



TEXAS FUNERAL SERVICE COMMISSION

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January 21, 2004

RQ-0169-GA

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OPINION COMMITTEE

The Honorable Greg Abbott
Attorney General of Texas
Attention: Nancy Fuller, Chief
Opinions Committee
Price Daniel Building, 6th Floor
Austin, TX 78701

Via CM RRR # _____

FILE # ML-43453-04
I.D. # 43453

Re: Opinion Request – Interpretation of H.B. 587, 78th Leg., R.S. (2003).

Dear General Abbott:

The Texas Funeral Service Commission at its November, 2003 meeting authorized me to request this opinion seeking interpretation of H.B. 587, 78th Leg., R.S. (2003). The questions presented affect the public interest.

House Bill 587 (the Bill) relates to the cremation of human remains and the operation of crematories and certain related entities. The Bill, among other things, creates new Chapter 716 of the Health and Safety Code.

Section 716.001(1) defines an authorizing agent” as a person authorized to dispose of decedent’s remains under Section 711.002.

Section 716.051 provides that:

Except as otherwise provided in this chapter, a crematory establishment may not cremate deceased human remains until it receives:

- (1) a cremation authorization form signed by an authorizing agent; and
- (2) a death certificate or other death record that indicates the deceased human remains may be cremated.

Section 716.052(a) provides, in part, that a cremation authorization form must, as relevant to this request:

...

(2) include the name and address of the funeral director or other person that contracted to provide for the cremation;

...

(3) identify the authorizing agent and the relationship between the authorizing agent and the deceased person;

...

(7) include the name of the funeral establishment or other person authorized to receive the cremated remains from the crematory establishment;

...

Sections 716.052© and (d) specify that:

1. A funeral director or other representative of a funeral establishment that contracts to provide for the cremation of deceased human remains must sign the cremation authorization form.

(d) A crematory establishment shall provide a cremation authorization form to an authorizing agent on request.

Section 716.104(a) requires a funeral director or funeral establishment to:

Provide a signed written statement to a crematory establishment that the human remains delivered to the crematory establishment were positively identified as the deceased person listed on the cremation authorization form by the authorizing agent or a representative of the authorizing agent delegated as provided by Section 716.053.

Section 716.053 provides that:

2. An authorizing agent may delegate to a representative in writing the authority to execute a cremation authorization form.

(b) An authorizing agent's written delegation of authority must be notarized and include:

(1) the name and address of the authorizing agent and the relationship of the authorizing agent to the deceased person;

(2) the name and address of the representative; and

(3) an acknowledgment by the authorizing agent that the representative may serve as the authorizing agent and execute the cremation authorization form.

(c) A crematory establishment is not liable in a civil action for relying on a cremation authorization form executed by a representative of the authorizing agent to whom authority is delegated in accordance with this section.

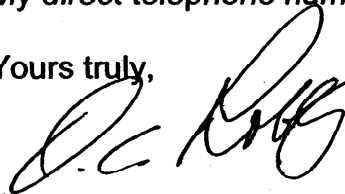
Does the Bill, particularly the foregoing sections, permit an authorizing agent or an agent's delegated representative to contract directly with a crematory establishment for the cremation of deceased human remains?

If the phrase "or other person" as used in 716.052 (a)(2) and (7) includes an authorizing agent, then Section 716.052(a) appears to impliedly authorize cremation contracts between an authorizing agent and crematory establishments. Under this construction Sections 716.052(s) and 716.104(a) apply only when a funeral establishment contracts for the cremation services or is involved in the transport of the decedent to the crematory establishment.

Conversely, the phrase "or other person" in 716.052(a)(2) and (7) could be construed to be limited to an employee of a funeral establishment who is not a funeral director. This construction leads to the conclusion that cremation services may be contracted for only through a funeral director or funeral establishment. Sections 716.052(s) and 716.104(a) would apply to all cremations.

If I can provide you with additional information, please advise me accordingly. My direct telephone number is 936-2472.

Yours truly,

A handwritten signature in black ink, appearing to read "O.C. Robbins", with a long horizontal flourish extending to the right.

O.C. "Chet" Robbins
Executive Director