

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

April 13, 2010

President Dennis Hamilton called the meeting to order at 10:00 A.M. in the Second Floor Conference Room of the Andrew Johnson Tower, Nashville, Tennessee.

Board members present were Dennis Hamilton, President, Eugene Williams, Vice President, Paula Bridges, Wayne Hinkle, Jill Horner, Clark McKinney and Tony Hysmith.

Staff members present were Adrian Chick, Assistant General Counsel, and Jimmy Gossett, Administrative Assistant.

ADOPTION OF AGENDA:

A motion was made by Clark McKinney to approve the agenda as printed.

Seconded by Eugene Williams

Adopted by voice vote

DECLARATORY ORDER HEARING – DOCKET NO. 12.21-104857A

A Petition for Declaratory Order, Docket No. 12.21-104857A, filed by Cole & Garrett Funeral Home and Cremation Services, was heard pursuant to the contested case provisions of Tenn. Code Ann. § 4-5-301 et. seq. Presiding at the hearing was the Honorable Anthony A. Adgent, Administrative Judge, assigned by the Tennessee Secretary of State. The Tennessee Department of Commerce and Insurance, Regulatory Boards Division was represented by Adrian Chick, Assistant General Counsel. The Petitioner was represented by Rachel A. Nelley, Esq. and Rebecca C. Blair, Esq., both of the Davidson County Bar. There were no intervening parties. After consideration of the Petition, testimony, exhibits, arguments of counsel and the record as a whole, the Board voted to issue a Declaratory Order declaring Rule 0660-06-.02 to be a valid rule. The Board made the following findings of fact:

1. Tenn. Code Ann. § 62-5-203 grants to the Board power to adopt, promulgate and enforce "standards of service and practice to be followed in the profession of funeral directing."
2. Rule 0660-06-.02 was adopted by a unanimous roll-call vote at the Board's December 11, 1984 meeting.

3. The rules were examined by the Attorney General and Reporter of the State of Tennessee and approved as to their legality pursuant to the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.
4. The rules were properly filed in the Department of State and became effective on March 22, 1985.

The Board made the following conclusions of law:

1. Rule 0660-06-.02(1)(a) incorporates by reference certain unfair or deceptive acts or practices defined in Title 16, Code of Federal Regulations, Part 453 and prohibits funeral directors, embalmers, and funeral establishments from engaging in such unfair or deceptive acts or practices.
2. Rule 0660-06-.02(1)(b) incorporates by reference the preventive requirements specified in Title 16, Code of Federal Regulations, Part 453, and requires funeral directors, embalmers, and establishments to comply with such preventive requirements.

The order was approved by roll call vote.

LEGAL REPORT:

ADRIAN CHICK, ASSISTANT GENERAL COUNSEL

1. Case No.: L10-FUN-RBS-2010001301

An inspection on December 16, 2009 revealed the following violations:

- TCA 62-5-306(d) - The current funeral director license of the manager was not available for inspection;
- TCA 62-5-308(d) - The current embalmer license of a person working at the establishment as an embalmer was not available at the time of inspection;
- TCA 62-5-107 - a cremation authorization form lacks the signature of a funeral director and lacks the address and telephone number of the crematory; and
- TCA 62-5-107 - a copy of the crematory's current license and latest inspection report was not available for inspection.

Complaint History: None.

Recommendation: Consent order assessing civil penalty of \$350 and authorization for hearing.

A motion was made by Wayne Hinkle to accept Counsel's recommendation.

Seconded by Eugene Williams

Adopted by voice vote

2. Case No.: L09-FUN-RBS-2009024931

This complaint is a duplicate of a complaint opened in Burial Services for operating a cemetery without being registered.

Complaint History: None.

Recommendation: Close with right to re-open if the Burial Services complaint reveals any violation of funeral laws or rules.

A motion was made by Eugene Williams to accept Counsel's recommendation.

Seconded by Wayne Hinkle

Adopted by voice vote

3. Case No.: L09-FUN-RBS-2009017951

This complaint was filed by a consumer who alleges that the Respondent funeral establishment buried his mother's cremated remains on top of his father's grave.

Response: The Respondent states that it did not serve this family and had nothing to do with interment of Complainant's mother.

Complaint History: Several closed, none directly related.

Recommendation: Dismiss.

A motion was made by Wayne Hinkle to accept Counsel's recommendation.

Seconded by Clark McKinney

Adopted by voice vote

4. Case No.: L09-FUN-RBS-2009014411

An inspection on May 4, 2009 revealed the following violations:

- Rule 0660-06-.02 - Three of five caskets in the selection room were not listed on the Casket Price List;
- Rule 0660-06-.02 - Price for alternative container on General Price List does not agree with prices on Casket Price List;

- Rule 0660-06-.02 - Statement of Funeral Goods and Services Selected does not itemize a package; and
- Rule 0660-06-.02 - Casket price range on General Price List does not match prices on the Casket Price List.

Response: The respondent submitted updated price lists.

Complaint History: Several closed, some FTC violations.

Recommendation: Consent Order assessing civil penalty of \$250 and authorization for hearing.

A motion was made by Eugene Williams to accept Counsel's recommendation.

Seconded by Wayne Hinkle

Adopted by voice vote

5. Case No.: L09-FUN-RBS-2009024111

An inspection on October 21, 2009 revealed the following violations:

- TCA 62-5-107 - A copy of the latest inspection report for the crematory used was not available at time of inspection;
- Rule 0660-06-.02 - Caskets and outer burial containers in the selection room are priced differently than same items on Casket Price List and Outer Burial Container Price List;
- Rule 0660-06-.02 - Caskets are being offered in the selection room that do not appear on the Casket Price List;
- Rule 0660-06-.02 - Prices of some items on Statement of Funeral Goods and Services is different than the price of the item on price lists; and
- Rule 0660-06-.02 - The price range for caskets on the General Price List does not match the Casket Price List.

Response: The Respondent apologizes for errors and states that the wrong price list may have been presented initially to the inspector.

Complaint History: Several closed, some FTC violations.

Recommendation: Consent Order assessing civil penalty of \$250 and authorization for hearing.

A motion was made by Tony Hysmith to accept Counsel's recommendation.

Seconded by Paula Bridges

Adopted by voice vote

6. Case No.: L10-FUN-RBS-2010001371

An inspection on December 28, 2009 revealed the following:

- Rule 0660-06-.02 - Respondent charged \$1,895 for basic services of funeral director and staff PLUS \$2,650 for direct cremation;
- Rule 0660-06-.02 - Price shown for alternative container on Casket Price List is inconsistent with prices for direct cremations;
- Rule 0660-06-.02 - Price range listed on General Price List for caskets is not accurate compared to the Casket Price List; and
- Rule 0660-06-.02 - A casket listed under "immediate burial" is not listed on the Casket Price List.

Response: Respondent inadvertently added the \$1,895 charge and has refunded the family. Other files have been checked and Respondent has verified this was a single occurrence.

Complaint History: One closed complaint with similar price discrepancies (but not involving duplicate charges) closed with \$500 consent order.

Recommendation: Consent order assessing civil penalty of \$750 and authorization for hearing.

A motion was made by Wayne Hinkle to accept Counsel's recommendation.

Seconded by Clark McKinney

Adopted by voice vote

7. Case No.: L10-FUN-RBS-2010006971

An inspection on February 9, 2010 revealed the following violations:

- Rule 0660-06-.02 - Statement of Funeral Goods and Services Selected reflects charge of \$1,365 for basic services plus \$1,225 for direct cremation;
- Rule 0660-06-.02 - Price charged for flower car exceeds the price of this item on the General Price List; and
- Rule 0660-06-.02 - Prices for direct cremation on General Price List are incorrect with regard to the cost of the alternative container;

Response: The Respondent states that he has refunded \$65 for the flower car and \$165 for transfer of remains. The Respondent has no intention of refunding the \$1,365 and believes the charge is appropriate.

Complaint History: None.

Recommendation: Consent Order assessing civil penalty of \$2,000 and authorization for hearing.

A motion was made by Wayne Hinkle and seconded by Paula Bridges to send to investigations.

Adopted by voice vote

8. Case No.: L10-FUN-RBS-2010001331

An inspection on December 21, 2009 revealed the following violations:

- TCA 62-5-316 - Respondent's establishment license expired 10/31/2009 and had not been renewed at time of inspection. Department of Health records indicate one funeral conducted during the period of expiration;
- TCA 62-5-107 - A copy of the latest inspection report for the crematory used was not available at the time of inspection (This same violation was found during a February 5, 2009 inspection and a consent order of \$350 paid.);
- Rule 0660-06-.02 - Immediate burial and direct cremation price ranges are incorrect; and
- Rule 0660-06-.02 - Price for direct cremation with cardboard container is not correct.

Response: The Respondent denies that it conducted any funerals between the date of expiration and the inspection, and also states that its license was active at the time of inspection.

Complaint History: One related complaint (failure to maintain a copy of the crematory's latest inspection report).

Recommendation: Consent Order assessing civil penalty of \$500 and authorization for hearing.

A motion was made by Paula Bridges and seconded by Wayne Hinkle to defer the complaint to the May 2010 meeting in order for the date of the renewal of the establishment's license could be determined.

Adopted by voice vote

9. Case No.: L10-FUN-RBS-2010001631

During an inspection on January 13, 2010, the field representative noticed that the chute running from the floor of the retort to the ash pan was blocked by a cardboard roller. The blockage was holding up large bone fragments from previous cremations.

Response: The Respondent's position essentially is that the blockage was not readily viewable, and it had no reason to suspect such a problem. The Respondent has since purchased an inspection mirror and adopted internal guidelines requiring the operator to check the chute after each cremation.

Complaint History: None related.

Recommendation: Consent Order assessing civil penalty of \$1,000 and authorization for hearing for violation of TCA 62-5-507(g) which reads, in pertinent part, as follows:

(g) Upon the completion of each cremation, the operator of a crematory facility shall remove from the cremation chamber all of the cremation residue that is practicably recoverable. If all of the recovered cremated remains will not fit in the urn selected or in the temporary container, the operator shall place the remainder in a separate temporary container; and the cremated remains placed in the separate temporary container shall be delivered, released or disposed of together with those in the urn or other temporary container. Nothing in this section requires an operator of a crematory facility to recover any specified quantity or quality of cremated remains upon the completion of a cremation, but shall only require an operator to recover from the cremation chamber all of the cremation residue that is practically recoverable.

A motion was made by Wayne Hinkle to accept Counsel's recommendation and that an inspection be conducted to confirm corrections have been made.

Seconded by Eugene Williams

Paula Bridges did not vote.

Adopted by voice vote

10. Case No.: L09-FUN-RBS-2009017901

The decedent was indigent, and the family requested a direct burial without embalming. The family did not view the body. A friend of the decedent went to the funeral home and asked to see the body. After being informed that the body was not in viewable condition, and based upon permission from the family, the funeral home permitted the friend to view the body. The friend then filed this complaint, alleging that the funeral home was disrespectful and should have

clothed the body. The family is very happy with the Respondent and feels that the Respondent was very kind and helpful.

Complaint History: None.

Recommendation: Dismiss. There is no merit to this complaint.

A motion was made by Tony Hysmith to accept Counsel's recommendation.

Seconded by Paula Bridges

Adopted by voice vote

11. Case No.: L09-FUN-RBS-2009018521

The Respondent funeral establishment advertised using the words "and cremation services" which is not part of their registered name.

Response: The Respondent promptly placed an order for the sign to be changed.

Complaint History: None.

Recommendation: Close with Letter of Warning.

A motion was made by Eugene Williams to accept Counsel's recommendation.

Seconded by Paula Bridges

Adopted by voice vote

12. Case No.: L10-FUN-RBS-2010003001

This complaint was filed by a competitor funeral establishment and alleges that the Respondent's advertisement is in violation of statute because it lists the names of two persons who are not licensed.

Response: The Respondent states that it normally makes a notation next to unlicensed persons to inform the reader that the person is not licensed but accidentally failed to do so in this particular ad.

Complaint History: One, not related.

Recommendation: Dismiss. The advertisement does not "give or tend to give the impression that such person is licensed or entitled to practice as a funeral director or embalmer."

A motion was made by Paula Bridges to accept Counsel's recommendation.

Seconded by Wayne Hinkle

Adopted by voice vote

13. Case No.: L10-FUN-RBS-2010002351

14. Case No.: L10-FUN-RBS-2010002341

The Complainant's pet died and was taken to Respondents for cremation on January 29, 2010. When the pet was dropped off, the Complainant was informed that there was normally a 48 hour turn-around and to call before she came. On January 31, 2010 the Complainant became angry and stated that she was on her way to pick up her pet's remains. The Complainant alleges the Respondent funeral director was rude.

Response: Respondent funeral director states that the complainant was most likely upset at the loss of her pet, but that he was not rude. The pet was cremated, delivered to the Complainant, and the fee was refunded to the Complainant.

Complaint History: None.

Recommendation: Dismiss.

A motion was made by Clark McKinney to accept Counsel's recommendation.

Seconded by Paula Bridges

Adopted by voice vote

15. Case No.: L09-FUN-RBS-2009024071

An inspection on October 8, 2009 revealed the following:

- TCA 62-5-107 - A cremation authorization form was not retained in a cremation file;
- TCA 62-5-107 - A cremation authorization form was not signed by a funeral director;
- TCA 62-5-107 - On three cremation authorization forms, the name of the funeral director is printed, but not signed;
- TCA 62-5-313 - Casketed body lacks permanent identification device; and
- Rule 0660-06-.02 - Three Statements of Funeral Goods and Services did not properly list all items.

Response: Respondent states that the missing cremation authorization form is now in the file, a cremation authorization form has been signed by the funeral director, signatures have been added as needed, a permanent identification device has been attached, and price lists have been updated.

Complaint History: One prior complaint for FTC violations, including failure to properly itemize goods and services on Statement of Funeral Goods and Services (\$350 consent order paid).

Recommendation: Consent order assessing civil penalty of \$500 and authorization for hearing.

A motion was made by Tony Hysmith to accept Counsel's recommendation.

Seconded by Eugene Williams

Adopted by voice vote

16. Case No.: L09-FUN-RBS-2009021491

This establishment operated from September 1, 2009 to September 21, 2009 with an expired license. Two families were served during this period.

Response: The Respondent regrets the mistake, which was an oversight.

Complaint History: None related.

Recommendation: Consent order assessing civil penalty of \$250 and authorization for hearing.

A motion was made by Wayne Hinkle to accept Counsel's recommendation.

Seconded by Clark McKinney

Adopted by voice vote

17. Case No.: L10-FUN-RBS-2010001391

An inspection on December 22, 2009 revealed the following:

- TCA 62-5-107 - Authorization for cremation form lacks signature of funeral director and lacks telephone number of crematory;
- TCA 62-5-107 - Another authorization for cremation form lacks the telephone number of the crematory;
- Rule 0660-06-.02 - Outer Burial Container initially presented at inspection lacks required disclosure language; and

- Rule 0660-06-.02 - Price range for caskets on General Price List does not match prices on Casket Price List.

Complaint History: No recent related complaints.

Recommendation: Consent order assessing civil penalty of \$250 and authorization for hearing.

A motion was made by Clark McKinney to accept Counsel's recommendation.

Seconded by Tony Hysmith

Adopted by voice vote

18. Case No.: L10-FUN-RBS-2010001271

An inspection on December 16, 2009 revealed the following:

- TCA 62-5-107 - Two cremation files did not contain a cremation authorization form; and
- Rule 0660-06-.02 - The reason for embalming was required but not listed on seven (7) Statements of Funeral Goods and Services Selected.

Response: The Respondent states that these errors will not occur again.

Complaint History: None.

Recommendation: Consent order assessing civil penalty of \$250 and authorization for hearing.

A motion was made by Wayne Hinkle to accept Counsel's recommendation.

Seconded by Eugene Williams

Adopted by voice vote

19. Case No.: L10-FUN-RBS-2010000901

This complaint was filed by a consumer who alleges the following:

- Complainant didn't call Respondent - the nursing home did;
- Respondent knew the decedent and complainant had no money;
- Complainant's siblings stole decedent's pension and social security money;
- Respondent knew the identity of the body but asked complainant to make an identification; and

- Respondent put a lien against complainant's property.

Response: The Respondent believes there is no merit to the complaint.

Complaint History: None related.

Recommendation: Dismiss. The complaint does not demonstrate violations of any funeral statutes or rule.

A motion was made by Jill Horner to accept Counsel's recommendation.

Seconded by Tony Hysmith

Adopted by voice vote

ADJOURN:

A motion was made by Paula Bridges to adjourn.

Seconded by Eugene Williams

Adopted by voice vote

There being no further business, the meeting was adjourned by President Dennis Hamilton at 1:10 P.M.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director