

TERMINOLOGY

Only three terms are defined in statute:

1. "Ancient Burying Ground" means a private cemetery established before 1880. (13 MRSA §1101-A, sub-§1);
2. "Public Burying Ground" means a burying ground or cemetery in which any person may be buried without regard to religious or other affiliation and includes a cemetery owned and operated by a municipality, a cemetery corporation or a cemetery association. (13 MRSA §1101-A, sub-§4); and
3. "Abandoned Cemetery" means a cemetery in which no burial has been made in the previous 40 years and the lots or grave sites of which have not been maintained within the previous 10 years, except for maintenance rendered by the municipality in which the cemetery is located (30-A MRSA §3

The following terms are not defined in statute:

1. "Burying Ground"

Although undefined in statute, it is reasonable to infer from the various provisions of chapter 83 that this term includes both private and public burying grounds.

2. "Cemetery"
3. "Private Burying Ground"

From the definition of public burying ground, it is reasonable to infer that a private burying ground includes a burying ground or cemetery in which only certain persons may be buried based upon their religious or other affiliation. It appears to include both ancient burying grounds and family burying grounds.

4. "Family Burying Ground"

Although the process for the establishment of a "family burying ground" is described in 12 MRSA §1142, the term itself is not specifically defined. Despite lacking a specific definition, however, it does appear that a family burying ground established prior to 1880 is also, necessarily, an ancient burying ground.

DUTIES OF MUNICIPALITIES

1. Veterans in Ancient Burial Grounds
 - SHALL keep in good condition all veterans graves, headstones, monuments and markers
 - SHALL keep the grass, weeds and brush suitability cut and trimmed – to the best of its ability given location and accessibility
 - MAY designate a caretaker
2. All others in Ancient Burial Grounds
 - MAY keep the grass, weeds and brush suitability cut and trimmed – to the best of its ability given location and accessibility
 - MAY designate a caretaker
3. Veterans in Public Burying Grounds
 - SHALL keep graves, headstones, monuments and markers in good condition and repair;
 - MAY adopt standards
 - IF no standards, then standards =
 - o Ensure grass is suitably cut and trimmed;
 - o Keep a flat grave marker free of grass and debris; and
 - o Keep burial place free of fallen trees, branches, vines and weeds

ACCESS

Property owner SHALL provide municipality or its caretaker access necessary to perform the duties (including placing flags re: §2901)

U.S. SUPREME COURT DECISIONS

[Lucas v. S.C. Coastal Council](#), 505 U.S. 1003, 1015 (1992)

“We have, however, described at least two discrete categories of regulatory action as compensable without case-specific inquiry into the public interest advanced in support of the restraint. The first encompasses regulations that compel the property owner to suffer a physical “invasion” of his property. In general (at least with regard to permanent invasions), no matter how minute the intrusion, and no matter how weighty the public purpose behind it, we have required compensation. For example, in *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982), we determined that New York's law requiring landlords to allow television cable companies to emplace cable facilities in their apartment buildings constituted a taking, *id.*, at 435–440, 102 S.Ct., at 3175–3178, even though the facilities occupied at most only 1 ½ cubic feet of the landlords' property, see *id.*, at 438, n. 16, 102 S.Ct., at 3177. See also *United States v. Causby*, 328 U.S. 256, 265, and n. 10, 66 S.Ct. 1062, 1067, and n. 10, 90 L.Ed. 1206 (1946) (physical invasions of airspace); cf. *Kaiser Aetna v. United States*, 444 U.S. 164, 100 S.Ct. 383, 62 L.Ed.2d 332 (1979) (imposition of navigational servitude upon private marina).

[Knick v. Township of Scott, Pennsylvania](#), 139 S. Ct. 2162 (2019)

The Town of Scott, PA enacted an ordinance requiring all cemeteries be kept open and accessible to the general public during daylight hours. Property owner Knick owned land that included a “small family graveyard” where the ancestors of Knick’s neighbors were allegedly buried. The Town of Scott notified Knick that she was violating the ordinance. Knick brought suit.

Decision

The justices did not disagree that this ordinance was a governmental taking of private property and would violate the 5th amendment if compensation was not provided.

The court split (5/4) on the exact point of time such a taking would become unconstitutional.

The majority (Roberts, Thomas, Alito, Gorsuch, and Kavanaugh) held that the ordinance violated the 5th Amendment **at the time of the taking** (when the ordinance was enacted) because compensation was not made in advance or at the moment of the taking. *Knick* at 2170 (emphasis added)

The dissent (Kagan, Ginsburg, Breyer, and Sotomayor) argued that the prior holdings of the court should be followed; a governmental taking violates the 5th Amendment if it does not provide a reliable mechanism to pay just compensation, even if the payment comes after the fact. *Knick* at 2180

MAINE SJC DECISIONS

[Brown v. Warchalowski](#), 471 A.2d 1026, 1029 (1984)¹

- “Private property cannot be taken through governmental action for private use, with or without compensation, except by the owner’s consent This constitutional guarantee surrounding the acknowledged right of ownership of private property necessarily implies from its mere declaration that private property cannot be taken through governmental action for private use, with or without compensation, except by the owner's consent. *Paine v. Savage*, 126 Me. 121, 123, 136 A. 664, 665 (1927); *Haley v. Davenport*, 132 Me. 148, 149, 168 A. 102, 103 (1933).”
- “In order to result in a constitutional “taking,” it is not necessary that the owner of property actually be removed from his property or completely deprived of its possession, but merely that an interest in the property or in its use and enjoyment be seriously impaired, such as when inroads are made upon an owner's title or an owner's use of the property to an extent that, as between private parties as in this case a servitude will attach to the land.”

[Bangor & Piscataquis R.R. Co. v. McComb](#), 60 Me 290, 295 (1872)

“As between individuals, no necessity, however great, no exigency, however imminent, no improvement, however valuable, no refusal, however unneighborly, no obstinacy, however unreasonable, no offers of compensation, however extravagant, can compel or require any man to part with an inch of his estate. This exercise of the right of eminent domain is, in its nature, in derogation of the great and fundamental principle of all constitutional governments, which secures to every individual the right to acquire, possess, and defend property. As between individuals, no necessity, however great, no exigency, however imminent, no improvement, however valuable, no refusal, however unneighborly, no obstinacy, however unreasonable, no offers of compensation, however extravagant, can compel or require any man to part with an inch of his estate. The constitution protects him and his possessions, when held on, even to the extent of churlish obstinacy.”

¹ In 1972, the Oxford County Commissioners granted the petition of a land-locked landowner and laid out a private way subject to gates and bars over the discontinued Jim Young Road, for the benefit of private access.