



TEXAS FUNERAL SERVICE COMMISSION

O. C. "Chet" Robbins, Executive Director

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RQ-0477-JC

December 6, 2001

RECEIVED

FILE # ML-42316-01

DEC 10 2001

I.D. # 42316

The Honorable John Cornyn
Attorney General of Texas
P.O. Box 12548
Austin, TX 7871102548

OPINION COMMITTEE

ATTENTION: OPINIONS COMMITTEE

Dear General Cornyn:

The Texas Funeral Service Commission's enabling legislation is codified at Occupations Code, Chapter 651. Section 651.001 contains the following definitions:

(5) "First Call" means the beginning of the relationship and duty of a funeral director to take charge of a dead human body and have the body prepared for burial or disposition by embalming, cremation, or another method. The term does not include an ambulance call if the person dispatching the ambulance does not know whether a dead human body is to be picked up.

(7) "Funeral directing" means acts associated with or arranging for the disposition of a dead human body, performed by a person for compensation, from the time of first call until:

- (A) inurnment, interment or entombment services are complete; or
- (B) the body is permanently transported out of this state.

(9) "Funeral merchandise" means merchandise sold primarily for use in:

- (A) a funeral ceremony;
- (B) embalming; or
- (C) the care and preparation of a dead human body for burial, cremation, or other disposition.

Despite §651.001(7)'s use of the phrase "acts associated with or arranging for the disposition of a dead human body," Chapter 651 fails to define those acts. Further, § 651.459(a)(7) provides, in part, that it is a violation of the Act "to perform acts of funeral directing or embalming in a capacity other than as that of an employee, agent, subcontractor, or assignee of a licensed funeral establishment that has contracted to perform those acts."

It appears, though, that the definition of "first call" above requires two actions by a funeral director: First, the taking of possession of a dead human body; and second, the preparation of the body for burial or other disposition. Similarly, the definition of "funeral directing" requires acts associated with the disposition of a dead human body, or arranging for the disposition of a dead human body. Further, funeral directing begins at first call. If the foregoing is true, then it follows that acts of funeral directing over which the Commission has jurisdiction under Chapter

651 cannot occur until a person has died.

From this point further in this request I refer to acts that occur before death as "pre need" and acts that occur after death as "at need". Because the definition of funeral directing is limited to at-need acts, pre-need casket sales, and funeral merchandise and funeral services do not appear to be acts of funeral directing.

Although Chapter 651 does not expressly define a casket as funeral merchandise, the Commission believes that a casket is merchandise sold primarily for use in a funeral ceremony. In this connection Finance Code, Chapter 154 vests in the Finance Commission certain authority over prepaid funeral arrangements (pre-need matters). Particularly, § 154.002 contains the following definition:

(8) "Prepaid funeral benefits" means prearranged or prepaid funeral or cemetery services or funeral merchandise, including a casket..., incidental to a funeral service."...

Based on the foregoing I request your opinion on the following:

(1) Are caskets funeral merchandise under 651.001(9)?

(2) Is the sale by a casket store (not a licensed funeral establishment) of a casket for the burial of a person who is deceased at the time of the sale an act of funeral directing, if the store has not otherwise contracted to perform for compensation acts associated with or arranging for the disposition of a dead human body?

(3) If the sale described in (2) is an act of funeral directing, then does a person who makes the sale violate § 651.459(a)(7) above if, at the time of the sale, the person is not an employee, agent, subcontractor, or assignee of a licensed funeral establishment that has contracted to perform those acts?

I was authorized to request this opinion by the Commission at the most recent meeting held November 27, 2001.

We have identified the following individuals or organizations who or that may wish to file briefs regarding this request.

Funeral Consumers Alliance of Texas
Lamar Hankins
317 Bishop St.
San Marcos, Texas 78666

American Budget Caskets
6859 Lawndale
Houston, Texas 77023

Pat Graham

**Caskets Plus
P.O. Box 265
Junction, Texas 76849**

**Texas Funeral Directors Association
1513 S. Interstate 35
Austin, Texas 78741**

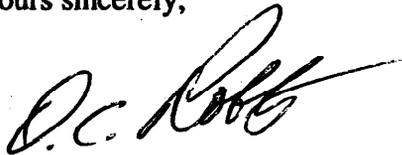
**Hilgers and Watkins
San Jacinto Center, Suite 1300
98 San Jacinto Blvd.
Austin, Texas 78701**

**Consumers Union
Rob Schneider
1300 Guadalupe, STE 100
Austin, Texas 78701**

**Eternal Justice
Carolyn Jacobi
9385 Steeple Court
Laurel, Maryland 20723**

**National Federation of Independent Business
Jeff Clark
1201 Rio Grande, STE 100
Austin, Texas 78701**

Yours sincerely,

A handwritten signature in black ink, appearing to read "O.C. Robbins". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

**O.C. Robbins
Executive Director**

cc: All Commissioners