

Warren Chisum
STATE REPRESENTATIVE

COMMITTEES:
ENVIRONMENTAL REGULATION,
CHAIR
COUNTY AFFAIRS
HOUSE ADMINISTRATION



House of Representatives

RECEIVED

MAR 18 2002

OPINION COMMITTEE

AUSTIN OFFICE:

P.O. BOX 2910
AUSTIN, TEXAS 78768-2910
(512) 463-0736

DISTRICT OFFICE:

P.O. BOX 2061
PAMPA, TEXAS 79068-2061
(806) 665-3552

RQ-0523-JC

March 12, 2002

The Honorable John Cornyn
Office of the Attorney General
209 W. 14th Street
P.O. Box 12548
Austin, TX 78711-2548

FILE # ML-42519-02
I.D. # 42519

RECEIVED

MAR 18 2002

OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION

2720

Dear Attorney General Cornyn:

This letter is to request an Attorney General Opinion concerning interpretation of the authority of the Texas Funeral Service Commission in light of the passage of H.B. 3076 by the 77th Texas Legislature under Section 651, Texas Occupations Code, specifically:

1. Whether the Texas Funeral Service Commission is required to register cemeteries operated not for profit;
2. Whether the Texas Funeral Service Commission is required to register crematories that are on the site of a perpetual care cemetery already registered with the Texas Banking Commission;
3. Whether the Texas Funeral Services Commission has the authority to investigate a cemetery or crematory whether or not a consumer complaint has been filed; and
4. Whether the Texas Funeral Services Commission has the authority to require a cemetery or crematory to send the agency a copy of the purchase agreement disclosure.

I have attached a letter of legislative intent which I wrote to the agency today. I appreciate your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Warren Chisum".

Warren Chisum, Chair
House Committee on Environmental Regulation

attachment

Warren Chisum
STATE REPRESENTATIVE

COMMITTEES:
ENVIRONMENTAL REGULATION,
CHAIR
COUNTY AFFAIRS
HOUSE ADMINISTRATION



House of Representatives

AUSTIN OFFICE:

P.O. BOX 2913
AUSTIN, TEXAS 78768-2910
(512) 463-0736

DISTRICT OFFICE:

P.O. BOX 2061
PAMPA, TEXAS 79066-2061
(806) 665-3552

March 12, 2002

Chet Robbins, Executive Director
Texas Funeral Service Commission
P.O. Box 12217
Austin, TX 78711

Dear Mr. Robbins:

Thank you for your efforts to implement the responsibilities added to the Funeral Service Commission's mission with the passage of H.B. 3067 last session. I know that you are committed to the ultimate goal of the legislation -- the protection of consumers who purchase funeral services for their families, no matter from whom they purchase the services.

It is my understanding that you are working toward the goals of the law but that questions may have arisen as to your authority. The legislature considered many of the issues that have arisen, and I hope this letter will shed a little light on the legislative intent surrounding the passage of H.B. 3067.

A. Registration Requirements for Cemeteries

H.B. 3067 imposes a new registration requirement for cemeteries and crematories in Chapter 651, Texas Occupations Code. The law applies the registration requirement only if the cemetery or crematory sells goods or services for burial or disposition of a body under Section 651.652, Texas Occupations Code and the law exempts perpetual care cemeteries in Section 651.654.

The statute does not automatically exempt governmental entities, nonprofit organizations, fraternal organizations or churches, but I believe the legislature did intend to exempt these types of entities from paying the fee. On the face of the statute, the exemption only applies if the cemetery or crematory does not sell goods or services to the public. As evidenced by the Sunset Commission Decision materials dated January 2001, the legislature intends for the registration process to exclude the majority of cemeteries considered to be historical or family owned. Further, the Sunset Commission specifically declined to modify the law to regulate historical and family owned cemeteries simply because such a cemetery continues to be active or sells plots outside the family. The spirit behind legislative intent focuses on registration requirements for entities engaged in the cemetery or crematory business on a for-profit basis. As long as entities such as governmental entities, nonprofit organizations, fraternal organizations or churches do not sell goods or services related to burial or disposition of the body as a method for generating revenue, these entities should not pay the registration fee. The overriding goal of H.B. 3067 centers on protecting the public, and the legislature does not perceive entities that do not handle burials for profit as a threat to the public.

District 88: Carson, Childress, Collingsworth, Dallam, Donley,
Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson,
Lipscomb, Ochiltree, Roberts, Sherman, Wheeler

*Chet Robbins,
page 2*

However, the legislature hopes to locate, identify and catalogue historical and family cemeteries and cemeteries under the care of other entities that do not use burials as a profit center. I'm sure these types of entities would be happy to provide the information on a one-time basis and periodically update the information as a public service if no registration fee is involved. The law does not prohibit your agency from designing a registration form to allow an entity to provide information necessary to register, and include an option to register without paying a fee if the entity is not for profit.

Whether or not an entity is required to pay the registration fee must be made by your agency on a case-by-case basis. If you determine a registration and a fee is in order and an entity refuses to pay or register, you are authorized to institute enforcement actions against the entity for violating the law.

B. Authority to Register Crematories

The Texas Legislature intended to give your agency independent regulatory authority over crematories. Note that the title for Subchapter N, Chapter 651, Texas Occupations Code is entitled "Registration Requirements: Cemeteries and Crematories." The conjunction "and" clearly implies that the legislature intends that both cemeteries "and" crematories register. More specifically, registration requirements for crematories are added in Section 651.653, Texas Occupations Code. Again, the conjunction used is important. The word "or" is operative in both the title as well as the body of this section of the statute, expressing our intent to require separate registrations for cemeteries "or" crematories. The plain language of the statute and basic grammatical rules express the intent that crematories have a special registration requirement. In fact, Section 311.011, Texas Government Code, commonly known as the Texas Code Construction Act, requires words and phrases in statutes to be read in context and construed according to the rules of grammar and common usage.

Further, even though Section 711.006(a), Texas Health and Safety Code, only allows crematories on the grounds of a "burial park," Section 711.001, Texas Health and Safety Code says a "burial park" is a "cemetery." However, a "cemetery" is not necessarily a "perpetual care cemetery" under the same section of the law. Therefore, the legislature views a crematory, a cemetery and a perpetual care cemetery as separate and distinct entities. Otherwise, the legislature would not have provided separate definitions for each.

The exemption from registering created in Section 651.654, Texas Occupations Code only applies to perpetual care cemeteries and not to crematories. The requirement that perpetual care cemeteries register with the Texas Department of Banking was never intended in itself to satisfy the registration requirement for crematories. The legislature intends for Section 651.654, Texas Occupations Code to exempt perpetual care cemeteries from registration and the registration fee since these entities already registered with a state agency.

*Chet Robbins,
page 3*

The Sunset Commission Decision materials dated January 2001 clearly state that if a crematory and a cemetery have separate owners, the cemetery and crematory owners would register independently. If the owner of crematory does not also own the perpetual care cemetery where the crematory is located, then the legislature intends for the crematory to file a separate registration form and pay a separate registration fee. As a practical matter, the information requested to gain a permit to operate as a perpetual care cemetery could include a question as to whether a crematory is on the property.

The January 2001 materials also explain that the registration fee is intended to allow the commission to set fees in order to recover the agency's cost for the investigation of complaints. For sites with both a perpetual care cemetery and a crematory, the legislature intended that your agency conduct investigations at the same time, thus providing for the best use of resources.

In short, the legislature intends for H.B. 3067 to expand the Texas Funeral Service Commission's regulatory authority to include crematories. The bill expressly adds the words "crematory" and "registration" to regulatory language throughout the bill.

C. Complaints and Investigations

Unlike Section 651.157, Texas Occupations Code which clearly directs your agency to inspect funeral establishments at least once every two years, Section 651.1575, Texas Occupations Code allows you to inspect a cemetery or crematory only if a complaint is received. Your agency is fully authorized to investigate consumers' complaints regarding the funeral industry, including cemetery and crematory services, in Section 651.202, Texas Occupations Code. In Sections 651.046 and 651.0465, Texas Occupations Code, the law requires facilities involved with the funeral industry to notify consumers of how to file complaints should grievances occur.

Under Section 651.152, Texas Occupations Code, your agency is authorized to establish procedures to administer the law you are charged to enforce. Should your agency find fault when investigating complaints against cemeteries and crematories, the agency should use the same guidelines and remedies available when sanctioning funeral and embalming individuals or entities, including the revocation of the ability to provide services.

D. Purchase Agreement Disclosure


Section 651.0465, Texas Occupations Code requires a cemetery or crematory to use a purchase agreement disclosing information to the consumer which is similar to the purchase agreement required of a funeral establishment in Section 651.046. The legislature essentially intended to duplicate the authority over purchase agreements for funeral establishments and apply those same protocols to regulated cemeteries and crematories. Your agency should address purchase agreements for cemeteries and crematories in the same manner as the agency handles purchase agreements for funeral establishments. Section 651.460(a)(2), Texas Occupations Code, clearly gives your agency the authority to request price lists.

Chet Robbins.
page 4

It is my intent to request an Attorney General's Opinion regarding the matters raised in this letter. If in fact the Attorney General determines that current law does not give your agency the legal authority to act in the manner consistent with my explanation of legislative intent, then I have every intention to clarify the law during the 78th Legislative Session. As you know, Article 3 of H.B. 3067 requires your agency to report to the Sunset Commission on your progress under the bill no later than September 1, 2002, so legislative action is already set for next session. In the meantime, it seems appropriate for you and the funeral industry to discuss these issues while keeping legislative intent and future legislative action in mind.

Thank you for your cooperation. Given the recent events in Georgia, it is critical that your agency and staff take full advantage of the authority granted under H.B. 3067 to ensure the appropriate final disposition of bodies entrusted to all entities regulated by your agency.

Sincerely,


Warren Chisum,
State Representative

cc: Harry Whittington, Presiding Officer, Texas Funeral Service Commission
Joey Longley, Director, Sunset Advisory Commission
Diane Thomas, Texas Funeral Service Commission Task Force, Comptroller of Public
Accounts