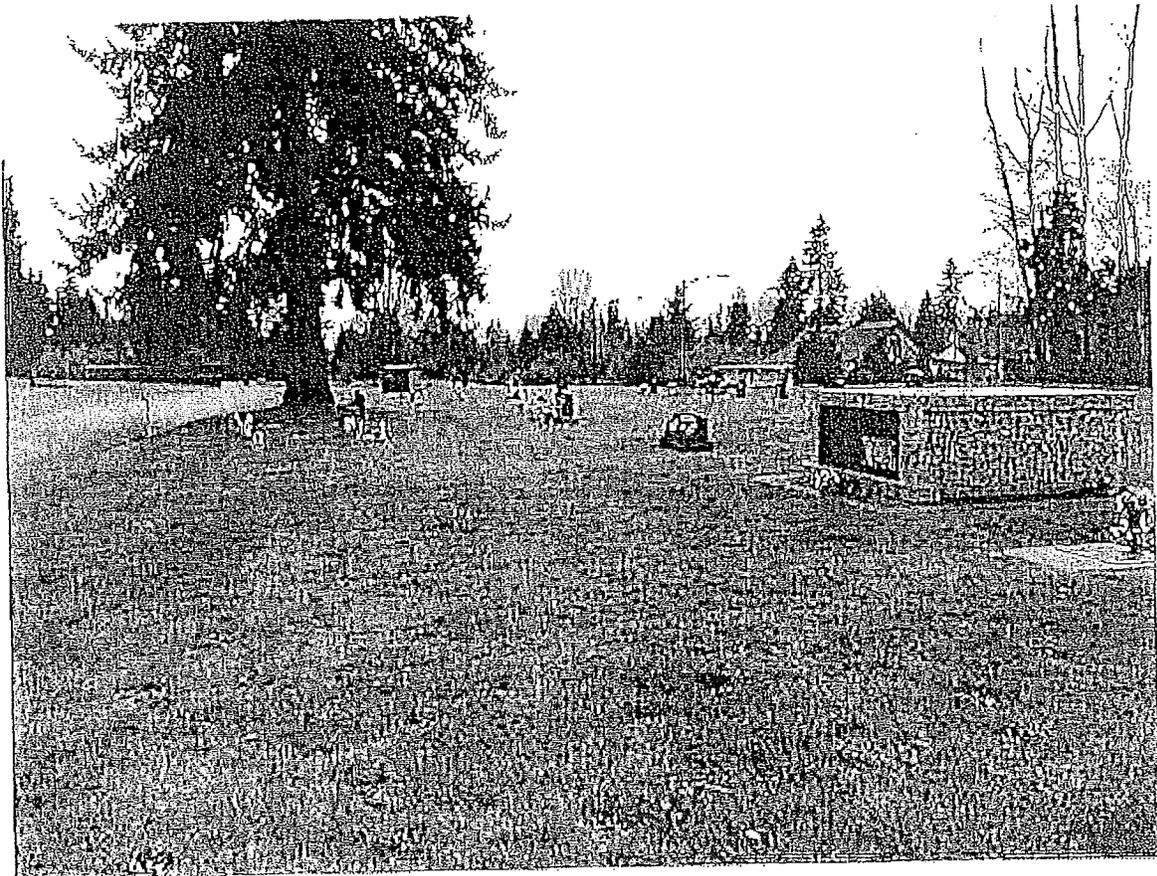
NOTES:

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

APPENDIX E

JUN 12 2014
Business and Professions
Division 1

CEMETERY RULES AND REGULATIONS



SOUTHWICK, INC.
DBA
FOREST MEMORIAL GARDENS

*Note:
Also incl.
1997 rules + regs
for WA F & C Board*

Effective July 1, 2011

10(j) Correction of Errors

The Corporation reserves the right to correct errors made by it in making interments, disinterments or removals, or errors in the description, transfer or conveyance of any interment property, either by cancelling such conveyance and conveying in lieu thereof other reasonably equivalent property selected by the corporation, or, in its discretion, by refunding the amount of money paid on account of the purchase. In the event the error shall involve the interment of the remains of any person in such property, the Corporation reserves and shall have the right to remove and reinter the remains in the property conveyed in lieu thereof. The Corporation shall have the right to correct any errors involving placing an improper inscription, including incorrect name or date, either on a memorial or on a container for cremated remains. The Corporation shall not be liable in damages to any person for any such inadvertent error committed by it.

10(k) Delay in Interment

The Corporation shall not be liable for delay in the interment of a body where objection of the interment has been made, or where the Rules and Regulations have not been complied with. The Corporation reserves the right, under such circumstances, to place the body in a receiving vault until rights of all interested parties have been determined. The Corporation shall be under no duty to recognize any objection to interment unless it is in writing and filed in the Corporation's office.

10(l) Interment Permit and Identity

The Corporation shall not be responsible for securing the interment permit or for establishing the identity of the person sought to be interred.

10(m) Rights Prior to Payment

No interment shall be permitted or memorial placed in or on property not fully paid for except by written consent of the Corporation. If such consent is given, any interments or memorial placed in or on said property shall be temporary. A Promissory Note shall not be considered payment, and no right shall be acquired by the plot purchaser by an interment until the price of such property, including contribution to the Endowment Care Fund, is fully paid in cash, including principal and interest. If the purchaser of property fails to meet any payment within thirty (30) days after the same is due, the Corporation may re-enter said property and all interest in the plot of any person other than the Corporation shall terminate. The Corporation, thereupon, shall be released from all obligations of sale and may retain such payments as have been made toward the

APPENDIX F

[No. 49691-7-II. Division Two. October 17, 2017.]

SOUTHWICK, INC., *Appellant*, v. THE WASHINGTON STATE
FUNERAL AND CEMETERY BOARD, *Respondent*.

- [1] **Death — Cemeteries — Regulation — Statutory Authority.** Under RCW 18.235.130(8) and RCW 18.235.020(2), cemeteries and funeral homes may be sanctioned for failing to comply with the statutes governing cemeteries and funeral homes in Title 68 RCW.
- [2] **Constitutional Law — Due Process — Procedural Due Process — Requirements — Basic Elements.** Fundamentally, procedural due process of law requires notice and an opportunity to be heard.
- [3] **Constitutional Law — Due Process — Procedural Due Process — Scope — In General.** The process due in a particular situation must be meaningful and appropriate to the nature of the case.
- [4] **Administrative Law — Due Process — Procedural Due Process — Final Agency Action — Sufficiency.** An entity that is subjected to a regulatory enforcement proceeding is not deprived of procedural due process of law by the fact that the hearing officer in the initial hearing on the matter finds the entity to have violated a statute that the entity was not charged with violating and that was not argued at the hearing if the entity is afforded adequate opportunity to brief and argue the applicability of the statute to undisputed facts before a higher level administrative agency that has final administrative decision-making authority in the case.
- [5] **Death — Cemeteries — Removal of Remains — From One Plot to Another — Within Same Cemetery — Validity.** RCW 68.50.140 generally prohibits the removal of human remains from one plot to another plot in the same cemetery without authority of law, such as a specific statutory exception.
- [6] **Statutes — Construction — Conflicting Provisions — General and Specific Statutes.** While statutes should be read to complement each other, when there appears to be a conflict, preference is given to the more specific statute.
- [7] **Death — Cemeteries — Removal of Remains — From One Plot to Another — Within Same Cemetery — Authority of Law — Statutory Provisions.** RCW 68.50.220 states the legal authority and requirements for moving human remains from one plot to another within the same cemetery that if not followed can constitute a violation of RCW 68.50.140.

- [8] **Death — Cemeteries — Removal of Remains — From One Plot to Another — Within Same Cemetery — Authority of Law — Internal Rules and Regulations.** A cemetery operator's own internal rules and regulations adopted under the authority of RCW 68.24.110 do not provide the "authority of law" required by RCW 68.50.140 to remove human remains.
- [9] **Death — Cemeteries — Mapping and Plotting — Resurveying or Alteration — Statutory Provisions.** RCW 68.24.060 pertains to the resurveying or alteration in shape and size of a mapped and plotted part or subdivision of a cemetery.
- [10] **Death — Cemeteries — Removal of Remains — From One Plot to Another — Within Same Cemetery — Plot Mapping — Necessity.** A cemetery operator does not violate RCW 68.24.060 by moving the plot locations of human remains within the cemetery without amending the plot map for the cemetery.
- [11] **Administrative Law — Judicial Review — Attorney Fees — Unjustified Agency Action — Statutory Provisions — "Prevails" in Action — Necessity.** Attorney fees and costs are not awardable under RCW 4.84.350 to a party that does not at least substantially prevail on judicial review of an agency action.

SUTTON, J., delivered the opinion for a unanimous court.

Nature of Action: A cemetery operator sought judicial review of a decision by the Washington State Funeral and Cemetery Board to sanction the operator for moving cremated human remains to new plots within the cemetery without obtaining the consent of or notifying the affected families.

Superior Court: The Superior Court for Thurston County, No. 16-2-00102-2, Anne Hirsch, J., on September 23, 2016, entered a judgment upholding the board's decision.

Court of Appeals: Holding that the operator was not deprived of procedural due process of law in the administrative proceedings, and that the board properly concluded that the operator committed a statutory violation by unlawfully disturbing human remains without obtaining the consent of or notifying the affected families, but that the board erroneously concluded that the operator committed a statutory violation by failing to amend the cemetery plot map to note the moved plot locations, and that remand was re-

quired because the board did not specify how it reached its determination on sanctions, the court *affirms in part* and *reverses in part* the superior court's judgment and the board's order and *remands* the case to the board for further proceedings.

Matthew B. Edwards (of *Owens Davies PS*), for appellant.

Robert W. Ferguson, Attorney General, and *R. July Simpson*, Assistant, for respondent.

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¶1 SUTTON, J. — Southwick Inc. appeals from the superior court's order affirming the Washington State Funeral and Cemetery Board's (Board) decision sanctioning Southwick for moving cremains¹ to new cemetery plots without notifying the families. Southwick argues that its procedural due process rights were violated when the presiding officer originally granted summary judgment in favor of the Department of Licensing (Department) based on RCW 68.50.140 when that statute was not cited in the original notice of violation or argued at the summary judgment hearing. Southwick also argues that (1) Southwick was authorized to move the cremains based on its own operating rules and (2) the Board incorrectly interpreted and applied the statutes governing plotting cemeteries and moving human remains.²

¹ "Cremains" are human remains that have been cremated.

² Southwick also argues that the Board's order is not supported by substantial evidence. But a challenge based on substantial evidence is a challenge to the findings of fact. And Southwick has never challenged the underlying facts and did not assign error to the Board's findings of fact. Southwick is actually arguing that the uncontested facts do not satisfy the statutes in question. Accordingly, Southwick's challenge is actually a challenge to the Board's application of the law,

¶2 We hold that Southwick's opportunity to argue the applicability of RCW 68.50.140 at a hearing before the Board ultimately satisfied the requirements of procedural due process in this case. And we hold that the Board properly concluded that Southwick violated RCW 68.50.140 but that the Board erred by concluding that Southwick violated RCW 68.24.060. Because the Board did not specify how it reached its determination on sanctions, we remand to the Board to reconsider the appropriate discipline for Southwick's violation of RCW 68.50.140.

FACTS

¶3 From 1857 to 1989, Forest Cemetery Association operated Forest Memorial Cemetery (Cemetery) within the city of Olympia (City). In 1947, the Cemetery granted an easement to the City to construct, operate, and maintain a water main. In 1989, the Board granted Southwick authority to operate the Cemetery. Southwick was unaware of the City's easement. Around 2002, Southwick established an urn garden over the City's easement. By 2011, 37 urns containing human cremains were interred within the urn garden.

¶4 In 2011, the City notified Southwick that it had violated the terms of the easement by installing encroachments over the easement. The City demanded that any encroachments be removed from the easement. Between 2013 and 2014, Southwick worked to remove the encroachments from the City's easement. In order to do so, Southwick relocated the urn garden approximately 9 feet from its original location. When relocating the urn garden, Southwick removed 37 urns from their burial places and reburied them in new plot locations. Southwick kept the urns in the same juxtaposition

not to the sufficiency of the evidence supporting the order, and will be addressed as such. Southwick's "substantial evidence" challenge will not be discussed further.

as the original plots. Southwick did not notify the families of the removal, relocation, and reburial of the urns.

[1] ¶5 The Department served Southwick with a statement of charges alleging unprofessional conduct under RCW 18.235.130.³ The Department alleged that Southwick violated RCW 68.24.060—amendment of cemetery maps and plats—by replotting the Cemetery, which resulted in disturbing human remains. The statement of charges also alleged that Southwick moved human remains in violation of RCW 68.50.200, which requires obtaining permission from next of kin to move human remains, and RCW 68.50.220, which provides exceptions to the consent requirement but requires notification to next of kin prior to moving human remains.

¶6 Neither party disputed any of the underlying facts. The Department filed a motion for partial summary judgment of all issues except sanctions. Southwick filed its own motion for summary judgment. A presiding officer heard both motions. The presiding officer granted partial summary in favor of the Department based on the following conclusions of law:

2. In response to the City's order to remove encroachments from the easement, the Cemetery was surveyed by the City. Pursuant to the survey, the Cemetery was forced to alter the location of the Urn Garden which is contemplated under RCW 68.24.060 moving all the inurnment plots from one location to another. In doing so, the Cemetery was also forced to disturb human remains, so the action was not authorized under RCW 68.24.060.

3. Alternatively, human remains may be removed and moved to a new location within the [C]emetery so long as notice and

³ RCW 18.235.130 defines unprofessional conduct that may be sanctioned, including "[v]iolating any of the provisions of this chapter or the chapters specified in RCW 18.235.020(2) or any rules made by the disciplinary authority under the chapters specified in RCW 18.235.020(2)." RCW 18.235.130(8). Under RCW 18.235.020(2)(b)(iv), cemeteries and funeral homes may be sanctioned for failing to comply with the statutes governing funeral homes and cemeteries in Title 68 RCW.

permission is granted by a surviving relative, or if there is a court order and the surviving relative is notified. RCW 68.50.200; RCW 68.50.210; RCW 68.50.220.

4. In this case, there was a potential for the City of Olympia to obtain a court order, but no order was obtained. Had the City obtained a court order, the Cemetery would still be required to provide notice to a surviving relative under RCW 68.50.220. Without a court order, the Cemetery was required to not only notify, but also to obtain consent, from a surviving relative or the Thurston County Superior Court.

5. Therefore, the Cemetery did not comply with any of the authorizing statutes listed above.

6. The Cemetery is in direct violation of RCW 68.50.140 for unlawful disturbance, removal or sale of human remains.

Admin. Record (AR) at 298-99. The presiding officer concluded that the "act of disturbing human remains without obtaining consent or even notifying the families of the deceased" constituted unprofessional conduct for the purposes of RCW 18.235.130. AR at 299. The presiding officer referred the case to the Board for a hearing on appropriate sanctions.

¶7 Before the hearing, Southwick filed a motion for reconsideration of the presiding officer's decision with the Board. In both the motion and argument, Southwick addressed the application of RCW 68.50.140. In its final order, the Board considered Southwick's motion for reconsideration.

¶8 The Board then made the following conclusions of law:

4.4 On reconsideration, this tribunal finds that RCW 68.50.140 provides a general prohibition against removal of interred human remains. The respondent removed the interred human remains of 37 people and so has violated RCW 68.50.140, unless one of two potentially applicable exceptions applies.

4.5 One potential exception to the general prohibition is codified in RCW 68.50.200, which allows interred

remains to be moved so long as consent for removal is obtained from next of kin. In this case, the Respondent failed to get consent of next of kin prior to removing the interred human remains and so did not meet the requirements of this exception.

- 4.6 The other potential exception to the general prohibition is codified in RCW 68.50.220, which provides that a cemetery authority may move interred remains in response to a court order. However, even when a court order is obtained, the next of kin must be notified. In this case, there was no court order requiring Respondent to remove the interred remains. Further, Respondent did nothing to notify the next of kin. Therefore, this exception does not apply.
- 4.7 Respondent also violated RCW 68.24.060 because it moved plot locations but failed to amend the plot map associated with that move. Respondent constructively amended the plot map by moving the plot locations and further violated RCW 68.24.060 when it moved human remains in the process of altering the plot locations.

AR at 7-8. Based on Southwick's violations, the Board concluded that Southwick had engaged in unprofessional conduct under RCW 18.235.130(8). The Board sanctioned Southwick \$7,500, required Southwick to attempt notification of all next of kin, and required Southwick to place an appropriate notice in the local newspaper for three days.

¶9 Southwick appealed the Board's final order to the Thurston County Superior Court. The superior court affirmed the Board's final order. Southwick appeals.

ANALYSIS

I. STANDARD OF REVIEW

¶10 Our review of agency action is governed by the Administrative Procedure Act, chapter 34.05 RCW. We review the Board's final order, not the presiding officer's decision or the superior court's order. *Olympic Healthcare*

Servs. II, LLC v. Dep't of Soc. & Health Servs., 175 Wn. App. 174, 181, 304 P.3d 491 (2013). We will grant relief from an agency action order if the order is unconstitutional, the agency erroneously interpreted or applied the law, or the order is not supported by substantial evidence. RCW 34.05.570(3)(a), (d), (e). The party challenging an agency action bears the burden of demonstrating the invalidity of the agency action. RCW 34.05.570(1)(a).

¶11 We review the Board's findings of fact for substantial evidence and review the Board's conclusions of law de novo. *Steven Klein, Inc. v. Dep't of Revenue*, 183 Wn.2d 889, 895-96, 357 P.3d 59 (2015). Unchallenged findings of fact are verities on appeal. *Porter Law Ctr., LLC v. Dep't of Fin. Insts.*, 196 Wn. App. 1, 13, 385 P.3d 146 (2016). Southwick has never challenged or disputed any of the Board's findings of fact. Accordingly, we treat the Board's findings of fact as verities on appeal.

II. PROCEDURAL DUE PROCESS

¶12 Southwick argues that the Board's order is unconstitutional because it violates Southwick's right to procedural due process. We hold that Southwick's opportunity to argue the issue at a hearing before the Board ultimately satisfied the requirements of procedural due process in this case.

[2, 3] ¶13 Both the federal and state constitutions guarantee an individual procedural due process when the State deprives an individual of life, liberty, or property. *Alvarado v. Dep't of Licensing*, 193 Wn. App. 171, 176-77, 371 P.3d 549 (2016). Fundamentally, procedural due process requires notice and an opportunity to be heard. *Alvarado*, 193 Wn. App. at 177. More than mere formalities, "[d]ue process must be 'meaningful and appropriate to the nature of the case.'" *Alvarado*, 193 Wn. App. at 177 (quoting *Svendgard v. Dep't of Licensing*, 122 Wn. App. 670, 681, 95 P.3d 364 (2004)).

[4] ¶14 It is undisputed that the Department did not allege a violation of RCW 68.50.140 in the statement of charges against Southwick and that Southwick did not have notice or the opportunity to present argument regarding RCW 68.50.140 before the presiding officer. Therefore, the presiding officer's order, standing alone, would violate the fundamental requirements of procedural due process.

¶15 However, we review the Board's final order, not the presiding officer's order. The Board considered Southwick's motion for reconsideration and allowed full briefing and argument regarding RCW 68.50.140. Thus, as it relates to the Board's order, Southwick received notice of the potential violation of RCW 68.50.140 from the presiding officer's order. And Southwick had a meaningful opportunity to be heard on the issue before the Board because it was able to brief and argue the applicability of RCW 68.50.140 to the undisputed facts. Accordingly, the fundamental requirements of procedural due process have been satisfied with the Board's final order.

¶16 Southwick argues that the opportunity to be heard before the Board does not satisfy the requirements of procedural due process because the hearing before the Board was a motion to reconsider, which shifts the burden to Southwick. But procedural due process considers whether the process is meaningful and appropriate within the context of the case. *Alvarado*, 193 Wn. App. at 177. Within the context of this case, where there were no disputed facts, the opportunity to brief and argue a purely legal issue is a meaningful and appropriate opportunity to be heard because Southwick was able to fully present its case before the Board. Therefore, the Board's final order complies with the requirements of procedural due process and is not unconstitutional.

III. STATUTORY VIOLATIONS

¶17 Southwick argues that the Board erred when it concluded that Southwick violated RCW 68.50.140 and

RCW 68.24.060. We hold that the Board did not err by concluding that Southwick violated RCW 68.50.140 by unlawfully disturbing human remains. However, we hold that the Board did err by concluding that Southwick violated RCW 68.24.060 by amending the cemetery plat map.

¶18 The Board's conclusions are based on its interpretation of the applicable statutes. Statutory interpretation is a matter of law that we review *de novo*. *Jametsky v. Olsen*, 179 Wn.2d 756, 761, 317 P.3d 1003 (2014). The purpose of statutory interpretation is to determine and give effect to the legislature's intent. *Gray v. Suttell & Assocs.*, 181 Wn.2d 329, 339, 334 P.3d 14 (2014). To determine legislative intent, we first look to the plain language of the statute, considering the text of the provision, the context of the statute, related provisions, and the statutory scheme as a whole. *Gray*, 181 Wn.2d at 339.

A. RCW 68.50.140—Unlawful disturbance, removal, or sale of human remains

¶19 RCW 68.50.140 states, in relevant part:

(4) Every person who removes, disinters, or mutilates human remains from a place of interment, without authority of law, is guilty of a class C felony.

The Board concluded that RCW 68.50.140 "provides a general prohibition against removal of interred human remains . . . unless one of two potentially applicable exceptions applies." AR at 7. Southwick argues that the Board erred by interpreting RCW 68.50.140 as a general prohibition against removal of human remains.

[5] ¶20 But the Board did not conclude that RCW 68.50.140 was a general prohibition against removal of human remains: the Board concluded that RCW 68.50.140 is a general prohibition against removal of human remain *subject to certain exceptions*. This is exactly what the plain language of the statute provides. RCW 68.50.140(4) prohibits removal, disinterment, and mutilation of human re-

mains without authority of law. Therefore, the plain language of the statute establishes that removal of human remains is generally prohibited unless a person has authority of law. Specific statutes that permit removal of human remains provide the authority of law. Accordingly, “authority of law” is the exception to the general prohibition against removal of human remains. The Board correctly interpreted RCW 68.50.140 to prohibit removal of human remains unless a specific statutory exception applied that provided the authority of law to remove the remains.

¶21 There is no dispute that Southwick disinterred human remains. However, Southwick argues that (1) it did not disinter human remains from “a place of interment” and (2) it acted with the authority of law. Br. of Appellant at 21.

¶22 Southwick argues that it did not disinter human remains from a place of interment because RCW 68.04.100 defines “interment” as “the placement of human remains in a cemetery.” Br. of Appellant at 21. Based on this definition, Southwick argues that to remove human remains from the “place of interment” means removing the human remains from the cemetery boundaries rather than moving human remains from a specific plot in a cemetery to a different plot. Southwick’s argument is unpersuasive because “place of interment” is more specific than “interment” and because when read together with RCW 68.50.220, it is clear that the legislature intended “place of interment” to refer to the plot in which human remains were interred rather than the cemetery.

¶23 The definition of “interment” in RCW 68.04.100 is essentially defining an action—what it means to inter remains (although it obscures this concept by nominalizing a verb). But RCW 68.50.140(4) uses the whole phrase “place of interment,” the plain language of which means the place where human remains are interred or placed in a cemetery. Therefore, “place of interment” refers to the specific plot or place where the human remains were placed. Because Southwick removed human remains from one plot and rein-

tered them to a different plot, Southwick removed the human remains from a “place of interment.”

[6-8] ¶24 Even if Southwick’s interpretation of “place of interment” based on RCW 68.04.100 is correct, RCW 68.04.100 provides a general definition of “interment” that conflicts with the more specific application of the concept in RCW 68.50.220. RCW 68.50.220 states:

RCW 68.50.200 and RCW 68.50.210 do not apply to or prohibit the removal of any human remains from one plot to another in the same cemetery or the removal of [human] remains by a cemetery authority from a plot for which the purchase price is past due and unpaid, to some other suitable place; nor do they apply to the disinterment of human remains upon order of court or coroner. However, a cemetery authority shall provide notification to the person cited in RCW 68.50.200 before moving human remains.

(Alteration in original.) As the Board concluded, RCW 68.50.220 is one statute that provides the authority of law authorizing the removal or disinterment of human remains. And RCW 68.50.220 directly addresses moving human remains from one plot to another in the same cemetery.

¶25 We read statutes relating to the same subject together. *Lenander v. Dep’t of Ret. Sys.*, 186 Wn.2d 393, 412, 377 P.3d 199 (2016). Statutes should be read to complement each other, but where there appears to be a conflict, we give preference to the more specific statute. *Lenander*, 186 Wn.2d at 412. Because RCW 68.50.220 is a very specific statute governing the legal authority and requirements for moving human remains from one plot to another within the same cemetery, it must control over a general definition of “interment.” Therefore, to the extent RCW 68.50.140 refers to the authority of law to remove human remains from a place of interment, it must be read to include moving remains from one plot to another as addressed in RCW 68.50.220.

¶26 Southwick also argues that it did not act “without authority of law” because RCW 68.24.110 authorized South-

wick to create its own rules and gave it the right to correct errors in making interments. Although Southwick may have statutory authority to enact its own internal rules and regulations, the rules and regulations themselves are not the law. Accordingly, Southwick's internal rules and regulations do not provide the "authority of law" required by RCW 68.50.140.⁴

¶27 Here, the Board properly interpreted RCW 68.50.140 as a general prohibition against disturbing human remains unless certain exceptions provided the cemetery with the authority of law. And the Board properly applied RCW 68.50.140 to conclude that Southwick improperly removed human remains. Therefore, the Board did not erroneously interpret or apply RCW 68.50.140. Because the Board correctly interpreted and applied RCW 68.50.140, it properly concluded that Southwick violated RCW 68.50.140.

B. RCW 68.24.060—Maps and Plats

[9, 10] ¶28 RCW 68.24.060 states:

Any part or subdivision of the property so mapped and plotted may, by order of the directors, be resurveyed and altered in shape and size and an amended map or plat filed, so long as such change does not disturb the interred remains of any deceased person.

Southwick argues that the Board erred because the findings of fact do not support its conclusion that Southwick violated RCW 68.24.060. Based on the plain language of the statute, RCW 68.24.060 applies to resurveying a mapped and plotted part or subdivision, altering in size and shape, and amending the map or plat. Southwick did not take any

⁴In its final order, the Board recognized that there were two statutory exceptions to RCW 68.50.140 that provide the authority of law to remove human remains: RCW 68.50.200 and RCW 68.50.220. And the Board concluded that Southwick did not meet the requirements of either statute and, therefore, Southwick acted without authority of law. Southwick does not address the Board's application of either statute.

of these actions, and there are no findings of fact relating to this issue. Moreover, the record does not establish that the Cemetery was mapped and plotted for the purposes of the statute. Accordingly, the findings of fact do not support the Board's conclusion that Southwick violated RCW 68.24.060.

ATTORNEY FEES

[11] ¶29 Southwick requests an award of attorney fees and costs under RCW 4.84.350. Under RCW 4.84.350(1), a court awards attorney fees and other expenses to a qualified party that prevails on judicial review of an agency action, unless we find that the agency action was substantially justified or that circumstances make an award unjust. *ZDI Gaming, Inc. v. Wash. State Gambling Comm'n*, 151 Wn. App. 788, 812-13, 214 P.3d 938 (2009), *aff'd*, 173 Wn.2d 608, 268 P.3d 929 (2012). Here, Southwick is not the substantially prevailing party. Accordingly, Southwick is not entitled to attorney fees and costs on appeal.

CONCLUSION

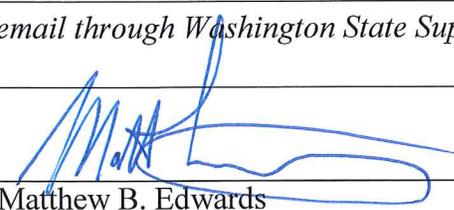
¶30 We hold that Southwick's opportunity to argue the issue at a hearing before the Board ultimately satisfied the requirements of procedural due process in this case. And we hold that the Board properly concluded that Southwick violated RCW 68.50.140 but that the Board erred by concluding that Southwick violated RCW 68.24.060. Because the Board did not specify how it reached its determination on sanctions, we remand to the Board to reconsider the appropriate discipline for Southwick's violation of RCW 68.50.140.

¶31 We affirm the Board's order in part, reverse in part, and remand to the Board to reconsider sanctions.

MAXA, A.C.J., and LEE, J., concur.

I certify that on the 7th day of May, 2018, I
caused a true and correct copy of Appellant Southwick, Inc.'s
Supplemental Brief to be served in the manner indicated below:

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By: 
Matthew B. Edwards

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