

SUPREME COURT OF THE STATE OF WASHINGTON

Southwick, Inc. v. Wash. State Funeral & Cemetery Bd., 191 Wash.
2d 689

426 P.3d 693 (2018) · No. 95237-0 · Decided September 13, 2018

SUMMARY

The Washington Supreme Court held that Southwick, Inc. lacked statutory "authority of law" to disinter and relocate cremated human remains without first notifying next of kin. The court concluded that cemetery rules adopted under state law could not override the statutory notice requirement and affirmed the violation of RCW 68.50.140(4) and RCW 68.50.220, remanding for reconsideration of sanctions. A dissent argued that the criminal statute was ambiguous and that the rule of lenity should apply.

CASE DETAILS

COURT	Supreme Court of the State of Washington
WRITING FOR THE COURT	Johnson, J.; Madsen, J.; Owens, J.; Stephens, J.; Wiggins, J.; Yu, J.
JURISDICTION	Washington
DECIDED	September 13, 2018
DOCKET	95237-0
DISPOSITION	remanded
PROCEDURAL POSTURE	Petition for review of a Washington Court of Appeals decision affirming in part and reversing in part an administrative disciplinary order concerning the relocation of cremated human remains.
STANDARD OF REVIEW	Under the Washington Administrative Procedure Act, the court may reverse an agency order based on an error of law or if unsupported by substantial evidence. Statutory interpretation and agency conclusions of law are reviewed de novo, although substantial weight is given to an agency's interpretation of statutes within its expertise.
PRECEDENTIAL VALUE	Published Washington Supreme Court en banc opinion; precedential.
PARTIES	Southwick, Inc. v. Washington State, Washington State Department of Licensing, Business and Professions Division, Washington State Funeral and Cemetery Board

TOPICS

statutory interpretation administrative law judicial review of agency action standard of review
appellate procedure

PRACTICE AREAS

administrative law cemetery and funeral regulation statutory interpretation appellate procedure

QUESTIONS PRESENTED

1. Whether Southwick acted with authority of law under RCW 68.50.140(4) when it disinterred and relocated cremated human remains without providing prior notice to next of kin.
2. Whether Southwick's internal cemetery rules or contractual arrangements could authorize conduct that conflicted with the statutory notice requirement.
3. Whether Southwick violated RCW 68.50.220 by failing to notify next of kin before relocating human remains within the same cemetery.

HOLDINGS

1. Southwick was not acting with authority of law when it disinterred and relocated the cremains without giving the statutorily required prior notification to next of kin, and its conduct violated RCW 68.50.140(4).
2. Southwick violated RCW 68.50.220 by failing to notify next of kin before relocating the cremains within the cemetery.
3. Cemetery authorities may adopt internal operating rules only insofar as those rules are consistent with state law; they may not contract around or exempt themselves from statutory requirements.

KEY QUOTATIONS

“Because Southwick's rules cannot supersede state statutes, we affirm the Court of Appeals and hold Southwick was not acting with “authority of law” when it disinterred the cremains and thus violated RCW 68.50.140(4).” (slip op. at 1)

“Parties may not contract around existing state law, and Southwick's argument that its rules establish authority of law fails.” (slip op. at 10)

“A statutory scheme establishing and governing disinterment requirements cannot be interpreted to allow cemeteries to create rules by contract exempting themselves from complying with those same statutes.” (slip op. at 12)

“We affirm the Court of Appeals and remand to the Board for reconsideration of sanctions in light of our holding.” (slip op. at 14)

FACTUAL BACKGROUND

Southwick operated Forest Cemetery, where it created an urn garden in an area later discovered to lie within the City of Olympia's waterline easement. After the City requested removal of obstructions from the easement, Southwick moved the urn garden approximately nine feet, relocating 37 sets of cremated human remains while preserving the plots' relative alignment. Southwick did not provide advance notice to the next of kin before moving the remains and relied on an internal rule reserving the right to correct errors in interments and disinterments.

PROCEDURAL HISTORY

The Washington State Funeral and Cemetery Board granted summary judgment against Southwick, found violations of cemetery and professional-conduct statutes, imposed a \$7,500 fine, and ordered notification efforts. Thurston County Superior Court affirmed the Board's final order. The Court of Appeals affirmed the violation under RCW 68.50.140, reversed another violation under RCW 68.24.060, and remanded for reconsideration of the sanction. The Washington Supreme Court granted review only of whether Southwick acted with authority of law when it relocated the cremains without notifying next of kin, affirmed the Court of Appeals on that issue, and remanded for reconsideration of sanctions.

DISPOSITION

remanded

REMAND INSTRUCTIONS

Remand to the Washington State Funeral and Cemetery Board to reconsider the appropriate sanction in light of the Supreme Court's holding.

CASES CITED

- Southwick, Inc. v. Wash. State Funeral & Cemetery Bd., 200 Wn. App. 890, 893, 403 P.3d 934 (2017)
- Southwick, Inc. v. Wash. State Funeral & Cemetery Bd., 190 Wash. 2d 1001, 412 P.3d 1260 (2018)
- Jametsky v. Olsen, 179 Wash. 2d 756, 761, 317 P.3d 1003 (2014)
- Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wash. 2d 1, 9, 43 P.3d 4 (2002)
- Ames v. Dep't of Health, Med. Quality Assur. Comm'n, 166 Wash. 2d 255, 260, 208 P.3d 549 (2009)
- Kellum v. Dep't of Ret. Sys., 61 Wash. App. 288, 291, 810 P.2d 523 (1991)
- Haley v. Med. Disciplinary Bd., 117 Wash. 2d 720, 728, 818 P.2d 1062 (1991)
- St. Francis Extended Health Care v. Dep't of Soc. & Health Servs., 115 Wash. 2d 690, 695, 801 P.2d 212 (1990)
- State v. Gunwall, 106 Wash. 2d 54, 68-69, 720 P.2d 808 (1986)
- Arnold v. City of Seattle, 185 Wash. 2d 510, 528, 374 P.3d 111 (2016)
- State v. Kirwin, 165 Wash. 2d 818, 825, 203 P.3d 1044 (2009)
- Bostain v. Food Express, Inc., 159 Wash. 2d 700, 716, 153 P.3d 846 (2007)
- Edelman v. State ex rel. Pub. Disclosure Comm'n, 152 Wash. 2d 584, 591, 99 P.3d 386 (2004)
- State ex rel. Evergreen Freedom Found. v. Wash. Educ. Ass'n, 140 Wash. 2d 615, 634, 999 P.2d 602 (2000)

- Brown v. City of Yakima, 116 Wash. 2d 556, 561, 807 P.2d 353 (1991)
- Kennedy v. City of Seattle, 94 Wash. 2d 376, 383-84, 617 P.2d 713 (1980)
- LaMon v. Butler, 112 Wash. 2d 193, 200-01, 770 P.2d 1027 (1989)

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