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April 9, 1999

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Honorable John Cornyn  
 Attorney General of the State of Texas  
 P.O. Box 12548  
 Austin, Texas 78711-2548

ATTORNEY GENERAL'S OFFICE  
*Liz Robinson*

FILE # ML-40774-99 RECEIVED  
 I.D. # 40774 APR 13 1999

Dear General Cornyn:

Opinion Committee

I am seeking your opinion in interpreting Texas Revised Civil Statutes, Article 4582b ("Code") and 21 TAC Section 201.1 et seq. ("Rules"), regarding The Texas Funeral Service Commission. Your advice on the following issues is of considerable importance to the funeral profession and I will appreciate your analysis of the Code and Rules.

Several of these questions concern work performed by a licensed independent contractor embalmer who does not hold any other license issued by the commission. The Code makes reference to embalmers acting as agents or subcontractors (see 4582b (3)(H)(19)), but does not further specify the scope of their activities or the extent of disclosures required by their activities. In each instance the independent contractor holds an individual embalmers license and each facility has its own license as a funeral establishment.

Please respond to the following questions:

1. When a consumer has contracted with a funeral establishment for funeral services, is the funeral establishment required to disclose to the consumer that embalming will not be performed at the same facility? If so, is disclosure that the embalming **might be** performed at another location and authorization for this procedure adequate?

Page 2

The Honorable John Cornyn

April 9, 1999

2. When an independent contractor performs embalming services for a funeral establishment, is any person (the independent contractor or the funeral establishment) required to disclose to the consumer the price charged by the independent contractor to the funeral establishment for embalming services? (see also FTC regulations at 16 CFR 453 et seq.)
3. When an independent contractor performs an embalming service, is the contractor required to obtain written permission to embalm from the consumer? (Note: The Code appears to require written permission be obtained by the funeral provider only.)
4. Does compliance with the disclosure requirements of 21 TAC, Sections 203.7 and 203.8 satisfy the consumer disclosure requirements pertaining to embalming? If so, does compliance with the specific requirements of those sections constitute an affirmative defense to administrative prosecution for alleged disclosure violations?
5. Each funeral establishment is required to have an embalming facility (see Letter Opinion No. 98-014). May two or more separate, licensed funeral establishments use a common funeral establishment as their designated embalming facility?
6. Is an independent contractor (embalmer) authorized to utilize any licensed funeral home's embalming facility or is the embalmer required to maintain his or her own separate facility?
7. May an independent contractor (embalmer), who utilizes a particular funeral home's embalming facility, perform embalming services for other funeral home establishments at that licensed site?

Page 3  
The Honorable John Cornyn  
April 9, 1999

8. If the Code does not explicitly require an independent contractor to obtain a commercial embalmers license to perform any of the activities above, must the Funeral Service Commission adopt that interpretation as a rule?

9. Absent a formal rule clarifying which activities require a commercial embalmer's license, is the Funeral Service Commission precluded from taking administrative action against an entity that engages in activities referred to in the aforementioned questions 5, 6 and 7?

10. Is the Texas Funeral Service Commission prohibited from hiring as an investigator a person who does not meet the requirements set out in section 6D(f) of the Code?

11. Can a person hired by the Funeral Service Commission as an inspector perform the duties of an investigator, if he or she lacks the requisite qualifications?

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ken Armbrister', with a long horizontal flourish extending to the right.

Ken Armbrister, Chairman

KA/bkj