

HB

509

LAW OFFICES

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March 8, 1976

The Honorable Representative R.E. Bradley
Chairman, Joint Commerce Committee
Alaska State Legislature
Pouch V, State Capitol
Juneau, Alaska 99801

Dear Representative Bradley:

Thank you for sending me a copy of the revised House Bill No. 509. I noted with some interest the changes that were made apparently as a result of the hearing before the Commerce Committee during February in Juneau. It is apparent from the revision that the Committee did recognize the points made at the hearing to the effect that:

1. The licensing provision should not prohibit the offering to the public of the opportunity to purchase funeral merchandise and services on a pre-arranged basis; and
2. The trust provision related to pre-need sales should not be designed to affect the cemetery industry.

Unfortunately, the changes made in the revised draft did not clear all of the problems which were brought out in my prior letter to you - a copy of which is attached hereto for reference - and at the hearing by the various participants. In this regard I wish to draw your attention to specifically the following matters:

First, while the revision of subsection (7) of section 08.42.090 grounds for refusal to issue or renew licenses and suspension or revocations of licenses, (at pages 5 - 6 of the revised House Bill) is sufficient to allow pre-need sales, subsection (8), (9), and (10) still could be interpreted so as to limit the pre-need market. Please refer to my discussion of these particular subsections in the enclosed letter.

The Honorable Representative
R.E. Bradley

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Second, the definition of mortuary science under section 08.42.10 subsection (3) is still broad and could be interpreted as including the interment in the cemetery. Perhaps it would be best to exclude from the definition cemetery operation.

Finally, the amendment to section 45.50.471(b) subsection (23) will still have the effect of eliminating the pre-arranged market for the reasons indicated in my letter and also in the testimony of several witnesses at the hearing. We noted the exemption for cemetery lots and markers, but even this is not sufficient since there are other items which are sold by cemeteries which would be included, as example, the exclusion does not cover mausoleum crypts or lawn crypts, both of which are currently being sold by cemeteries.

Attached hereto for your review is a copy of a proposed pre-need merchandise and service trust fund bill which adequately covers this area in a manner by which it can be controlled by the State and still allow for the consumer to have the opportunity to purchase these items on a pre-need basis. There are similar laws to the proposed bill in the States of Nevada and Hawaii. We, of course, are hopeful that the Committee will review this proposed legislation and perhaps adopt it instead of the present trust section which unfortunately does not cover many of the areas which will be confronted by the State in the operation of such a trusting provision. We, of course, would hope that your Committee would recommend the adoption of such a law for the State of Alaska but in any event the present trust provision must be amended to exclude from its provisions cemetery merchandise including lots, markers, mausoleum crypts, lawn crypts and any other item normally sold by a cemetery, as well as those items connected with a funeral service which are readily deliverable and not subject to being performed in the future.

I want to personally thank you for the courtesy extended to me at the hearing in Juneau and it was a great pleasure having the opportunity to not only meet you and the other members of the Committee, but to have the opportunity to testify. If there are to be any further hearings on this matter, I would appreciate your letting me know as soon as possible.

Cordially,

LAPIN, PANICHI & LEVINE, LTD.



Harvey I. Lapin

HIL:cb

cc: All members of the Joint Commerce Committee
Ms. Sharon Andrew

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January 29, 1976

The Honorable Senator Willis
Chairman of the Senate Commerce Committee
State of Alaska
Pouch V, State Capitol
Juneau, Alaska 99801

Re: House Bill 509

Dear Senator Willis:

Pursuant to our telephone conversation on January 28, 1976 I would like to expand on the comments which I made regarding House Bill 509. This Bill, as you know, is very specialized legislation dealing with a complicated subject of which many people are not extensively informed. Since I suspect that the proponents of this legislation have no doubt indicated that it is required in order to protect the consumers of the State of Alaska my comments will be structured in response.

While a great deal of beneficial legislation has been enacted in recent years for that purpose of protecting the consumer, in some instances legislation to protect the need of special interests has unfortunately been enacted under the same auspices. House Bill 509 probably falls within that latter category. I further suspect that in all probability no consumers have been consulted about the need for the protection that they are about to receive. It might therefore be interesting to examine this law from the point of view of the consumer.

On the basis of my briefly outlined background, you no doubt are aware that my interests are primarily involved in advising clients in the cemetery industry though I do represent several clients throughout the country who are also in the funeral business. Attached hereto for your reference is a copy of my current biography solely for the purpose of giving you some idea of my background.

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The first section of proposed House Bill 509, section 08.42.020, deals with the licensing provisions for morticians. I certainly am in agreement with the concept that individuals who deal with the public and claim a certain expertise in specialized areas should be licensed. However, I am concerned about establishing classifications which may tend to mislead the public. I therefore notice with some interest the creation by statute of a new science, namely the practice of "mortuary science." It is quite evident from the FTC Staff Report on funeral industry practices that the industry has promoted and encouraged the concept of professionalism throughout the country. Query! whether this new classification may be giving substance to this concept in a manner which may be used in the future to mislead a consumer as to the credentials of the practitioner. Secondly in the licensing area, if these requirements have merit then they must have equal merit for those who are presently practicing in the state. Since a new licensee and even someone coming from another state are required to meet these qualifications and take an examination, it seems questionable as to how the consumer is protected by not imposing the same requirement on those presently engaging in this occupation in the state.

The next area of the statute on which I would like to comment is section 08.42.090 dealing with the grounds for refusal to issue or renew licenses. Many of these grounds for terminating a license are well founded and just reasons for acting. However, some of these are designed to appear to be basis for revoking a license, but in fact are designed to restrict or prevent competition in the marketplace and to assure that no sales of funeral merchandise or services will be made in advance of the time immediately subsequent to death when a consumer is least able to properly consider the various alternatives available. This concept can be easily illustrated by reviewing some of the grounds for revocation of a license. The primary grounds of concern are as follows:

Subsection (8) which provides "Solicitation of a dead human body by the licensee, his agents, servants or employees, whether solicitation occurs before or after death; but this does not prohibit general advertising;" This section obviously is intended to prevent the despicable practice of "body snatching". However, the language used is broad enough to not only cover that practice but to also prevent any licensee from soliciting the consumer to make funeral arrangements on a pre-need basis. Is the consumer protected by being prevented from considering the availability of various types of funeral arrangements in advance of need? Obviously, if the proponents only are

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concerned with the body snatching problem the language of subsection (8) could be revised to accomplish that problem without limiting the pre-arrangement market, i.e. "solicitation of a dead human body by the licensee, his agents, servants or employees, whether solicitation occurred immediately before an impending death or after death; but this does not prohibit general advertising or sales made on a pre-arranged basis.

Subsection (9) "Employment by the licensee of any person for the purposes of calling upon individuals or institutions to influence them to turn over a dead human body to a particular mortician;" This subsection also is intended to deal with the body snatching problem by preventing the use of non-licensed individuals to accomplish the same purpose. This particular language has been used as the basis in other states from preventing licensees or their agents from discussing pre-arrangement plans on a low cost basis with nursing homes, welfare hospitals and other organizations interested in making these types of arrangements. Clearly this section should be adjusted to allow that type of contact.

Subsection (10) "The direct or indirect payment or offer of payment for the purpose of securing business." The obvious intent of this section is to prohibit kickbacks or bribes to individuals who would be steering business to a particular funeral home. However, the manner in which the section is stated is broad enough to also prevent a funeral director from employing salesmen who might be contacting members of the public to discuss pre-arrangement plans. This provision should be restated to eliminate the phrase "securing business" and inserting after "obtaining a dead body by the licensee, his agents, servants or employees immediately before an impending death or after death." The intended purpose would still be accomplished without affecting the pre-arranged market.

Subsection (11) "Solicitation or acceptance by a licensee of any payment for recommending or causing a dead human body to be disposed of in a specific crematory, mausoleum or cemetery." This section was intended to prevent licensees from accepting kickbacks for recommending to someone that they use a specific crematory, mausoleum or cemetery. Again, we do not object to the prohibition in this manner of a practice which might be harmful to consumers. The language as it presently is however could also have the effect of preventing a licensee who also owns a crematory, mausoleum or cemetery from recommending his own property, or entering into a pre-arranged funeral and burial sales package with a crematory, mausoleum or cemetery in which they have a financial interest. There is a

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trend in the funeral and cemetery industry to establish combination funeral homes and cemeteries. The reasons for this trend are the obvious cost savings connected with the elimination of substantial equipment such as limousines and labor saving through the dual use of personnel, since funeral home personnel are often only occupied at the time of a funeral and often have free time. It is our understanding that this trend has also been followed in Alaska. If subsection (11) is not limited in its scope it could prevent a consumer from obtaining the benefits of these cost savings. In order to avoid this unintended result, I would suggest the following changes. After the word "body" I would insert the phrase "immediately before an impending death or after death" and at the end of the phrase after "cemetery" I would insert the following "provided however that nothin herein shall prevent the recommendation or solicitation for sales of space and merchandise in a specific crematory, mausoleum or cemetery if said licensee has an ownership interest in said specific crematory, mausoleum or cemetery and such ownership interest is disclosed at the time of the solicitation, recommendation or sale."

The next section of the Act of which I have some difficulty is the definition section 08.42.10. The definition number (3) "mortuary science" is broad enough to cover the operation of a cemetery, crematory and mausoleum in that the phrase "preparing dead human bodies for burial by means other than embalming, disposing of dead human bodies, or operating a place for the care or disposition of dead human bodies" could certainly be construed to cover the activities of cremating and interment in a cemetery or entombment in a mausoleum. Cremation, interment and entombment are normally understood in both industries to be within the area of disposition of dead human bodies. I would suggest that this definition be amended so as to specifically exclude these areas. The following might be appropriate: "but shall not include those services normally performed by a cemetery, crematory or mausoleum."

The next area for consideration is the disclosure of cost provision, section 45.45.120. This provision is an attempt in part to conform the laws of the State of Alaska with some of the findings of the proposed Trade Regulation Rule of the FTC. However, it is not as extensive as the requirements of the proposed Rule. In this regard I would suggest that you take a look at section 453.5 of the proposed Rule at page 15 of the Staff Report. In particular subsection (e) at page 16 which requires itemization of all items involved in the funeral service. The proposed Alaska Bill does not provide for an itemization of the various items in the basic service, so the consumer does not have the opportunity to determine as to whether they want or need all of these basic services.

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Finally, we get to the amendment to section 45.50.471 subsection (22) at page 8 which requires that all of the proceeds from "...contracts relating to the disposition of a body upon death whereby certain personal property will be furnished or the professional services of a funeral director or embalmer will be furnished..." to be deposited into a trust. This section is probably the most obvious section designed with the intention of preventing any pre-arranged sales, thereby limiting the market to the at-need time when the consumer is most apt to be subject without control to the sales techniques of the funeral director. In this regard I draw your attention to the proposed Trade Regulation Rule section 453.4 merchandise and service selection starting at the bottom of page 13 of the Staff Report, which indicates some of the methods used to maximize sales at this time. I also draw your attention to the statement at page 2 of the Report as follows:

"Each year millions of families are forced by the death of a relative to make one of the largest consumer purchases under severe handicaps of time pressure, emotional distress and lack of information, or experience. As an FTC hearing examiner noted long ago there are few if any industries where the ultimate consumer is so disadvantaged or where his normal bargaining power is so deluded in a situation of such immediate need."

It is also of note at page 4 of the Report that the Commission has recognized the general marketing strategy of the industry as follows:

"It is enough to say that the general marketing strategy of much of the industry seems to follow the following precepts: (1) eliminate low cost alternatives to the standard funeral through control of laws, regulations and codes of ethics, (2) use any means possible - laws and regulations, propaganda, refusal to deal - to stunt the development of memorial societies or pre-need societies which can bargain on behalf of the consumer in a non-emotional concept."

The last section of House Bill 509 was intended and will have the effect of eliminating any businessman in the State of Alaska from engaging in pre-need sales. The reasons are very obvious. No seller would make a binding commitment to perform in a situation where 100% of the proceeds to be derived were required to be placed into a trust fund with the accrued interest being retained in the trust and the purchaser having the unlimited right to demand a refund at any time up to and including the time immediately before the services and merchandise are to be used and delivered. This is

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particularly true since it would be necessary for such a seller to fund promotional sales costs and commissions to salesmen who would be making such sales. It is our understanding that there is an active pre-arranged funeral and burial market in the State of Alaska. If this section is enacted in its present form it will no doubt prevent any future sale by those sellers presently engaged in this market. Query! does it protect the consumer to eliminate the availability of an alternative to the recognized harmful bad practice of requiring consumers to make these necessary purchases only at the time when they are least able to properly handle these arrangements.

This does not mean that I am opposed to any type of legislation in this area. There are recognized problems involved with pre-need sales and the consumer is entitled to some protection. However, protection does not mean elimination. Further, only in the funeral industry has the 100% trust concept been used to the obvious advantage of those trying to maximize their market strategy by eliminating opposing marketing forces. If this concept was followed in other industries, as example the insurance industry where the obligation is to provide funds at the time of death, there would be no insurance industry.

As I indicated to you other states have dealt with this problem. Unfortunately, many of them have blindly followed the 100% concept and as a result there is no pre-arrangement market in those states. Some states have dealt with the subject on a realistic basis and have made provisions which have not stifled the market but have protected the consumer. While we are not recommending to you the adoption of any specific legislation from another state on this subject, we would point out that the section as presently proposed does not cover a lot of areas which should be covered in any legislation of this type. Some of these areas are as follows:

1. There should be some definitions of the type of merchandise to be covered, as example what does "certain personal property" mean? Does this phrase include the various types of personal property normally sold by cemeteries and other related industries on a pre-need basis, such as markers, memorials, monuments, etc.?
2. Many of the states have licensing requirements to make sure that sellers will meet certain specifications and not be "fly by night" operators. It seems relatively clear that the proponents of this Bill were not concerned with any of these aspects since the intention is not to promote this type of selling but to eliminate it.

3. Other unanswered questions are:

- (a) what happens if someone does not put the money into trust?
- (b) how are the trust funds to be invested?
- (c) can they be commingled by the bank for investment purposes? If not, you have just set up a requirement whereby every bank must keep separate accounts for each individual.
- (d) has anyone consulted the banks as to whether they would be willing to undertake this obligation and if so is the bank allowed a fee on this money?
- (e) if the merchandise is delivered or deliverable, why should a seller not be entitled to withdraw the funds?
- (f) why should the seller be bound for the total time of the trust to deliver the merchandise and services when the consumer has no obligation?

This section is really not for the purpose of giving the consumer the unlimited right of refund to protect their interest. Its intention is to allow the funeral director at the time of need to convince anyone who may have made such arrangements that they have better merchandise available which could be acquired with the funds set aside in the account rather than that merchandise previously bought on a pre-arranged basis. It further allows the funeral director to upgrade a consumer at the time of death because they have already funded a portion of the costs and an additional amount may not be a problem at that time.

If the intended effect were to merely protect the public other means could have been utilized to provide the same type of protection to the consumer and still allow sellers to engage in the marketing of pre-arranged funeral and burial merchandise. Analogous types of sales where delivery is deferred, protection such as performance bonds, insurance, actuarial computed holdbacks and funded guarantee programs have been used to successfully protect the consumers. Only in the area of pre-need selling of funeral and burial merchandise have laws been used under the guise of protecting the public to prevent competition from entering the marketplace. It is our position that a law which requires the funding of an unrealistic percentage of sales proceeds with the unrestricted right of refund was intended to restrict the marketplace and not to protect the rights of consumer.

We are attaching as exhibits copies of laws enacted in the States of Florida, Louisiana and Virginia dealing with the problem of pre-need sales of merchandise and services on a more realistic basis. In all cases the amounts required to be deposited are less than 100% of the proceeds. Certainly the proponents of this Bill should not

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object to this type of treatment, if they in fact are only concerned with consumers' interests and not merely protecting their interest in the market. In this regard we must point out that the details of an interment service are not dissimilar to that of the funeral service.

As I advised you, the Federal Trade Commission is presently dealing with this subject in connection with the proposed Federal Trade Regulation Rule. It is our understanding that hearings on this subject will be on or about April 15 of this year. I am sure that you will be able to obtain further information on these matters by contacting the hearing examiner who is to conduct these hearings throughout the country, Mr. Jack Kahn, whose number in Washington is 202 724 1152. You might also be interested in discussing the area with the staff of the FTC who conducted these investigations. Arthur Angel, Esq. is the primary staff attorney on this project, his number is 202 523 3871. If he is not available, you might also talk to William Golden who participated extensively in the project (202 523 3171).

We are hopeful that we have been able to demonstrate that it is possible that the interest of the consumers may not be protected by the proposed House Bill 509. I would also hope that we have brought to your attention the fact that this area is being extensively covered in connection with the FTC hearings, the results of which may be very helpful to you in evolving legislation in this area. It would be our recommendation that perhaps it would be worthwhile for your Committee to table this proposed House Bill until such time as it could obtain the benefits of the results of this investigation and the proposals which no doubt will be forthcoming as a result. Alaska might then be in the forefront of enacting legislation which in fact would be in the best interests of the consumer in one of the most important areas of our day to day life, rather than enacting legislation which is probably intended to restrict the marketplace rather than to benefit the consumer.

I enjoyed our conversation the other day and would be extremely willing to provide you with any further information or comments you may desire. Please feel free to contact us at any time.

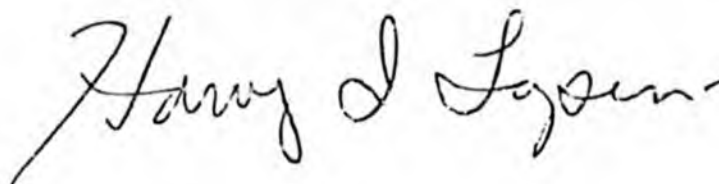
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January 29, 1976

In the event I should not be available, my associate Lawrence Robins is extremely conversant with these areas and could no doubt be helpful.

Very truly yours,

LAPIN, PANICHI & LEVINE, LTD.

A handwritten signature in cursive script that reads "Harvey I. Lapin". The signature is written in dark ink and is positioned below the typed name of the firm.

Harvey I. Lapin

HIL:cb

encs

cc: The Honorable Representative Robert Bradly

PRE-NEED MERCHANDISE AND SERVICES TRUST FUND

Section 1. Definitions.

As used in this Act:

(a) "Agent" means an individual authorized by a seller to offer, or sell or solicit the purchase of a pre-need contract on behalf of the seller.

(b) "Beneficiary" means the person for whose benefit funeral and/or cemetery merchandise or services are furnished or performed pursuant to a pre-need contract, whether it be the buyer of such a contract or someone else designated by the buyer.

(c) "Buyer" means the purchaser of a pre-need contract.

(d) "Cemetery Company" means any individual, partnership, corporation or association, owning or controlling cemetery lands or property and engaged in the operation of cemetery business in this state.

(e) "Cemetery merchandise" means those items normally supplied by a cemetery company under a pre-need contract, including urns, vases, grave liners, burial vaults, crypts, memorial bases, and other similar merchandise, but does not include the sale of interment, entombment or inurnment space.

(f) "Cemetery services" means those services normally performed by a cemetery company under a pre-need contract for the opening and closing of graves, crypts and niches, foundation installation, and other services in relation thereto.

(g) "Department" means the Department of Commerce.

(h) "Funeral establishment" means any individual partnership, corporation or association owning or controlling a properly licensed funeral home engaged in operation in this state.

(i) "Funeral merchandise" means those items normally supplied by a funeral establishment under a pre-need contract, including caskets, burial vaults, clothing and other similar merchandise.

(j) "Funeral services" means those services normally performed by a funeral establishment under a pre-need contract, for funeral services.

(k) "Person" includes natural persons, partnerships, firms, associations, and corporations residing in or doing business in this State.

(l) "Pre-need contract" means a contract for the purchase of funeral and/or cemetery merchandise or services to be furnished or performed at a future date for a specific consideration which is paid in advance by one or more payments in one sum or by installment payments.

(m) "Seller" means any person selling a pre-need contract.

(n) "Trust fund" means funds deposited with a trustee by a seller pursuant to a pre-need contract.

(o) "Trustee" means any state or national bank, trust company, or federally insured savings and loan association authorized to transact such business in the State of Alaska, and designated as trustee of the trust fund in a pre-need contract.

Section 2. Application.

Except as hereinafter provided, no person or other legal entity shall, directly or indirectly, solicit or enter into a pre-need contract for the sale of funeral and/or cemetery merchandise or services which may be used in connection with the final disposition, burial or commemoration of the memory of a deceased human

being if delivery of the funeral and/or cemetery merchandise or services thereunder is to be made at an uncertain future date, such as at death, or more than one hundred and twenty (120) days after receipt of the final payment under such pre-need contract.

Section 3. Seller's Certificate of Authority:

Application Contents; Supporting Documents; Fee.

(a) No person shall sell pre-need contracts without first obtaining a certificate of authority from the Department as hereinafter provided.

(b) The proposed seller or appropriate corporate officer of the seller shall make application in writing to the Department for a seller's certificate of authority, showing:

(1) The proposed seller's name and address and his occupation during the preceding five (5) years;

(2) The name and address of the proposed trustee;

(3) The names and addresses of the proposed performers, specifying what particular services, supplies and equipment each performer is to furnish under the proposed pre-need contract; and

(4) Such other pertinent information as the Department may reasonably require.

(c) The application shall be accompanied by:

(1) The applicant's fingerprints on a form furnished by the Department;

(2) A copy of the proposed trust agreement and a written statement signed by an authorized officer of the proposed trustee to the effect that the proposed trustee understands the nature of the proposed trust fund account and accepts it;

(3) A copy of each contract or understanding, existing or proposed, between the seller and performers relating to the proposed pre-need contract or items to be supplied under it;

(4) A copy of each document relating to the proposed seller, trustee, trust, or pre-need contract, as may be required by the Department; and

(5) A fee of twenty-five (\$25.00) dollars, no part of which is refundable.

Section 4. Seller's Certificate of Authority:

Issuance; denial.

(a) If the Department finds that the application is complete, that the seller is in compliance with all requirements therefor, that the applicant otherwise qualifies under the provisions of this chapter, and upon satisfactory evidence that a funeral and/or cemetery merchandise and service trust fund has been established, he shall issue a seller's certificate of authority to the applicant.

(b) The Department shall refuse to issue a seller's certificate of authority to any applicant who does not comply with or otherwise meet the requirements of this chapter. Upon such refusal, the Department shall give written notice thereof to the applicant setting forth the reasons for such refusal.

Section 5. Seller's Certificate of Authority:

Expiration; Renewal; Renewal Fee.

(a) Each seller's certificate of authority issued pursuant to this chapter shall expire at midnight on April 30 next following its date of issuance.

(b) The Department may renew from the seller, accompanied by a renewal fee of twenty-five (\$25.00) dollars, if he finds that the seller is, at that time, in compliance with all applicable provisions of this chapter.

Section 6. Seller's Certificate of Authority:
Revocation; Suspension.

(a) After giving written notice of charges to the to the seller, not less than thirty (30) days in advance of hearing, the Department may, after hearing, revoke the seller's certificate of authority if the seller:

(1) Obtained his certificate of authority through misrepresentation or concealment of a material fact;

(2) Is no longer qualified for such certificate of authority; or

(3) Violates any provision of this chapter or any lawful order or rule or regulation of the Department.

(b) If a seller is found guilty under paragraph (3) of subsection (a), the Department may, in lieu of revocation, suspend his seller's certificate of authority for a period not to exceed ninety (90) days.

Section 7. Surety Bond.

(a) Prior to the issuance of a certificate of authority to a seller, the seller shall post with the Department and thereafter maintain in force a bond in the principal sum of fifty thousand (\$50,000.00) dollars issued by an authorized corporate surety in favor of the State of Alaska, or a deposit made up of cash or negotiable securities. If a deposit is made in lieu of a bond, the deposit shall at all times have a market value of not less than the amount of the bond required by the Department.

(b) In lieu of posting the entire amount of the bond or deposit required under subsection (a), the Department may approve the posting of a bond or deposit in the amount of five thousand (\$5,000.00) dollars or

multiple thereof, not to exceed fifty thousand (\$50,000.00) dollars, if he finds that the circumstances and status of the applicant's business do not immediately warrant the posting of a bond or the full amount of the bond or deposit for the purposes provided in subsection (c). If less than the amount of the bond or deposit is posted by the applicant, the Department may require him to post an additional bond or deposit of five thousand (\$5,000.00) dollars or multiple thereof each following year until the required maximum of fifty thousand (\$50,000.00) dollars is met. The Department may require a quarterly report if no bond is required.

(c) The bond or deposit shall be held for the benefit of buyers of pre-need contracts and other persons as their interests may appear, who may be damaged by misuse or diversion of moneys by the seller or his agents, or to satisfy any judgments against the seller for failure to perform a pre-need contract. The aggregate liability of the surety for all breaches of the conditions of the bond shall, in no event, exceed the sum of such bond. The surety on the bond shall have the right to cancel such bond upon giving sixty (60) days' notice to the superintendent and thereafter shall be relieved of liability for any breach of condition occurring after the effect date of such cancellation.

(d) The Department:

(1) Shall release the bond or deposit after the seller has ceased doing business as such and the Department is satisfied of the nonexistence of any obligation or liability of the seller which the the bond or deposit was held; or

(2) May reduce the bond or deposit in five thousand (\$5,000.00) dollar increments if he finds that the circumstances and status of the applicant's business warrant such reduction.

Section 8. Agent's License: Requirement; Exception.

(a) It is unlawful for any person to solicit the sale of pre-need funeral and/or cemetery merchandise and service contracts in this State on behalf of a seller unless he holds a valid Agent's license issued by the Department.

(b) This section does not apply to a seller who is an individual holding a valid seller's certificate of authority.

Section 9. Agent's License: Application; Fee.

(a) To qualify for an agent's license, the applicant shall execute and file a written application with the Department on forms furnished by the Department.

(b) The application shall:

(1) Require information concerning the applicant's identity, address, personal background and business, professional or work history;

(2) Contain such other pertinent information as the Department may require.

(3) Be accompanied by a filing and license fee of five (\$5.00) dollars, no part of which is refundable.

Section 10. Agent's License: Issuance; Temporary Permits.

(a) If the Department finds that the application is complete after all investigation not to exceed thirty (30) days, it shall issue at the request of the holder of a valid seller's certificate of authority an agent's license to the applicant.

(b) An applicant for an agent's license may receive a temporary agent's permit, for a period of not to exceed thirty (30) days, at the request of a holder of a valid seller's certificate of authority, provided that each sales agreement sold by a temporary agent shall be cosigned by a licensed agent of a valid seller's certificate of authority.

Section 11. Agent's License: Expiration; Renewal; Renewal Fee; Voiding.

(a) Each agent's license issued pursuant to this chapter shall expire at midnight April 30 next following its date of issuance.

(b) An agent's license may be renewed at the request of the holder of a valid seller's certificate of authority upon filing a written request for renewal accompanied by a five (\$5.00) dollar renewal fee.

(c) An agent's license becomes void unless he is employed by a holder of a valid seller's certificate of authority.

Section 12. Pre-Need Contracts: Content; Entire Agreement; Rescission.

(a) All pre-need contract forms offered or sold in this State shall contain:

(1) The names and addresses of the seller, buyer, beneficiary, and trustee;

(2) A clear and unambiguous statement of the services and merchandise to be supplied and by whom;

(3) The purchase price of each item of supply or service and how payable;

(4) The date and place of execution;

(5) The full percentage of sales commission to be retained by the seller;

(6) The seller's or his agent's signature on the original contract and his identification by name and title on any duplicate copy of such contract given to the buyer;

(7) A provision in 10-point boldface type or larger, stating in substance that the buyer shall be permitted to return the contract within ten (10) days of its delivery to the buyer and to have the full purchase price or amount paid thereon refunded if the buyer is not satisfied with it for any reason;

(8) In print on its face sheet, in 10-point boldface type or larger, a notice stating, "This is not an insurance contract."; and

(9) Other reasonable and appropriate provisions.

(b) The written contract, when signed, shall constitute the entire agreement between the parties relative to its subject matter. All obligations of both parties shall be fixed, and enforceable by the other parties to the contract.

(c) Any provision in a written contract that allows the seller to escalate the purchase price due to inflation or rising costs or otherwise shall be void, and of no force and effect unless the buyer is furnished at least six months prior to performance of a pre-need contract with written notice by the seller of his intention to escalate and the amount of the escalation does not exceed an amount sufficient to cover extraordinary cost increases in excess of the normal cost of living increases experienced by the seller. Such notice of escalation shall be effective five (5) days

after receipt thereof by the buyer.

(d) If the buyer, pursuant to the provision re-
quired by paragraph (7) of subsection (a), returns
the contract to the seller at its branch or home
office or to the agent through whom it was purchased,
the contract shall be void from the beginning and the
parties shall be returned to the same position they
occupied before the contract was entered into.

Section 13. Pre-Need Contracts: Approval; Disapproval
of Forms.

(a) A seller shall not offer, sell or deliver
in this State any pre-need cemetery contract unless
the form of such contract has been filed with and
approved in writing by the Department.

(b) The Department shall disapprove any such
form of contract which he finds:

(1) Printed or reproduced in such a manner
as to be substantially illegible in whole or
in part;

(2) Contains ambiguous or misleading
provisions, clauses or titles.

(3) Does not comply or is inconsistent
with any applicable requirement of this chapter;
or

(4) For other good cause shown.

(c) No amendment or modification of any such form
shall be made unless the amendment or modification has
been filed with and approved in writing by the
Department.

(d) Each filing is subject to a waiting period of
up to thirty (30) days before it becomes effective.

(e) A filing shall be deemed to meet the requirements of this chapter unless disapproved by the Department within the waiting period or any extension thereof.

Section 14. Pre-Need Contracts: Credit Life Insurance.

The seller may make available to buyers, under deferred payment, pre-need contracts for credit life insurance on a form and terms filed with and approved by the Department. The buyer must be provided with a certificate of such credit insurance as otherwise required by the Department.

Section 15. Funeral and/or cemetery merchandise and service trust fund: Payments to trust; amounts required; administration; duty of care.

(a) Any cemetery company, funeral establishment or other seller entering into a pre-need contract wherein the delivery of the funeral and/or cemetery merchandise or services is to be made at an uncertain future date, such as death, or more than one hundred twenty (120) days after receipt of the final payment under such contract shall deposit into a trust fund established for that purpose fifty percent (50%) of the gross receipts, less sales taxes, for the sales of such funeral and/or cemetery merchandise or services. Upon proper certification of costs to the Department, any cemetery company, funeral establishment or other seller with the written approval of the Department may deposit into the trust fund an amount comprising one hundred and ten percent (110%) of such cost in lieu of the fifty percent (50%) requirement.

(b) Each deposit herein required shall be paid into the trust fund so established within twenty (20) days after the close of the month of receipt from the buyer by the cemetery company, funeral establishment or other seller, except that the entire amount required to be deposited based upon the sales price, less sales taxes, shall be so deposited in trust within seven (7) years from the date of the original sale, regardless of whether or not all amounts due therefor shall have actually been paid.

(c) The trust fund shall be administered by a trustee in accordance with a written trust instrument.

(d) The trustee shall, with respect to such trust funds, exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering

the probable income as well as the probable safety of their capital; provided however that the cemetery company, funeral establishment or other seller may appoint an individual or committee of two or more individuals to act in an advisory capacity with the trustee in the investment of the trust fund and that the cemetery company, funeral establishment, or other seller with the consent of the Department, may change the trustee of the trust fund. Within the limitations of such standards, and subject to any express provision or limitation contained in any particular trust instrument, a trustee is only authorized to acquire and retain fixed investments specifically including, but not limited to, certificates of deposits, bonds, debentures and other corporate obligations, which men of prudence, discretion and intelligence acquire or retain for their own account.

(e) Each deposit into any such trust fund shall be identified by the cemetery company, funeral establishment or other seller by furnishing the trustee and the buyer with the name of the buyer, the amount of the retail sales price, and the amount of money required to be deposited, together with a copy of the contract of sale. The cemetery company, funeral establishment or other seller shall allocate to each separate account its share of the total income earned in each calendar year, based upon the proportion that the principal balance in each said account bears to the total principal balances in all such accounts. For this purpose each deposit made before June thirtieth of each year shall be considered as having been made on the first day of the year, but deposits made after June thirtieth shall not participate in the distribution of income earned during that calendar year. The trustee may commingle the deposits in such trust fund for purposes of the management thereof and the invest-

ment of funds therein. Annually, the trustee shall advise the cemetery company, funeral establishment or other seller of the amount of income received by the whole fund for that calendar year. The cemetery company, funeral establishment or other seller shall keep detailed records of the amount of money deposited from time to time.

(f) In the administration of the trust fund, the trustee shall be liable only for bad faith and wanton negligence, and shall be entitled to rely upon advice of independent counsel; and upon doing so in good faith, such trustee shall have no liability for such acts or actions.

Section 16. Funeral and/or cemetery merchandise and service trust fund: Withdrawals from trust; inability of seller to perform; default of buyer.

(a) The funds shall be held in trust both as to principal and income earned thereon, and shall remain intact, except that the costs of operation of the trust may be deducted from the income earned thereon, until delivery of the merchandise is made or the services are performed by the cemetery company, funeral establishment or other seller or until the death of the beneficiary. Upon delivery of said merchandise or performance of the services, the cemetery company, funeral establishment or other seller shall certify such delivery or performance to the trustee and the amount of money plus income on deposit with trustee to the credit of that particular contract. Upon such certification, or in case of death prior to such certification, and upon submission of a certified copy of a death certificate, the amount of money on deposit to the credit of each particular contract, including principal and income earned thereon, shall be forthwith paid to the cemetery company, funeral establishment or other seller. The trustee may rely upon all such certifications herein required to be made and shall not be liable to anyone for such reliance.

(b) If for any reason a cemetery company, funeral establishment or other seller that has entered into a contract for the sale of funeral and/or cemetery merchandise or services and has made the deposit into the trust fund as herein required to be made cannot or does not provide the funeral and/or cemetery merchandise

or perform the services called for by the contract within a reasonable time after request in writing to do so, the buyer or his heirs or assigns or duly authorized representative shall have the right to provide such funeral and/or cemetery merchandise or services, and, having done so, shall be entitled to receive the deposit to the credit of that particular contract. Written instructions to the trustee by the cemetery company, funeral establishment or other seller directing the trustee to refund the amount of money on deposit, or an affidavit by either the buyer or one of his heirs or assigns or duly authorized representative, stating that the funeral and/or cemetery merchandise or services were not provided, shall be sufficient authority for the trustee to make refund of the funds on deposit to the person submitting the affidavit. The trustee shall not be held responsible for any such refunds made on account of the cemetery company's, funeral establishment's, or other seller's written direction or an affidavit submitted in accord with this section. However, nothing herein contained shall relieve the cemetery company, funeral establishment or other seller from any liability for non-performance of the contract terms.

(c) If the cemetery authority or other seller cannot deliver the funeral and/or cemetery merchandise sold because of a national emergency, the provisions of subsection (b) shall be suspended for the duration of said emergency and for fifteen days following the termination thereof.

(d) If the buyer defaults in making payments, the cemetery company, funeral establishment or other seller shall have the right to cancel the contract and to withdraw from the trust fund the entire balance to the credit of the defaulting buyer's account as liquidating damages. In such event, the trustee shall deliver said balance to

the cemetery company, funeral establishment or other seller upon its certification, and upon receiving said certification the trustee may rely thereon and shall not be liable to anyone for such reliance.

Section 17. Funeral and/or cemetery merchandise and service trust fund: Payments to purchaser; change of domicile.

If after final payment a buyer moves his domicile to a point that makes delivery of the funeral and/or cemetery merchandise or services impossible or impractical, the trustee shall refund to the buyer the principal amount of money on deposit to the credit of that particular contract, including the income earned thereon. In the event that the amount refunded hereunder is less than seventy-five (75%) percent of the principal amount paid by buyer under the terms of the pre-need contract then seller shall pay to buyer the difference between the amount refunded and seventy-five (75%) percent.

Section 18. Trust funds exempt from attachment, other process.

In the absence of fraud all trust funds held or invested in accordance with the provisions of this chapter are not liable to attachment, garnishment or other process, or to be seized, taken, appropriated or applied to pay any debt or liability of the seller, buyer or beneficiary by any legal or equitable process or by operation of law.

Section 19. Records and reports of sellers, trustees.

(a) Every seller shall keep accurate accounts, books and records of all transactions, copies of all agreements, dates and amounts of payments made and accepted, the names and addresses of the contracting parties, the persons for whose benefit such funds are accepted and the names of the depositories in which such funds are deposited. Every trustee handling trust funds under the provisions of this chapter shall

file with the Department quarterly, a financial statement for each trust account required to be maintained by the seller, on forms prescribed and adopted by the Department. Every annual report shall be accompanied by a fee of \$10. If such statement is not received by the Department as required he may, after giving 10 days' notice, revoke the seller's certificate of authority.

(b) The seller shall keep within this state, at the address shown upon the certificate of authority, complete records of all transactions under his certificate of authority. Such records and the affairs of the seller shall be subject to audit and examination by the Department at any reasonable time.

(c) The seller shall keep such records for a period of not less than 5 years after the completion of all transactions to which they relate.

Section 20. Nonwaiver of provisions; retroactive effect; penalties.

(a) Any provision of any contract for the sale of personal property or the performance of services herein contemplated which waives any of the provisions of this chapter shall be void.

(b) Anything herein to the contrary notwithstanding, the provisions of this chapter shall apply only to contracts that are entered into subsequent to July 31, 1974.


(c) Any cemetery company, funeral establishment or other entity, as defined in this chapter, failing to make the required deposits to the trust fund or otherwise violating the provisions of this chapter shall be guilty of a misdemeanor, punishable by fine of not less than two hundred dollars or more than one thousand dollars, or by imprisonment of not less than thirty days nor more than one year, or both, and each violation of this chapter shall constitute a separate offense.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

FEDERAL TRADE COMMISSION

Seattle Regional Office
28th Floor Federal Building
915 Second Avenue
Seattle, Washington 98174
(206) 442-4655

February 11, 1976

Representative Bob Bradley 
Chairman, House Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Bradley:

In connection with the hearing on substitute bill 509 to be held on Friday, February 13, this office would like to respectfully submit some comments, in regard to both the overall philosophy of this legislation and on specific provisions of the proposed bill. We are sorry we are unable to be in Juneau in person so as to facilitate a dialogue, but we want you to have our thoughts nonetheless.

Need for Licensing

Since the bill sets up a new licensing provision for funeral directors, a basic inquiry is, should such licensing be instituted at all, in view of its increased cost to the tax payer and basic restrictiveness in denying access to the profession to some people. This letter is not addressed to embalmer licensing.

It could be strongly argued that funeral directors (as opposed to embalmers) are not so unique and specialized with regard to their required skills that licensing of the funeral direction function is necessary in the public interest. A good funeral director is basically a good administrator who has knowledge of his business and how to operate it the same as the operator of other business establishments selling goods and services.

An important point in connection with the question of whether there is a need for licensing is whether other, less restrictive methods, will not be equally as effective. The answer

is that it appears that the only substantive inhibitory provisions of the bill which are either (1) not already covered by existing state law (such as false or misleading advertising -- see Alaska's "Little FTC Act" administered by the Attorney General and local officials) or (2) not related to the obtaining of a license, are certain provisions in 8.42.090. If the problem lies in the need to prohibit some of these activities (a few of which will be commented upon later in further detail), a law could be passed prohibiting funeral directors from engaging in these practices and rendering them subject to a civil suit by the Attorney General and/or local officials to enjoin them from engaging in any such practices.

We note that there is a grandfather clause in the legislation. This, of course, raises a question as to whether there are currently practices being engaged in which call for licensing legislation. If such is the case, all those engaging in such practices will nevertheless automatically receive licenses. If practices which would be violative of the bill are not being engaged in, a question is raised as to whether there is a need for the bill.

Permits to Operate Funeral Home

Perhaps it is also appropriate to raise the question as to why a separate funeral home permit is necessary in addition to a licensing provision. This seems to be "dual licensing" and unduly restrictive.

Advertising and Solicitation

Subsections 8, 9 and 10 of 8.42.090 are all directed at the payment of money and personal solicitation in order to obtain funeral business. Whether these provisions are contained in a licensing statute, or set up separately as outlined above, we feel that they should be amended to make clear that their purpose does not pertain to any type of advertising. For instance, if personal solicitation by a licensee or his employe is meant, the statute should be written to encompass only personal solicitation by direct or telephone contact. In connection with subsection 8, is the phrase "general advertising" to be interpreted as an opposite of "specific" advertising, such as price advertising or other specific references? If so, it should be amended to make clear that all advertising is permitted.

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Subsection 10 is written so broadly as to be easily interpreted as an advertising prohibition. If it is intended to prohibit payments for "leads" or referrals, it should be more narrowly drafted to reflect that intent.

Price Disclosure

As you know, the Federal Trade Commission has proposed a trade regulation rule on funeral industry practices, a copy of which is enclosed. It may serve as a guide to you in considering provisions of your proposed legislation, where applicable, and may suggest other areas where state legislation would be appropriate.

In reference to Article 4, FUNERALS, Section 45.45.120 Disclosure of Costs, we suggest consideration of the itemized components of a funeral listed in Section 453.5(e) and (f) of the proposed FTC rule. Subsection (e) requires price information to be itemized for people who inquire about arrangements and prices prior to any agreement, and subsection (f) requires itemization of the invoice after services have been performed by a funeral home. The specific itemization of services and merchandise in the proposed rule will give consumers meaningful price information without burdening them or funeral homes with too many categories.

The purpose of itemization is not only to give useful information to consumers but to remedy several interrelated price abuses that have been identified in the course of investigation by FTC staff. One abuse is the tying of the purchase of the casket to other services. The standard adult funeral is often sold as a "package", and the price is determined by the choice of the casket. The services and merchandise provided are the same from one standard adult funeral to another. Many consumers believe that by purchasing a more elaborate (and expensive) casket, they will receive increased services from the funeral home staff and increased use of the funeral home's facilities for the "package" price. FTC staff has found that this is usually not the case. Our conclusion is that the price of the casket should specifically be itemized separately from other merchandise and services.

Itemized price disclosures will serve to give consumers the prices of the components of a funeral and will be more useful to consumers as a shopping tool if cost disclosures can be received prior to signing a contract. Itemized price

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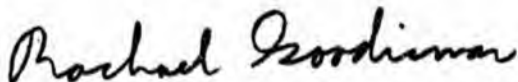
disclosures can be more economical to consumers if services and merchandise not selected can be declined. We would support a provision in the proposed bill which would allow unwanted services and merchandise to be declined for which consumers could then receive a commensurate discount. Such itemized information will allow prospective customers to make price/value considerations for the services and merchandise they choose, if coupled with the right to decline unwanted components.

We believe that the category divisions described in subsection 45.45.120 of proposed bill 509 are too broad to prevent tying arrangements as described above and will not be nearly as helpful to consumers as more complete price disclosures. "Consumers" includes those who want to comparison shop "before need" as well as to understand what they bought "at need."

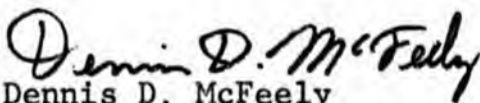
While it is commendatory for the state of Alaska to pass consumer protection legislation, this office feels that each request for new licensing should be very closely examined to determine whether it, on balance, really serves the public interest in comparison with other less restrictive ways for achieving the same, or substantially the same, purpose. No profession or group has a right to be licensed by the state in order to enhance its dignity or prestige. Since licensing is, as stated, inherently restrictive in nature and tends to reduce competition, an element fundamental to the American marketplace, the hard questions should be asked in each instance when licensing is proposed.

The foregoing expresses the views of the Seattle Regional Office and not necessarily those of the Federal Trade Commission itself.

Sincerely yours,



Rachel Goodisman
Consumer Protection Specialist



Dennis D. McFeely
Attorney

Enclosure

FEDERAL TRADE COMMISSION

[16 CFR Part 453]

FUNERAL INDUSTRY PRACTICES

Trade Regulation Proceeding

Notice of Proceeding, Proposed Trade Regulation Rule, Statement of Reason for Proposed Rule, Invitation to Propose Issues of Fact for Consideration in Public Hearings, and Invitation to Comment on Proposed Rule.

Notice is hereby given that the Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended 15 U.S.C. 41, et seq., the provisions of Part I, Subpart B of the Commission's procedures and rules of practice, 16 CFR 1.7, et seq., and 553 of Subchapter II, Chapter 5, Title 5 of the U.S. Code (Administrative Procedure), has initiated a proceeding for the promulgation of a Trade Regulation Rule concerning Funeral Industry Practices.

Accordingly, the Commission proposes the following Trade Regulation Rule and to amend subchapter D, Trade Regulation Rules, Chapter 1 of 16 CFR by adding a new Part 453 as follows:

PART 453—FUNERAL INDUSTRY PRACTICES

- Sec.
- 453.1 Definitions.
- 453.2 Exploitative practices.
- 453.3 Misrepresentations.
- 453.4 Merchandise and service selection.
- 453.5 Price disclosures.
- 453.6 Interference with the market.
- 453.7 Retention of documents.

AUTHORITY: The provision of this Part 453 are issued under 38 Stat. 717, as amended (15 U.S.C. 41, et seq.).

§ 453.1 Definitions.

For the purpose of this part, the following terms and definitions shall apply:

(a) *Funeral service industry member.* A "funeral service industry member" is any person, partnership or corporation, or any employee or agent thereof,

engaged in the business of selling or offering for sale, directly to the public, funeral services and merchandise; of preparing deceased human bodies for burial, cremation or other final disposition; or of conducting or arranging funerals.

(b) *Funeral services.* "Funeral services" consist of services performed incident to: (1) the care and preparation of deceased human bodies for burial, cremation or other final disposition; (2) the arrangement, supervision or conducting of the funeral ceremony and the final disposition of the deceased including, but not limited to, transporting the remains, securing necessary permits, embalming, arranging for death notices and other funeral-related items.

(c) *Funeral merchandise.* "Funeral merchandise" consists of articles and supplies sold or offered for sale, directly to the public, or used by funeral directors incident to: (1) the care and preparation of deceased human bodies for burial, cremation or other final disposition; (2) the arrangement, supervision or conducting of the funeral ceremony.

(d) *Person, partnership or corporation.* The term "person, partnership or corporation" refers to any party, other than a state, over which the Federal Trade Commission has jurisdiction, and may include in appropriate circumstances, but is not limited to, individuals, groups, organizations, trade associations, and professional societies.

(e) *Customer.* A "customer" is any person, association, or other entity who purchases, attempts to purchase or seeks information regarding possible future purchase of funeral services and/or merchandise, without intention of resale.

(f) *Immediate cremation.* An "immediate cremation" is a disposition of human remains which includes reduction of the remains by a heating process and which does not involve formal viewing or a prior funeral ceremony with the body present.

(g) *Outer interment receptacle.* An "outer interment receptacle" is any container or enclosure which is placed in the grave around the casket to protect the casket and/or to prevent the collapse of the grave including, but not limited to, receptacles commonly known as burial vaults, grave boxes or grave liners.

(h) *Casket.* A "casket" is a rigid container which is designed for the encasement and burial of human remains and which is usually constructed of wood or metal, ornamented, and lined with fabric.

(i) *Suitable container.* A "suitable container" is any receptacle or enclosure other than a casket which is of sufficient strength to be used to hold and transport human remains including, but not limited to, cardboard, pressed-wood or composition containers and canvas or opaque polyethylene pouches.

(j) *Crematory.* "Crematory" refers to an establishment which reduces human remains by a heating process.

(k) *Defacing.* "Defacing" consists of deliberate efforts to make merchandise

commerce as "commerce" is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice for any funeral service industry member:

(a) *Display of least expensive caskets.* Whose establishment contains one or more casket selection rooms, to fail to display therein the three least expensive caskets offered for sale for use in adult funeral services, in the same general manner as other caskets are displayed. *Provided*, That if fewer than twelve (12) caskets are displayed, only one of the three least expensive caskets must be displayed.

(b) *Availability of other colored caskets.* To fail to inform customers, by means of a prominently displayed written notice, that displayed caskets can be obtained in other colors, or to fail to provide caskets in other colors to customers who so request, *provided*, That such caskets in other colors can be obtained from regular commercial suppliers upon twelve (12) hours notice.

(c) *Interference with customer's selection of offered items.* (1) to represent, directly or indirectly, orally, visually, or in writing, that any funeral merchandise or service is offered for sale when such is not a bona fide offer to sell said product or service;

(2) To make representations, directly or indirectly, orally, visually, or in writing, purporting to offer any funeral merchandise or service for sale when the purpose of the representation is not to sell the offered merchandise or service but to obtain leads or prospects for the sale of other funeral merchandise and/or services at higher prices;

(3) To discourage the purchase, by customers, of any funeral merchandise or service which is advertised or offered for sale by:

(i) Disparaging the quality, appearance or tastefulness of any such merchandise or service which is advertised or offered for sale;

(ii) Suggesting that such merchandise or service is not readily available or can only be obtained after an appreciable delay, when such is not the case;

(iii) Defacing any merchandise carried for sale; or

(4) To use any policy, sales plan, or method of compensation for salespersons which has the effect, in any manner, or discouraging salespersons from selling, or has the effect of penalizing salespersons for selling, any funeral merchandise or service which is advertised or offered for sale.

(d) *Disparagement of concern for price.* To suggest, directly or by implication, to any customer in any manner that the customer's expressed concern about prices, inexpensive services or merchandise or an expressed desire to save money by the customer is improper, inappropriate or indicative of a lack of respect or affection for the deceased.

§ 453.5 Price disclosures.

In connection with the sale or offering for sale of funeral services and/or merchandise to the public, in or affecting

commerce as "commerce" is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice for any funeral service industry member:

(a) *Price information over telephone.* To fail to provide by telephone, upon customer request, accurate information regarding the funeral service industry member's retail prices of funeral products and services, including caskets, vaults, basic services and cremation services, if offered.

(b) *Casket price list.* (1) To fail to furnish to each customer, before discussion about caskets offered for sale or the customer's selection of a casket, a printed or typewritten document which lists, in ascending order of price, the prices of all caskets available for purchase without requiring special ordering by the customer, together with sufficient information about each casket to enable the customer to locate and identify a casket among the others on display. The document shall also bear an effective date for prices listed thereon.

(2) To fail to include, on the printed or written list required by paragraph (b) (1) of this section in clearly legible type, the following heading:

CASKET PRICE LIST FOR (NAME OF FUNERAL HOME)

Listed below, in order, are the prices of the caskets offered by this funeral home together with information to help you locate and identify particular caskets which are displayed. If you are interested in any of the caskets which are included on this list but are not on display, please inquire.

(3) To represent to a customer that a casket on the list is not available, when such is not the case.

(c) *Display of casket prices.* (1) to fail to display prominently in or on the caskets on display the price of such caskets by card, sign or other means.

(2) To fail to display prominently prices on any casket photographs shown to customers and on any caskets shown to customers in display rooms maintained by casket manufacturers or wholesalers.

(d) *Vault disclosure and price list.* (1) to fail to furnish to customers, at the time they are shown or informed as to the availability of outer interment receptacles, before such a customer has made his or her selection, the following printed or typewritten notice:

Some cemeteries require that an outer enclosure be placed around the casket in the grave, while others do not. Where such a requirement exists, it can usually be satisfied by either a burial vault or a grave liner, which is usually less expensive than a burial vault. Outer interment receptacles are often sold by cemeteries as well as by funeral homes. Before selecting any other enclosure you may want to determine any applicable cemetery requirements as well as the offerings of your cemetery and funeral home.

(2) To fail to include on the printed statement required by paragraph (d) (1) of this section, in clearly legible type, the price for each outer interment receptacle available from the funeral home for purchase by the customer, together with a brief description of each enclosure, and

an effective date for the prices specified.

(e) *Price list.* (1) To fail to furnish to each customer who inquires in person about the arrangement, purchase, and/or prices of funeral goods or services, prior to any agreement on such arrangement or selection by the customer or to any customer who by telephone or letter requests written price information, a printed or typewritten price list, which the customer may retain, containing the prices (either the retail charge or the price per hour, mile or other unit of computation) for at least each of the following items:

(i) Transfer of remains to funeral home.

(ii) Embalming.

(iii) Use of facilities for viewing.

(iv) Use of facilities for funeral service.

(v) Casket (a notation that a separate casket price list will be provided before any sales presentation for caskets is made).

(vi) Hearse.

(vii) Limousine.

(viii) Services of funeral director and staff.

(ix) Outer interment receptacles (if outer interment receptacles are sold, a notation that a separate outer interment receptacle price list will be provided before any sales presentation for such items is made).

Provided, however, that the list may include total or package prices for any standard adult funeral service package under \$..... The items covered by any such single quoted price shall be specified, but need not be separately priced. However, if a customer wishes to decline one or more items, the price shall be reduced by at least the amount of savings accruing to the funeral home from the declination.

(2) To fail to include, on the printed price list specified in paragraph (e) (1) of this section, directly above the price listings, in clearly legible type, the following:

(i) The name, address, and telephone number of the funeral home;

(ii) An effective date for the prices listed thereon;

(iii) The statement "You are free to select only those items of service and merchandise you desire. You will be charged for only those items you select. In some instances, depending on the circumstances of death and/or the type of service you select, some additional services or merchandise may become necessary. If you are required to pay for certain services or merchandise you have not selected, because they are required by other factors, an explanation shall be provided in writing by the funeral director on the memorandum of funeral services selected which you will receive."

(d) Memorandum of funeral service selected. (1) To fail to furnish to each customer making funeral arrangements, on a written memorandum of the funeral service selected, a list, in at least the following categories, of the services and merchandise selected by the customer together with a price for each item:

Misrepresenting the preservative capabilities of embalming, caskets, or outer interment receptacles.

Failing to display inexpensive caskets.

Displaying inexpensive caskets in a manner which is calculated to discourage their selection by customers.

Pressuring customers into purchasing high-priced merchandise and services.

Disparagement of inexpensive merchandise.

Sales plans or commission schemes which penalize salespersons for selling inexpensive funerals while rewarding them for high-priced sales.

Disparaging a consumer's interest in price considerations.

Refusing to provide price information over the telephone.

Arranging the casket selection room so as to confuse customers and lead them to purchase more expensive caskets.

Displaying caskets without prices.

Misleading customers about the necessity for burial vaults and failing to disclose the availability of less expensive grave liners.

Tying together funeral products and services and refusing to quote separate prices on component items or give discounts for defined items.

Restricting the availability of low-cost funerals, pre-need plans, alternative methods of disposition, and memorial society programs.

Limiting the availability of price information through restrictions on price advertising.

The Commission particularly desires analysis and comment based on specific data and experience.

2. Is it necessary for the Commission to specify a maximum price or formula for the cremation container required by § 453.2(c), to prevent funeral directors from charging excessive prices for such alternative containers?

3. To what extent do existing state and local laws permitting the practices otherwise declared unfair or deceptive by § 453.2(a) and § 453.2(b) of the proposed rule (i.e., embalming without permission, obtaining custody of remains without authorization, refusing to release remains to the deceased's family) protect the public health, safety or welfare or serve other legitimate state interests? Should any of these requirements of state or local law be preempted?

4. Does § 453.3(d) abridge constitutionally protected speech? If so, by what

means can the protective purposes of the provision be attained constitutionally?

5. Are the funeral price disclosure requirements of § 453.5 necessitated by inadequate availability to consumers of price information? If so, is this inadequate availability the result of funeral directors' withholding of price information? Would the price disclosures required by § 453.5 help consumers make better-informed purchase decisions?

6. Will mandatory itemization of prices of funeral merchandise and services, as required by § 453.5(e) of the proposed rule, benefit consumers in their selection of funeral merchandise and services? Will the itemized memorandum of funeral merchandise and services selected, as required by § 453.5(f) of the proposed rule, benefit consumers? Please be specific. Are the categories of items which must be enumerated by § 453.5 (e) and (f) useful and appropriate? If not, what changes should be made?

7. Should the offering of low-cost package funerals be encouraged? Would itemization preclude the offering of low-cost funerals? Would exempting the least expensive funerals from the itemization requirements of § 453.5 (e) and (f) prevent such a result? If so, what is a reasonable dollar cut-off point for exempting such funerals from the itemization requirements of § 453.5 (e) and (f)?

8. Are there additional funeral industry practices which should be addressed by this rule?

9. Should the coverage of this rule be expanded to include unfair or deceptive practices used by funeral merchandise manufacturers, cemeteries or other allied industries? What specific practices should be addressed, and in what way are they unfair or deceptive?

10. What will be the impact of the rule on consumers?

11. What costs, economic or otherwise, to funeral homes, especially those which are small businesses, would result from implementation of the proposed rule, and how could such costs be minimized?

12. To what extent do the circumstances of the funeral transaction place the consumer in a more vulnerable posi-

tion than in other consumer transactions?

INVITATION TO PROPOSE ISSUES OF FACT FOR CONSIDERATION IN PUBLIC HEARINGS

All interested persons are hereby given notice of opportunity to propose any disputed issues of fact. The Commission or its duly authorized presiding official, shall, after reviewing submissions hereunder, identify any such issues in a Notice which will be published in the Federal Register. Such issues shall be considered in accordance with Section 18(c) of the Federal Trade Commission Act as amended by Public Law 93-637, and rules promulgated thereunder. Proposals shall be accepted until October 28, 1975, by the Special Assistant Director for Rulemaking, Federal Trade Commission, Washington, D.C. 20580. A proposal should be identified as a "Proposal Identifying Issues of Fact—Funeral Industry Practices Rule", and furnished, when feasible and not burdensome, in five copies. The times and places of public hearings will be set forth in a later Notice which will be published in the FEDERAL REGISTER.

INVITATION TO COMMENT ON THE PROPOSED RULES

All interested persons are hereby notified that they may also submit to the Special Assistant Director for Rulemaking, Federal Trade Commission, Washington, D.C. 20580, data, views or arguments on any issue of fact, law, or policy which may have some bearing upon the proposed rule. Written comments, other than proposed issues of fact, will be accepted until forty-five days before commencement of public hearings, but at least until October 28, 1975. To assure prompt consideration of a comment, it should be identified as a "Funeral Industry Practices Rule Comment", and furnished, when feasible and not burdensome, in five copies.

Issued: August 20, 1975

By direction of the Commission,

VIRGINIA M. HARDING,
Acting Secretary.

[FR Doc. 75-22902 Filed 8-20-75; 8-13 am]

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

JOINT COMMERCE COMMITTEE
HEARING AGENDA FOR FEBRUARY 6, 1976

AND

SUMMARY REPORT OF THE INTERIM COMMITTEE
ON MORTUARY SCIENCE

SENATOR ED WILLIS
CHAIRMAN INTERIM COMMITTEE

REPRESENTATIVE BOB BRADLEY
CHAIRMAN JOINT COMMERCE COMMITTEE

AGENDA

JOINT COMMERCE COMMITTEE'S
HEARING ON MORTUARY SCIENCE
FEBRUARY 6, 1976

- 8:00 a.m. - Introduction and opening by Representative Bob Bradley
- 8:10 a.m. - Summary of pending legislation by Bill Perrier
- 8:30 a.m. - Testimony from the public in the following order:
1. Individuals from out-of-town, as called by the Chair
 2. All remaining individuals, as called by the Chair

(All questions of persons giving testimony will come from the Joint Committees.
Any questions from the floor will be in writing and will be submitted to the Joint Committee Chairman for response)

STATE OF ALASKA
THE LEGISLATURE

POUCH V, STATE CAPITOL
JUNEAU, ALASKA 99811
465-3800

LEGISLATIVE AFFAIRS AGENCY

January 16, 1976

Senator Genie Chance
Capital Building
Pouch V
Juneau, AK 99801

Re: Final Report of the Interim Committee on Mortuary
Science

Dear Senator Chance:

The assignment of the Interim Committee on Mortuary Science was to refine the occupational licensing bill (HB 509) and after consideration if the need for an occupational licensing statute appeared, to prepare a committee substitute. The committee met on September 27, December 2, and December 19. Prior to these meetings a suggested revision was prepared and distributed to all the persons currently licensed to practice embalming in this state and to other interested groups. Notices of the workshop meetings were sent to each of these groups. There was substantial attendance from the profession at each of the first two meetings.

As a result of these, a proposed committee substitute for HB 509 has been prepared and a copy of the bill is attached.

Essentially the bill adopts a dual licensing system; that is, licenses are issued separately for the practice of funeral directing and for the practice of embalming. The administration of the occupational licensing was put in the Department of Commerce. The committee's feelings were that an occupational licensing board would not be a good solution and that the Department of Commerce was a logical alternative.

The proposed substitute also sets substantial educational qualifications as a prerequisite to licensing. Under existing law, no qualifications exist. For this reason a "grandfather" provision was inserted which allows persons who are currently licensed as an embalmer to obtain a license as an embalmer under the new act and a person who has actively practiced as a funeral director to obtain a license as a funeral director under the new act without requiring that the newly imposed qualifications be met.

A substantial area covered in the act was a regulation of pre-need sales. The primary thing this regulation does is require that funds received from pre-need sales be deposited in an account in the name of the purchaser and that both the principal and interest in this account remain the property of the purchaser until time of need.

Since pre-need sales are made by other than professionals, and since an enforcement mechanism is essential, this section was made part of the consumer protection statute.

In addition, the bill contains a disclosure of cost section which requires that in broad categories the cost of the services be disclosed to the purchaser. The bill was prepared as a proposed committee substitute for Commerce Committee since the bill was currently lodged in Commerce Committee. The committee strongly recommends that both House and Senate Commerce Committees, preferably jointly, hold other hearings on this bill. During the hearing the committee indicated to the interested parties that if such a hearing were held, notice would be given to these parties.

Very truly yours,

Edward C. Willis
Chairman

ECW:bh

Attachment

Original sponsor: H. Beirne by request

1 IN THE HOUSE

BY THE COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 509

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to funerals and the practice of
7 mortuary science; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 08 is amended by adding a new chapter to read:

10 CHAPTER 42. MORTICIANS.

11 Sec. 08.42.010. AUTHORITY OF DEPARTMENT. The department has
12 jurisdiction over the practice of mortuary science under this chapter.
13 The department may adopt and enforce regulations relating to the
14 practice of mortuary science.

15 Sec. 08.42.020. LICENSE REQUIRED FOR THE PRACTICE OF MORTUARY
16 SCIENCE. (a) No person may engage in the practice of mortuary science
17 or hold himself out as engaging in the practice unless licensed as an
18 embalmer or funeral director by the department. A person holding a
19 license as a funeral director may not embalm or restore a dead human
20 body, take charge of the remains of a person dead of a communicable
21 disease or prepare for transportation by common carrier a human body
22 dead of a communicable disease.

23 (b) A person who has actively practiced embalming in the state for
24 at least one year and holds a valid embalmer's license issued in this
25 state (before the effective date of this chapter) shall be granted a
26 license to practice embalming and may renew the license annually. A per-
27 son who has actively practiced in the state as a funeral director for a
28 period of at least one year shall be granted a license to practice as a
29 funeral director and may renew his license annually.

Not grandfathered in to Am. Dir.?

1 (c) In areas of the state not served by a person licensed to prac-
2 tice mortuary science, the department may issue a permit to an unlicensed
3 person, on an annual basis, for the care and disposition of dead human
4 bodies for compensation. This person must have taken and passed an
5 examination conducted by the department in the subjects set out in sec.
6 60(a)(9) and (10) of this chapter. This permit otherwise in no way
7 licenses the holder to practice mortuary science.

8 Sec. 08.42.030. EXAMINATION OF APPLICANTS FOR LICENSE TO PRACTICE
9 MORTUARY SCIENCE. The department is granted authority to examine all
10 applicants for a license to practice mortuary science and to determine
11 whether an applicant possesses the necessary qualifications. The depart-
12 ment shall hold an examination at least once each year at the place and
13 time the department may determine.

14 Sec. 08.42.040. APPLICATION FOR LICENSE TO PRACTICE MORTUARY
15 SCIENCE. The applicant for an examination for a license to practice as
16 an embalmer or as a funeral director shall make application to the
17 department in writing on a form provided by the department.

18 Sec. 08.42.050. QUALIFICATIONS FOR LICENSE TO PRACTICE MORTUARY
19 SCIENCE. (a) In order to qualify for a license to practice embalming,
20 the applicant shall

21 (1) be at least 18 years of age;

22 (2) have not been convicted of a felony involving moral tur-
23 pitude;

24 (3) have satisfactorily completed at least two years at an
25 accredited college or university in such subjects as the department may
26 prescribe by regulation as suitable and desirable preparation for
27 the study of mortuary science;

28 (4) have graduated from an accredited school or college of
29 mortuary science;

? Could unduly restrict entry?
"natural law of competition"

1 (5) have taken and passed the examination for a license to
2 practice embalming conducted by the department;

3 (6) have completed at least one year of apprenticeship as a
4 resident trainee under an embalmer licensed to practice embalming in this
5 state.

6 (b) In order to qualify for a license to practice funeral direct-
7 ing the applicant shall:

8 (1) be at least 18 years of age;

9 (2) have not been convicted of a felony involving moral
10 turpitude;

11 (3) have satisfactorily completed at least two years at an
12 accredited college or university in such subjects as the department may
13 prescribe by regulation as suitable and desirable preparation for the
14 study of mortuary science;

15 (4) have taken and passed the examination for a license to
16 practice funeral directing conducted by the department.

17 (5) have completed at least one year of apprenticeship as a
18 trainee under a person licensed to practice funeral directing in this
19 state.

20 Sec. 08.42.060. SCOPE AND CONDUCT OF EXAMINATION FOR A LICENSE TO
21 PRACTICE MORTUARY SCIENCE. (a) The department shall examine applicants
22 for an embalmer's license on the following subjects: (1) theory and
23 practice of embalming, (2) anatomy, (3) pathology, (4) bacteriology,
24 (5) hygiene (including sanitation and public health), (6) chemistry
25 (including toxicology), (7) restorative arts (including plastic surgery
26 and demi-surgery), (8) funeral service arts and sciences, and funeral
27 service administration (including accounting, funeral law, psychology,
28 funeral principles, directing and management), (9) Alaska vital statis-
29 tics law, (10) the provisions of this chapter, and the regulations pro-

1 mulgated by the department under this chapter. The department shall
2 examine applicants for a funeral director's license on the subjects in-
3 cluded in (8), (9) and (10) of this subsection. The department may use
4 the examination provided by the Conference of Funeral Service Examining
5 Boards of the United States, Inc. where it is applicable to the subjects
6 in this section.

7 (b) A passing grade in the examination is an average grade of at
8 least 75 per cent with no individual subject grade of less than 70 per
9 cent.

10 (c) If an applicant receives an average grade of at least 75 per
11 cent, but receives a grade of less than 70 per cent in three or fewer
12 individual subjects, he may be reexamined only in those subjects. He is
13 entitled to reexamination on individual subjects only once. A grade
14 of at least 70 per cent in each of the subjects in which the applicant
15 is reexamined is sufficient to constitute a passing grade.

16 (d) Except as provided in (b) of this section, an applicant shall
17 be reexamined in all subjects if he reapplies for examination.

18 Sec. 08.42.070. RECIPROcity. (a) The department may recognize
19 the license issued to an embalmer or funeral director from another state
20 if the applicant for recognition of his license

21 (1) furnishes proof satisfactory to the department that he
22 has complied, in the state in which he is licensed, with requirements
23 substantially equal to the requirements of this chapter;

24 (2) furnishes proof satisfactory to the department that he is
25 over 18 years of age, has not been convicted of a felony involving moral
26 turpitude, that he is licensed in another state, and that he has practiced
27 mortuary science in another state for at least one year prior to the
28 date of application;

29 (3) takes and passes the examination provided for in (b) of

1 this section.

2 (b) The department shall examine each applicant under this section
3 on the following subjects: Alaska vital statistics law, the provisions
4 of this chapter, and the regulations promulgated by the department under
5 this chapter.

6 Sec. 08.42.080. LICENSE. A license issued under the provisions
7 of this chapter is effective for the calendar year and may be renewed
8 for successive one-year periods.

9 Sec. 08.42.090. GROUNDS FOR REFUSAL TO ISSUE OR RENEW LICENSES
10 AND SUSPENSION OR REVOCATION OF LICENSES. When the department has
11 reason to believe that an applicant or licensee has been guilty of any
12 of the following acts or omissions, it is the duty of the department to
13 conduct an investigation, and the department may, after proper hearing
14 and notice in accordance with the Administrative Procedure Act (AS 44.-
15 62), refuse to issue, refuse to renew, or may suspend or revoke, a
16 license upon a finding by the department of any of the following acts or
17 omissions:

- 18 (1) fraud or misrepresentation in obtaining a license;
- 19 (2) misrepresentation or fraud in the practice of mortuary
20 science;
- 21 (3) false or misleading advertising;
- 22 (4) aiding or abetting an unlicensed person to practice
23 mortuary science;
- 24 (5) using a casket or part of a casket which has previously
25 been used as a receptacle for the burial or other final disposition of
26 another dead human body;
- 27 (6) refusing to promptly surrender the custody of a dead
28 human body upon the order of the person lawfully entitled to custody;
- 29 (7) using profane, indecent or obscene language within the

? (7) using profane, indecent or obscene language within the
Why grounds for medical action?

1 immediate hearing of relatives of a deceased whose body has not yet
2 been interred or otherwise disposed of;

3 (8) solicitation of a dead human body by the licensee, his
4 agents, servants or employees, whether solicitation occurs after death,
5 or while death is impending but this does not prohibit general adver-
6 tising;

7 *✓ (9) ^{paid/replanned?} employment by the licensee of any person for the purpose*
8 of calling upon individuals or institutions to influence them to turn
9 over a dead human body to a particular licensee;

10 (10) the direct or indirect payment or offer of payment for
11 the purpose of securing business;

12 (11) solicitation or acceptance by a licensee of any payment
13 for recommending or causing a dead human body to be disposed of in a
14 specific crematory, mausoleum or cemetery;

15 (12) violation of a state law or regulation or municipal
16 ordinance or regulation affecting the disposition of a dead human body,
17 or contracts relating to the disposition of a dead human body;

18 (13) violation of any of the provisions of this chapter;

19 (14) conviction of a felony involving moral turpitude.

20 — Sec. 08.42.100. FUNERAL ESTABLISHMENT PERMIT. After the effec-
21 tive date of this chapter, no person may conduct, maintain, manage, or
22 operate a funeral establishment unless a permit for each establishment
23 has been issued by the department and is conspicuously displayed in the
24 funeral establishment. Each permit shall be valid only for one speci-
25 fic location, and separate permits shall be required of two or more
26 firms operating from the same funeral establishment. A permit to oper-
27 ate a funeral establishment shall be issued by the department upon
28 application for the permit on a form provided by the department. All
29 permits shall expire on the 31st day of December of each year and may

1 be renewed for successive one-year terms. Violation of a provision of
2 sec. 90 of this chapter by a person operating a funeral establishment
3 or with his knowledge or consent by an employee shall be considered
4 sufficient cause for suspension or revocation of the funeral establish-
5 ment permit.

6 Sec. 08.42.110. DEFINITIONS. In this chapter

7 (1) "department" means the Department of Commerce;

8 (2) "funeral establishment" means every place devoted to or
9 used in the care and preparation for disposition of dead human bodies,
10 or as the office or place for carrying on the profession of mortuary
11 science, or for any combination of these;

12 (3) "mortuary science" means embalming dead human bodies,
13 taking charge of the remains of those dead of a communicable disease,
14 or preparing dead human bodies for shipment, directing or supervising
15 funerals, preparing dead human bodies for burial by means other than
16 embalming, disposing of dead human bodies, or operating a place for the
17 care or disposition of dead human bodies.

18 (4) "resident trainee" means a person who has met the quali-
19 fications set out in sec. 50(a)(1) - (5) of this chapter and is engaged
20 in learning the practice of embalming under the direction and control
21 of a person properly licensed to practice embalming, or a person who
22 has met the qualifications set out in sec. 50(b)(1) - (4) of this
23 chapter and is engaged in learning the practice of funeral directing
24 under the direction and control of a person properly licensed to prac-
25 tice funeral directing.

26 Sec. 08.42.120. VIOLATIONS; PENALTIES. A person who violates or
27 aids a person in a violation of this chapter is guilty of a misdemeanor
28 and upon conviction is punishable by imprisonment for not more than one
29 year or by a fine of not more than \$5,000.

1 Sec. 08.42.130. ENFORCEMENT BY ATTORNEY GENERAL. The attorney
2 general may bring an action in the superior court to enjoin a person
3 from violating the provisions of this chapter.

4 * Sec. 2. AS 45.45 is amended by adding a new section to read:

5 ARTICLE 4. FUNERALS.

6 Sec. 45.45.120. DISCLOSURE OF COSTS. Every person performing
7 services or providing merchandise relating to the disposition of a dead
8 human body shall give to the person arranging for the disposition at the
9 time the arrangements are completed and before the time of rendering the
10 service or providing the merchandise a written statement showing, to
11 the extent then reasonably ascertainable,

12 (1) the price of the service and what is included;

13 (2) the price of each supplemental item of service or
14 merchandise;

15 (3) the amount involved for each of the items for which
16 money will be advanced; an item for which money is advanced shall be
17 charged in the same amount as the cost to the person making the advance;

18 (4) the method of payment.

19 * Sec. 3. AS 45.50.471 is amended by adding a new paragraph to read:

20 (22) making or entering into a contract relating to the
21 disposition of a body upon death whereby certain personal property will
22 be furnished or the professional services of a funeral director or
23 embalmer will be furnished, unless the person receiving money under the
24 contract deposits the money, within 15 days of its receipt, in a trust
25 account in a financial institution whose deposits are insured by an
26 instrumentality of the federal government as a separate account in the
27 name of the person benefited with a provision that should the money
28 deposited and any accrued interest not be used for the purposes intended
29 on the death of the person for whose benefit the contract was made all

1 money in the account shall become part of his estate. Upon demand by
2 the person for whose benefit the contract was made, all money in the
3 trust account, including accrued interest, shall be paid to him and the
4 contract shall be canceled.

5 * Sec. 4. AS 08.44.010 is repealed.

6 * Sec. 5. This Act takes effect January 1, 1977.

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**SUCCESSFUL
FUNERAL
SERVICE
PRACTICE**

Edited by **HOWARD C. RAETHER**

Executive Secretary

National Funeral Directors Association

PRENTICE-HALL, INC.

Englewood Cliffs, N. J.



ABOUT THE EDITOR

Howard C. Raether holds a Ph.B. and J.D. from Marquette University in Milwaukee, Wisconsin. He has been involved in funeral service for thirty years and Executive Secretary of the National Funeral Directors Association since 1948. He was consultant to the United States Government Department of Transportation, National Highway Safety Bureau, and is on a committee serving the Department of Health, Education and Welfare. He was given the highest honor the U.S. Army makes to a civilian—the Distinguished Civilian Service Award. He also is a member of the National Council on Tissue Transplantation and Utilization. He is editor of the NFDA monthly journal, *The Director*, and creator of the *Reference Manual* for funeral directors. In addition his recent writings include, as co-author, *A Compendium of Basic Information on Funeral Establishments and Funeral Establishment Employees and The Fair Labor Standards Act, as Amended* (1968); *Organ and Tissue Transplantation and Body Donation* (1970); and *Personnel Guidance Manual for Funeral Service Practice* (1970).

THE PREARRANGING AND PREFINANCING OF FUNERALS

*Thomas H. Clark
and
Howard C. Raether*

A Brief Background

In the chapter "The Law and a Funeral Service Practice" reference is made to changes in the law to permit an individual during his lifetime to take steps to get the kind of funeral he desires and to determine the method and place of final disposition of his body.

There have been developments toward this new concept for many years, but it has been only since the end of World War II that a significant impact of the move was felt. It was not until 1952 that the National Funeral Directors Association felt the situation warranted a policy statement which concluded with the recommendation which has led to laws controlling and regulating prefinanced funeral contracts being enacted in a large majority of the states.

The Sociology of Life and Death

The funerals for most people are selected at the time of death. Unless one knows when, where and under what circumstances he is going to die, it is difficult for him to prearrange his own funeral, either alone or with a member of his family, and feel that it will be as planned.

There are few people who are sure things won't change sufficiently to upset prearranged plans. And in cases when they are changed and are different, problems are often created instead of being solved.

A national study showed that in 1967 less than 1% of all funerals conducted, except in the Pacific and Mountain regions, were prearranged. It also revealed that from 25% to 33% (depending on the region) of the funerals conducted in 1967 that were prearranged were changed by the survivors. However, about 50% of funeral directors said at that time that prearrangements were on the increase.

Why?

There are those who feel, as is pointed out elsewhere herein, that our society is changing from a family culture to a generation culture. Families are being separated by age, by distance, by knowledge and by philosophy.

Sometimes an elder member, especially if living alone, wants to make sure he or she gets the kind of funeral he desires. Often a surviving spouse will make arrangements for the same kind of funeral that was just conducted for the husband or wife.

Sometimes differences in a family are such that segments thereof feel they have to protect themselves against each other as to funeral arrangements and costs.

Sometimes cost is the primary reason for the prearrangement and prefinancing. There are those who want a moderate to expensive service and who want to be sure they get it. Often prearranging is done in an attempt to keep costs down, to indicate to the family or other survivors that they should not go "overboard" in the prearranger's opinion.

Finally, there are those who prearrange and prefinance their own funeral because they want a specific type of service involving a particular church and/or clergyman and/or funeral director and/or any one of many other reasons trivial to some but important to the person doing the prearranging.

Prearrangements are a part of just about every funeral director's files and practice. They must be recognized as an aspect of present-day funeral service, and important facets of the overall picture must be understood.

Psychological Aspects

Some who have studied death, grief and bereavement say that following death there is a therapy in doing things and in having responsibilities. When most of the details of a funeral have been worked out and perhaps paid for by the deceased, this could leave the survivors with little to do in the actual at-need planning and decision making.

Equally important, survivors and the community may want to do some last thing or things in honor and/or respect and/or in recognition of the deceased. There may be the feeling this shouldn't or can't be done when the person has made his own arrangements. Or, there may be some things that the deceased has arranged which might affect the sensibilities of a survivor, or survivors, and bother them for years, but they won't suggest a change lest they "offend" the departed and his memory.

The Promotions of the Fifties

The idea of the prearranged or prefinanced funeral was not first conceived in the early fifties, but it was then that it became the basis for promotions to sell the idea of prearranging and prefinancing funerals.

Some of these promotions were built around package deals covering the funeral

service, funeral merchandise, flowers, burial vault, cemetery lot, opening and closing of the grave, and the grave marker.

Sales crews were trained and often blanketed an area pushing door bells and at times offering an item of merchandise free to get into the door to make their presentation.

In this presentation the alleged high cost of dying, peace of mind, and a special purchase price of the prearranged service and merchandise were usually stressed.

These developments led to two separate actions which although not related complemented each other.

The Association of Better Business Bureaus, now the Council of Better Business Bureaus, came out with three publications on the subject in seven years. In the same period many states enacted laws to control the prearranging and prefinancing of funerals.

The ABBBI publications are:

1. *Facts Every Family Should Know About Funerals and Interments.* Some paragraphs were devoted to package deals therein.
2. *Questions You Should Ask About Cemetery Lot Promotions.* Since many promotions—pre-need and otherwise—were cemetery initiated, this leaflet was prepared.
3. *Facts You Should Know. . . Questions You Should Ask. . . The Prearrangement and Prefinancing of Funerals.*

All three of these publications are kept current and their widespread distribution continues.

Because the last-mentioned booklet is pertinent to this chapter, the following excerpts from it are quoted:

In recent years a growing number of individuals, firms and groups have sought to stimulate public interest in prearranged, prefinanced funeral plans. Among them have been sales organizations and promoters outside the funeral profession who seek to interpose themselves as third parties in the traditional personal and confidential relationship between the funeral director and the survivors of the deceased. Grievous disappointments and severe financial losses have resulted from some unsound promotional schemes foisted on a credulous public by armies of high-pressure salesmen.

* * *

Sometimes, belief that a funeral has been fully prearranged and paid for can create a false sense of security for survivors.

* * *

The simplest way to prearrange a funeral is to leave written instructions for those who will make the arrangements. If advance payments are involved under a contract which does not permit the individual to alter the prearrangements to meet changing circumstances, the possibilities. . . can lead to serious problems. What assurance do you have that the funds deposited will be intact when the time for their disbursement arrives or that they will be available to you if you want them? Who will receive the interest on your money during the many years which may intervene between the date of deposit and the date of death? Will such interest revert to you? Will you be better off by depositing the money in your own bank where you will get the benefit of all interest earned? You also are free to withdraw your funds in an emergency.

* * *

Savir claims and promises of "bargain" rates are stressed in selling many of these promotional plans. Weigh carefully any representation that a "plan" will give you adequate services for less than you can obtain them from other funeral directors against the fact that the sales commissions and costs must be added to the cost of the funeral under the plan.

The material in these excerpts pinpoints the problem for many of the public.

The State Pre-Need Trust Laws

The questions which the Association of Better Business Bureaus was asking in its booklet on prefinanced funerals were often asked across the country during the fifties and sixties as many states considered legislation to regulate and control the contracts as to such funerals. The chart which is Appendix X gives the names of all the states within the continental limits of the United States. It shows the majority of them with a statute which in some way regulates these contracts. It also gives the basics of each state's statute.

The breakdown of state laws and/or opinions shows, as the Better Business Bureaus point out, that most of these statutes require that all money, or a major share of all monies, paid in advance for funeral merchandise or services, and accruing interest thereon, must be deposited in trust with an approved financial institution until the need for disbursement arises. In most of these states monies paid in advance for burial vaults must also be entrusted and there have been opinions of attorney generals and of state supreme courts upholding this requirement. In some states amounts paid for markers and mausoleum space sold in advance of death must also be placed in trust.

A West Virginia statute was held to be unconstitutional and a new law passed since. The constitutionality of the Arkansas, Idaho, Iowa, Illinois, Kansas, Utah and Texas statutes has been upheld by the supreme courts of those states.

Some promoting prefinanced funerals object to putting in trust or reserve 100% of monies paid in advance for funeral merchandise and services. In the Illinois case one of the suggestions made was that a lesser amount be deposited. The supreme court of the state in its decision points out that the plaintiff cemetery entered the "prearrangement business by choice" and that its procedures invite "regulation of a stringent nature." The matter was appealed to the Supreme Court of the United States which refused to consider the case.

Some Present-day Thoughts About Prearranged and Prefinanced Funerals

In the previously referred to Illinois decision the supreme court of that state said:

In the long interval between full receipt of the purchase price and contract performance the opportunities for fraud are great and risk of insolvency, with consequent inability to perform, apparent.

It is doubtful whether anyone has or will doubt the validity of this statement. And in many areas there has been a slackening of pre-need promotion activity. The economics of the situation has much to do with this for reasons funeral directors know.

The Plan with the Special Price

ABBBI queries a \$795 funeral being sold in advance for \$595. In its brochure an arrangement is cited "between one sales organization and 'participating' funeral homes (in which) the latter are required to represent that a designated funeral, available to customers of the 'plan' at the 'reduced price' of \$595, is 'regularly' priced at \$795. The actual price to the company selling the plan is only \$420."

The BBB asks, "Do you believe that a funeral home can afford to sell services and merchandise honestly priced at \$795 for little more than half that amount and still make a profit?"

Supposing that there was no sales organization, could a funeral home with a plan of providing a \$795 service for \$595 come out ahead with that amount?

If this is in a state where the interest on the monies paid in advance cannot accrue to the benefit of the funeral firm, the amount paid will not increase. Even in those states where the interest can accrue, as earned, to the benefit of the funeral firm, unless the entire amount, or a sizable portion of it, is held for a long period of time, the increment is not large enough to close the gap between the "before-need" and "at-need" figures if both are realistic.

Another factor of importance is the annual increased cost of providing the service. This is especially true if the components of the funeral and a particular casket are spelled out. Few things have gone down in price or remained stable in a number of years. Therefore every cost increase decreases the actual amount available for the funeral.

Finally, if the pre-need contract was solicited by a salesman, it is estimated that 15 to 30% of the total contract price will be used to absorb sales and administration costs.

Income for Federal Tax Purposes

When a funeral is prefinanced, if the firm to whom that money is paid has constructive, permissive or actual use of the money, the money is taxable as income by the federal government for the year in which the money was received. This is true whether the amount is a partial payment or the entire prepaid price of the service.

What to Do

This chapter shows that many states have enacted laws controlling and/or regulating the contracts made in advance of need for funeral services and/or merchandise. This coupled with significant variations in the pre-need laws and the divergent opinions which exist among funeral directors warrants the following recommendations:

1. Pre-need contracts and their solicitation *are* fraught with the danger of fraud and funeral directors should avoid any contract or plan which could harm their clientele or their service or place in the community.

2. Those who wish to prearrange their own funeral or one for someone for whom they have responsibility should be able to do so.
3. When a funeral is prearranged and monies are paid in advance of need for funeral services and/or merchandise including burial vaults, *all* such monies should be deposited in a trust fund with the person or persons prearranging having the control thereof to be entitled to the earnings therefrom. Furthermore such prearranger shall have the right to terminate the contract at any time without forfeiture of any of the funds which have been paid or earnings accrued.
4. Where a contract is entered into it should be in accordance with the laws of the state in which the prearrangement is made. Some state funeral directors associations have prepared contract forms. If there is no pre-need law and/or if no form is available—the suggested wording for one is at the conclusion of this chapter. In all such contracts the funeral director should bind himself only to the kind of funeral and merchandise which will be available at the time of need for the face amount of the contract.
5. Funeral directors should carefully consider the potential negative effects and cost of allowing a third party to step between themselves and their firm and the family through the representations of a third party soliciting a pre-need program or plan which will be serviced by the funeral home when the person for whom the service was prearranged dies.
6. No funeral business should be purchased which has the liability of providing funerals which have been prefinanced in whole or in part until the purchaser of the business is sure the monies paid in advance are on hand for the funerals which will have to be provided.

It is not the intent of the writers of this chapter to discourage individuals and families from discussing funerals and perhaps making tentative plans for a funeral or funerals. This is encouraged especially when there is a family or close friends and they share in the discussion. Death is not as commonplace as it once was. Millions of people in the country today have never experienced a death and funeral of someone close to them. They don't know what is involved and they should.

There is a big difference between tentative arrangements considering survivors and formal agreements which might disregard and adversely affect the sensibilities of those who will mourn.

Where there is no family or its members are disinterested or feel specific prearrangement is good, a formal agreement in line with the following contract suggestion will not only be proper but may also be helpful.

* * *

THIS AGREEMENT made and entered into this ____ day of _____ 19____, by and between _____, party of the first part, hereinafter sometimes referred to as "Funeral Director," and _____, party of the second part, sometimes hereinafter referred to as "Buyer."

WITNESSETH:

WHEREAS, party of the second part desires and hereby requests to enter into a contract to pro-

vide for payment for funeral merchandise and/or services in advance of death, which merchandise and/or services are to be delivered and performed subsequent to the death of _____, hereinafter referred to as Beneficiary as follows:

Professional services and casket

NOW, THEREFORE, in consideration of the mutual promises, it is hereby agreed as follows:

1. Funeral Director will supply to Beneficiary out of the funds deposited by Buyer the services and/or merchandise as set forth above for the sum of \$_____, payable as follows:

2. Said funds as aforesaid shall be placed with _____ hereinafter sometimes referred to as "Trustee" within ten days after receipt thereof. In the event, upon the death of Beneficiary, said funds are inadequate to provide for the services above described, then the funds shall be used by the Funeral Director to provide professional services and/or merchandise of a type as nearly similar as may be purchased with said funds at the time of Beneficiary's death.

3. Upon the death of Beneficiary, the said funds shall be released by the Trustee forthwith to the Funeral Director upon receipt of a certified copy of certificate of death or other evidence of death satisfactory to said Trustee and where required by State Law, an affidavit by the Funeral Director that the funeral services and/or merchandise which has been contracted for have been so provided and that the cost was not less than the amount on deposit. Any amount on deposit not required to pay for funeral services and/or funeral merchandise shall be returned on request to the Buyer if living, or if not living to the estate of the beneficiary.

4. Said funds shall remain on deposit with the Trustee and shall remain intact as a fund until the death of the Beneficiary, or until withdrawal by Buyer as hereinafter provided; and said funds may be withdrawn only for the full amount thereof and not in part, and said withdrawals must comply with the rules and regulations of said Trustee; provided, however, that the Buyer may, at any time upon complying with the rules and regulations of the Trustee, withdraw the funds deposited to date with the Trustee pursuant to this contract. In the event of withdrawal the Buyer shall notify the Funeral Director within twenty-four hours prior to such withdrawal, and in the event the withdrawal is completed, the Funeral Director shall be relieved from any of the obligations contained in this agreement.

5. It is mutually agreed that the said Trustee is only the repository of said funds and is not liable for the fulfillment of the contract by the Funeral Director, and upon payment over to said Funeral Director of the said funds, or repayment to Buyer, the Trustee's liability shall terminate.

6. Interest earnings which may accrue on said funeral fund shall be added to and become part of said fund.

7. Upon the death of Buyer, in the event the said funds shall exceed the amount required to provide services set forth above, any surplus shall be paid over to Beneficiary's estate (or) to _____, by the Funeral Director.

8. This Agreement shall be binding upon the heirs, administrators, executors and assigns of the parties hereto.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first above written.

THE WHOLE-MAN TOTAL-FUNERAL CONCEPT

*Howard C. Raether
and
Robert C. Slater*

Example: John J. Jones dies of a disfiguring malignancy. He is survived by his widow, one son, two daughters, one daughter-in-law, one son-in-law and two grandchildren. At the time of his death his married daughter is less than a month from having her first child. His unmarried daughter is engaged. Her fiance is in the army on duty within the country.

During the first contact with the son who is handling arrangements tentatively awaiting final plans for the funeral, four areas of concern of the family become apparent. They are:

1. Will restoration of the father's face be such that viewing will be possible?
2. The pregnant daughter was her father's favorite. How will she hold up? To what extent should she participate in the arrangements and during the various periods of the funeral.
3. What about the son-in-law to be? Might he get an emergency leave to be at the funeral? He could be a real comfort to his future bride.
4. The two grandchildren are ages 7 years and 10 months. The boy, 7, the first grandchild of the deceased, loved his "Bompa" very much. Should he be allowed at the funeral home? Should he see the casketed body of his grandfather? Should he go to the service?

This hypothetical situation could well be a real one. It could be more complex or consist of only one or two "concern areas." It is spelled out not to present some problems and the solutions to them. Rather it is outlined to introduce what happens

daily in funeral homes and two ways of considering what the funeral home owner(s) and other licensees should know and do in this situation.

Two Schools of Thought

There are two basic schools of thought regarding the serving of families and the role of funeral service licensees and the education necessary for them to fulfill their tasks. One is known as the whole-man-total-funeral concept. The other is the owner-manager-technician concept. A statement on how two funeral homes, one using the whole-man concept and the other the owner-manager-technician concept, might serve this family is essential to any present-day appraisal of funeral service practices.

Before spelling out this appraisal it should be made clear that this is not a discussion of the philosophies of funeral homes with a sizable number of funerals annually and those with a small volume. There are large firms with the whole-man-total-funeral concept. There are small firms with the owner-manager-technician philosophy, firms which use service companies to do some of the things involving personal contact even when the funeral-director-owner or an associate is available.

The Whole-Man-Total-Funeral Concept

In a funeral home where the whole-man-total-funeral concept prevails, after the receipt of the call on the death of John Jones the funeral-director-owner and/or manager or one of his staff would have the responsibility to follow through with the family. This licensee would provide the person-to-person professional service outlined in another chapter. He would tell of the advantages of viewing the deceased and if he did not do the restorative work to make the viewing possible, he would check on it periodically.

The person "waiting on" this family would alert the others on the staff to the condition of the pregnant daughter. Throughout the arrangements and period of the funeral he would watch for signs that would indicate the mother-to-be ought to be momentarily removed from the central scene. If need be, he might suggest calling her doctor.

This funeral director also could suggest contacting the Red Cross, or he might do it himself if the fiance asks for emergency leave and can't get it. He might also talk to the clergyman to see if he feels it important enough to call the chaplain for the fiance's army unit about the leave.

He undoubtedly would counsel with the family about the grandson's viewing the body and his part in the funeral, if any. There again he would talk to the clergyman and if the youngster knows the cleric well, he might be one of the two or three with the boy as he goes to see his "Bompa."

The whole-man-total-funeral concept makes one person licensed to practice funeral service responsible to a family to try to meet all their needs in relation to the total funeral. While there undoubtedly will be some delegation of duty and authority, the person "waiting on" the family is responsible for the funeral of the one they loved. And if the funeral home owner is not the one, he will at some time or times check with the licensee responsible and the family to see how things are coming.

The Owner-Manager-Technician Concept

When the original death call is received by a funeral home administered under the owner-manager-technician concept there are variations in what might happen depending on the size and practices of the firm. But unlike the previously described concept, the same licensee will not be involved in all facets of the funeral. Rather there will be one or more persons with specialized knowledges or skills who will perform their tasks and having done so their responsibility for that "service" ends. For instance, at the time of the removal a family may ask about several matters pertaining to funeral arrangements which the specialized technician may not be able to answer, necessitating a referral to another staff person.

In some funeral homes with this concept there are persons who do the arranging, there are others who are with the family for the casket selection, there are those who only embalm, and there might be some who just direct the actual funeral service.

Most times these individual functionaries report to a central office or person. Sometimes that person is not a funeral service licensee. What complicates the situation is that anyone of these individuals will find he must act alone sometimes without support from anyone else.

Following the death of John Jones the areas of concern might become apparent to those associated with the funeral home with the owner-manager-technician concept. But those who argue for the whole-man concept—as the authors of this chapter do—say that the chances are less that they will for two reasons. First, the departmentalized or specialized services of the funeral home bring no single staff member in constant communication with the family so as to allow them a total picture of what is happening and what is needed. Second, because the family sees and makes various arrangements with two or three people, they are less likely to get sufficiently close to one of them to make some requests they might have, or to "unload" some of their feelings.

Rabbi Dr. Earl A. Grollman, who is a well-known pastoral psychologist, paraphrased an article for clergymen in the following manner: "The word *care* has its root in a word that originally meant *care*. The funeral director is someone who cares about, who takes care, and who takes care of. He is called upon to cure, to encourage as well as to console, to overcome soul-wounds. His is part of a meaningful care-taking profession."

This definition fits most funeral service licensees. But its ultimate more often than not is found in those practicing with the whole-man-total-funeral concept.

Licensing—Education—Recruitment

It is estimated that approximately 75% of all persons licensed in funeral service hold a funeral director's and an embalmer's license, or a combination of both. There are seven states which do not license funeral directors as such. There are eleven states where there is a single license law covering both funeral directors and embalmers, or where the requirements for funeral directors include embalmer prerequisites.

The whole-man-total-funeral idea is best served when the licensee is educated *and* licensed to do all that is done or might have to be done in a funeral service practice.

The reasoning for this is valid when looking outside of funeral service and when

realistically confronting the facts within funeral service.

It is admitted that there are men and women who prefer the technical aspects of the profession. They like to enbalm and do restorative work. It is also true that some licensees seldom prepare a remains because their personal contact and administrative duties keep them fully occupied.

There are physicians who specialize in surgery. There are lawyers who do nothing but tax work. There are dentists whose practice is limited to extracting teeth and pharmacists who are research chemists. But in each of these fields the *general* education and license is that which must first be obtained and the specialization follows.

In funeral service the reasons are as logical and compelling.

It is helpful in the serving of people for all licensees to be fully qualified. As an example, the owner or manager should have the basic knowledge if not the experience to understand an embalming problem and perhaps help solve it, or at least to be able to relate it to someone.

Likewise a licensee specializing in technical functions should be able to fill in in other capacities in the absence of those who do this normally. He should also be able to serve those who may want him as their funeral functionary.

The following chapter deals with personnel practices. But it is pertinent at this point to state that for the funeral to continue with care taking personalized service given by licensed personnel there must continue to be an influx of such personnel to replace those who die, retire, or leave the field.

As long ago as 1957 the Joint Commission on Mortuary Education said in its report that the concept of the person licensed to practice funeral service must reintegrate the embalming with the funeral directing function. Also the role of the licensee must be expanded to include services which have a therapeutic and mental health value performed for the living.

The Commission was formed in April 1956 "to examine the bundle of tasks that have been socially and legally assigned as the occupational province of present-day American funeral service personnel with a view to determining the educational experiences, both preparatory and in-service, needed for their efficient and satisfactory performance."

The conclusion previously stated was predicated on the finding that embalmers were faced with an occupational dilemma—with ambiguous status. The reasons for this were summarized in the following manner:

1. Embalming in the minds of funeral service personnel is associated with the "back room" of the funeral home.
2. Dealing with the clientele "out front" is valued by funeral service staffs.
3. While not all who are primarily embalmers are discontented, those who are are critical in a manner symptomatic of frustrated career aspirations.
4. Funeral directing only in the dual license sense (funeral director and embalmer) means management, personal contacts and funeral direction. Paradoxically in many states this requires the least formal education and training.
5. Embalmers and other technicians have had little success in organizing associations other than unions.

There is one other point that the Commission made more than a decade ago which might be viewed as prophetic. In its analysis the Commission used the phrases "house of management" and "house of labor." It is our opinion that the whole-man-total-funeral concept with the single license will discourage a division of personnel whereas the owner-manager-technician concept will encourage it to the point where there may be a separation of "management" and "labor" in a funeral home.

A funeral home owner must face up to the following facts:

"Back room" men can be obtained, but often they must be paid as much or more salary as are qualified personnel. Also, these men *do* represent the funeral home and the owner(s) for better or worse. However, it is rare that a man who will make a worthwhile staff member can be recruited to be a "back room" man, a "second class citizen." There are times when the owner is away and one or more staff members fill in for him. Or he may be busy. The funeral is just as important to the people served by these staff members as it is to those served by the owner or manager. Irreparable harm can be done by a mistake or mistakes. There is no doing it over. The greater the education of a survivor or survivors the greater the possibility of his expecting good service by an equally or better educated person associated with the funeral home. The more closely a man fits the requirements of the whole-man concept the greater his chances are of meeting the challenge and needs of those of the "new" generation.

Paul R. Keenan, now of the University of Missouri, put it well when he said in his "Education for Tomorrow" :

If the funeral service practitioner of today and tomorrow is to be successful in his contacts with other members of his community, he will be expected to meet them on an equivalent academic basis. If he does not, not only will he be at some disadvantage, but many opportunities both personal and professional which he might otherwise enjoy will not be available to him.

We must also be aware that the basic fund of knowledge is increasing in this day and age at a rate in which it is doubled every ten years. This has resulted in many changes in sociological and professional practices. In many fields it has resulted in computer storage of information—in others it has established specialties, and sub-specialties within professions and occupational groups. Employment opportunities unknown ten years ago are commonplace today, and this has contributed much to the complex situation in which today's citizen must function and which he hopes to understand.

There is no doubt, unless some unforeseen circumstance arises, that knowledge will continue to become available at a constantly accelerating rate, accompanied by a comparable complexity of life; and the person who finds himself unprepared for it will experience some difficulty in keeping abreast of new developments in everyday living. If this is true of citizens attempting to find a place in life which is satisfying to them, it will also be true of the professional who will find the many faces of society constantly changing, and who will have to cope with these changes if he is to survive. It should be remembered that he must operate both as a member of his society and also as a professional person to satisfy special needs of the community in which he elects to function.

Funeral service has been comfortable in the knowledge that it has developed according to specific customs based on the needs of the people, but no one can adequately predict the lines on which it will develop further. It does not, however, require a soothsayer to

predict that funeral service will be subjected to changes because the needs and demands of the public are changing, and will continue to change.

In the almost 100 years of licensing the funeral functionary, there have been three basic steps of progression to meet the *needs and demands of change*, with a fourth now developing fast:

1. The embalmer-public-health concept.
2. The advent of the funeral director license to embrace more than embalming and to place responsibility for actions beyond preparation of the body.
3. The dual license law in most states with most licensees being both funeral directors and embalmers, or holding a combination license.
4. The single license to practice funeral service predicated on the whole-man-total-funeral concept to encompass services essential to the place of the licensee as a "care-taker," or "care-giver," or "gate-keeper" in America in the last third of the twentieth century.

APPENDIX X

Basic Data on State Pre-Need Trust Laws

STATE	PRE-NEED STATUTE	STATE CONTROL AGENCY	PERMIT REQUIRED	AMOUNT OF PAYMENTS PUT IN TRUST	AMOUNT OF INCOME PART OF TRUST	AMOUNT BUYER CAN WITHDRAW
1. ALABAMA	no law					
2. ALASKA	no law					
3. ARIZONA	yes	yes	no	100%	100%	100%
4. ARKANSAS	yes	yes	yes	100%	100%	none
5. CALIFORNIA	Funeral directors only	yes	no	100%	Used to pay expenses and forfeitures	100% of payments
6. COLORADO	yes	yes	yes	85%	Up to 15% of contract	Amount of payments & interest accrued.
7. CONNECTICUT	Insurance law governs	yes	yes			
8. DELAWARE	Participation in such activities considered grounds for suspension or revocation of license.					
9. DISTRICT OF COLUMBIA	no law					
10. FLORIDA	yes	yes	yes (only licensees can arrange)	100%	100%	100%
11. GEORGIA	yes	yes	yes	100%	100%	100%
12. HAWAII	no law					
13. IDAHO	yes	no	no	100%	100%	100% less cost of operating trust
14. ILLINOIS	yes	yes	yes	95%	95%	Amount in trust account less 25% or \$35.00 whichever is greater.
15. INDIANA	yes	yes	yes	100% less trustee's expense	100% less trustee's expense	Amount in trust account less 10% or \$35.00 whichever is greater
16. IOWA	yes	no	no	80%	100%	Amount in trust account on mutual consent

STATE	PRE-NEED STATUTE	STATE CONTROL AGENCY	PERMIT REQUIRED	AMOUNT OF PAYMENTS PUT IN TRUST	AMOUNT OF INCOME PART OF TRUST	AMOUNT BUYER CAN WITHDRAW
17. KANSAS	yes	no	no	100%	100%	100%
18. KENTUCKY	yes	yes	yes	100%	100%	100%
19. LOUISIANA	Participation in such activities possible grounds for revocation of license.					
20. MAINE	yes	no	no	100%	100%	100%
21. MARYLAND	yes	no	Licensed funeral director and em- balmer only	100%	100%	100%
22. MASSACHUSETTS	no law					
23. MICHIGAN	yes	no	no	100%	100%	100%
24. MINNESOTA	yes	no	no	100%	100%	100%
25. MISSISSIPPI	Pre-need contracts limited severely and controlled by Insurance Commissioner					
26. MISSOURI	yes	yes	no	80%	none	73%
27. MONTANA	yes	yes	no	100%	100%	100% on mutual consent
28. NEBRASKA	yes	yes	no	100%	100%	100%
29. NEVADA	Life insurance law governs					
30. NEW HAMPSHIRE	no law	Burial associations prohibited				
31. NEW JERSEY	yes	no	no	100%	100%	100%
32. NEW MEXICO	Life insurance law governs					
33. NEW YORK	yes	yes	no	100%	100%	100%
34. NORTH CAROLINA	yes	yes	yes	100%	100%	100%

STATE	PRE-NEED STATUTE	STATE CONTROL AGENCY	PERMIT REQUIRED	AMOUNT OF PAYMENTS PUT IN TRUST	AMOUNT OF INCOME PART OF TRUST	AMOUNT BUYER CAN WITHDRAW
35. NORTH DAKOTA	yes	yes	Can be engaged in only by operators of licensed funeral establishments	100%	100%	100%
36. OHIO	yes	no	no	100%	100%	100%
37. OKLAHOMA	yes	yes	yes	90%	100%	100% of amount paid into trust fund
38. OREGON	yes	no	no	100%	100%	100%
39. PENNSYLVANIA	yes	yes	no	last 70%	100% on deposit	last 70% of payments.
40. RHODE ISLAND	no law - Pre-need arrangements may be grounds for suspension or revocation of license					
41. SOUTH CAROLINA	no law - funeral directors may not collaborate with life insurance companies in this area					
42. SOUTH DAKOTA	yes	no	no	100%	100%	100%
43. TENNESSEE	yes	yes	no	100%	100%	100%
44. TEXAS	yes	yes	yes	90%	100% less trust expenses	All of payments held in trust - no interest
45. UTAH	yes	yes	yes	at least 75%	100% of trust	90% of the amount placed in trust
46. VERMONT	no law					
47. VIRGINIA	yes	no	no	100%	100%	Mutual consent
48. WASHINGTON	Insurance law governs					
49. WEST VIRGINIA	yes	yes	no	95%	95%	Amount in trust less 25% or \$35.00 whichever is greater

STATE	PRE-NEED STATUTE	STATE CONTROL AGENCY .	PERMIT REQUIRED	AMOUNT OF PAYMENTS PUT IN TRUST	AMOUNT OF INCOME PART OF TRUST	AMOUNT BUYER CAN WITHDRAW
50. WISCONSIN	yes	no	no	100%	100%	100%
51. WYOMING	Commissioner of Insurance sets out rules and regulations					

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE

Second Session - Ninth Legislature .

I. REQUEST

Bill No. House Bill 509 (proposed CS)
 Title: An Act relating to funerals and the practice of mortuary science
 Requested by: House Commerce Committee Date: _____
 Return Date Requested: _____
 Agency: Commerce Program: Licensing Professions

II. FISCAL DETAIL

Budget Request Unit(s) Affected: Regulating and Licensing of Professions

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100 PERSONAL SERVICES						
200 TRAVEL		6.0				
300 CONTRACTUAL		5.0				
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		11.0	.0	.0	.0	.0

B. FUNDING: (Thousands of dollars)

GENERAL FUND		11.0	.0	.0	.0	.0
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	0 /	0 /	0 /	0 /	0 /
MAN MONTHS (P./T.)	/	0 /	0 /	0 /	0 /	0 /

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This bill does not create a board, but will place the responsibility for setting standards, developing examinations and examining and licensing applicants within the Department of Commerce and Economic Development. Total licensees are estimated to be from 75 to 100 persons and places of business initially. The Department will need contractual assistance to formulate regulations and funding to hold hearings the first year. We are assuming an effective date of July 1, 1976 and that investigations and enforcement are the responsible of the Attorney General.

IV. ATTACHMENTS

V. DATE: February 2, 1976 PREPARED BY: Sharon Andrew, Director

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

JOINT COMMERCE COMMITTEE
HEARING AGENDA FOR FEBRUARY 6, 1976

AND

SUMMARY REPORT OF THE INTERIM COMMITTEE
ON MORTUARY SCIENCE

SENATOR ED WILLIS
CHAIRMAN INTERIM COMMITTEE

REPRESENTATIVE BOB BRADLEY
CHAIRMAN JOINT COMMERCE COMMITTEE

TELEGRAM

NCA ALASKA COMMUNICATIONS, INC.

PHONE: 526-6440

JUNEAU, ALASKA 99801

1976 FEB 5 PM 8 34

02095 POM ANCHORAGE ALASKA 15 02-05 0340P AST

PMS REP BOB BRADLEY

JUN

1261

AS I READ HB509 EDUCATIONAL STANDARDS TOO HIGH

AND WOULD INCREASE CONSUMER COSTS. URGE REVISION

RICHARD L JOHNSON PO BOX 11 99510

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

02065 POM ANCHORAGE AK 15 02-04 945A AST

1976 FEB 4 PM 5 55

PMS REPRESENTATIVE BOB BRADLEY STATE HOUSE

POUCH V

167

JUN

URGE DELAY OF CSHG 509 BECAUSE IT NEEDS FURTHER STUDY

MARIA FOX BOX 600 LAKERIDGE DRIVE EAGLE RIVER 99577

*Respect your
for advice*

*hearing
about*

*Standing further Review
further comments
Further comments
Ed Weller changed up
your district*

TELEGRAM

ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

1976 FEB 5 PM 7 59

12062 POM FAIRBANKS ALASKA 02-05 445P AST

PMS REP BOB BRADLEY

JUN

251

UNLESS CSHB509 CONTAINS DUAL LICENSING I WOULD

URGE ITS DEFEAT

JIM HEIBER 415 ILLINOIS FAIR

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 536-6440

JUNEAU, ALASKA 99801

1976 FEB 5 PM 8 02

CJ

12060 POM FAIRBANKS ALASKA 02-05 445P AST

PMS REP BOB BRADLEY

JUN

250

OPPOSE CSHB509 BECAUSE IT IS TOO RESTRICTIVE

RAMONA VAN DE DEEGAETE

738 WEST 72 ANCH

TELEGRAM

ALASKA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

1976 FEB 5 PM 7 59

12061 POM FAIRBANKS ALASKA 02-05 445P AST

PMS REP BOB BRADLEY

JUN

249

REQUEST FURTHER CONSIDERATION OF ALL ASPECTS CSH8509

BEFORE PASSAGE URGE CAUTION

JOHN CAVEN 4024 EVERGREEN FAIR

TELEGRAM

RCA ALASKA COMMUNICATIONS INC

PHONE: 536-6440

JUNEAU, ALASKA 99801

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12064 FAIRBANKS ALASKA POM 02-05 445P AST

PMS REP BOB BRADLEY

JUN

252

DOES CSHB509 REALLY CONSIDER THE CONSUMER URGE CAUTION

BEFORE PASSAGE

WALLACE BELL 2100 STANFORD DR ANCH

TELEGRAM

BCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

1976 FEB 5 PM 8 05

CJ

12067 POM FAIRBANKS ALASKA 02-05 445P AST

PMS REP BOB BRADLEY

JUN

AS I READ CSHB509 EDUCATIONAL STANDARDS TOO HIGH FOR

ALASKA

RITA IHITACAGA

509 MARINE VIEW JUNEAU

TELEGRAM

ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

1976 FEB 5 PM 8 05

CJ

12066 POM FAIRBANKS ALASKA 02-05 445P AST

PMS REP BOB BRADLEY

JUN

254

URGE DEFEAT CSHB509 BECAUSE IT MAY BE TOO COSTLY FOR THE

CONSUMER

PAUL WAGNER SR 525 4TH FAIR

TELEGRAM

ALASKA COMMUNICATIONS, INC.

PHONE: 580-6440

JUNEAU, ALASKA 99801

1976 FEB 5 PM 8 04

CJ

12065 POM FAIRBANKS ALASKA 02-05 445P AST

PMS REP BOB BRADLEY

JUN

253

COST OF FUNERALS ALREADY TOO HIGH CSHB509 WOULD DRIVE THEM

HIGHER

ROBERT W BIGGS

738 WEST 72 ANCH

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

1976 FEB 5 PM 8 06

CJ

12068 POM FAIRBANKS ALASKA 02-05 445P AST

PMS REP BOB BRADLEY

256

JUN

UNLESS CSHB509 CONTAINS DUAL LICENSING I WOULD URGE

ITS DEFEAT

IRENE S LOWERY RR5 BOX 5199 NBR 32 JUNEAU

TELEGRAM

NCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

1976 FEB 5 PM 8 35

02096 POM ANCHORAGE ALASKA 15 02-05 0340P AST

PMS REP BOB BRADLEY

0262

JUN

URGE FURTHER STUDY TO INCORPORATE APPRENTICESHIP

AND TRAINING AGENCY REQUIRMENTS IN HB509

RANDOLPH WEST 1542 G STREET 99501

TELEGRAM

BCA ALASKA COMMUNICATIONS, INC.

PHONE: 588-6440

JUNEAU, ALASKA 99801

02064 POM ANCHORAGE AK 15 02-04 945A AST

1976 FEB 4 PM 5 55

PMS REPRESENTATIVE BOB BRADLEY STATE HOUSE

POUCH V

0165

JUN

UNLESS CSHB509 CONTAINS DUAL LICENSING

I WOULD URGE ITS DEFEAT

KEN VOLTZ

ANCHORAGE ALASKA

TELEGRAM

NCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

02063 POM ANCHORAGE AK 15 02-04 945A AST

1976 FEB 4 PM 5 55

PMS REPRESENTATIVE BOB BRADLEY STATE HOUSE

POUCH V

0164

JUN

CSHB509 NEEDS MUCH REVISION AND SHOULD CONTAIN DUAL

LICENSING

DENNIS WARD

ANCHORAGE AK

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 536-6440

JUNEAU, ALASKA 99801

1976 FEB 4 PM 5 56

02066 POM ANCHORAGE AK 15 02-04 945A AST

PMS REPRESENTATIVE BOB BRADLEY STATE HOUSE

POUCH V

JUN

URGE DELAY IN CSHB509 PENDING FURTHER STUDY WITH

RESPECT TO RECIPROCITY

RICKY LOWE 3404 WOODLAND PARK DRIVE

ANCHORAGE ALASKA

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

02068 POM ANCHORAGE AK 15 02-04 945A AST

1976 FEB 4 PM 6 00

PMS REPRESENTATIVE BOB BRADLEY STATE HOUSE

POUCH V

0171

JUN

AS I READ CSHB509 EDUCATIONAL STANDARDS TOO HIGH FOR ALASKA

CHRIS MILLAR SRA BOX 40510

ANCHORAGE ALASKA

TELEGRAM

HCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

1976 FEB 4 PM 6 01

02069 POM ANCHORAGE AK 15 02-04 945A AST

PMS REPRESENTATIVE BOB BRADLEY STATE HOUSE

POUCH V

JUN

PROPOSED FTC FUNERAL RULES NOW PENDING MAY NEGATE

CSHB509

FRED KEHL

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

1976 FEB 4 PM 6 03

02072 POM ANCHORAGE AK 15 02-04 945A AST

PMS REPRESENTATIVE BOB BRADLEY STATE HOUSE

POUCH V

1275

JUN

DOES CHSB 509 REALLY CONSIDER THE CONSUMER URGE

CAUTION BEFORE PASSAGE

ERNIE HAYWOOD 835D STREET ANCHORAGE 99501

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC. 1976 FEB 4 PM 6 45

PHONE: 586-6440

JUNEAU, ALASKA 99901

02084 POM ANCHORAGE ALASKA 15 02-04 340P AST

PMS REP BOB BRADLEY

JUN

CSHB264 WOULD VIRTUALLY PREVENT ME FROM PURSUING

MY VOCATION OF THE PAST FIVE YEARS

LARRY WOOTEN 4131 LAUREL ANCHORAGE

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

1976 FEB 5 AM 12 11

02185 POM ANCHORAGE ALASKA 15 02-04 0922P AST

PMS SEN BOB BRADLEY

0192

JUN

OPPOSE CSHB509 BECAUSE OF RESTRICTIVENESS

GORDON W CATCHING BOX 6187 ANNEX

TELEGRAM

NCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

1976 FEB 5 PM 8 37

02098 POM ANCHORAGE ALASKA 15 02-05 0340P AST

PMS REP BOB BRADLEY

JUN

0264

HOUSE BILL 509 LACKS COMPREHENSIVE STRUCTURE

AND IS VAGUE NEEDS EXTENSIVE WORK THANK YOU

LA ROGERS 3637 KNIK AVENUE 99503

TELEGRAM

FCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1976 FEB 5 PM 8 07

12069 POM FAIRBANKS ALASKA 02-05 445P AST

PMS REP BOB BRADLEY

JUN

~~12069~~ 257

URGE REJECTION OF CSHB509 IN PRESENT FORM AS IT WOULD

RESTRICT PREPLANNING FUNERAL SERVICES

ROBERT FARMSWORTH RR6 BOX 4064 JUNEAU

TELEGRAM

ALASKA COMMUNICATIONS, INC.

PHONE: 336-6140
UNEAU, ALASKA 99801

1976 FEB 5 PM 7 40

12072 POM FAIRBANKS ALASKA 02-05 520P AST

REP BOB BRADLEY

0260

JUN

I CANNOT WITH A CLEAR CONSCIENCE SUPPORT OR ENDORSE

CSHB509

BILL FREIDEL 318 YANKOVICH RD FAIR

TELEGRAM

COA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

1976 FEB 5 PM 7 58

12060 POM FAIRBANKS ALASKA 02-05 445P AST

PMS REP BOB BRADLEY

JUN 248

UNLESS CSHB509 CONTAIN DUAL LICENSING I WOULD URGE ITS

DEFEAT

PAUL ALLEN WAGNER JR

525 4TH AVE FAIR

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 526-6440

JUNEAU, ALASKA 99801

1976 FEB 4 PM 5 59

; 02067 POM ANCHORAGE AK 15 02-04 945A AST

PMS REPRESENTATIVE BOB BRADLEY STATE HOUSE

POUCH V

0170

JUN

OPPOSE CSHB509 BECAUSE IT IS TO RESTRICTIVE

MR AND MRS LEONARD HUNTER BOX 440H STAR ROUTE A

ANCHORAGE ALASKA

TELEGRAM

ECA ALASKA COMMUNICATIONS, INC.

PHONE: 582-6440

JUNEAU, ALASKA 99801

02070 POM ANCHORAGE AK 15 02-04 945A AST

1976 FEB 4 PM 6 01

PMS REPRESENTATIVE BOB BRADLEY STATE HOUSE

POUCH V

0173

JUN

COST OF FUNERALS ALREADY TOO HIGH CSHB509 WOULD DRIVE
THEM HIGHER

JOANNE L RAVITHIS 940 WEST 77TH ANCHORAGE

TELEGRAM

BCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1976 FEB 4 PM 6 02

02071 POM ANCHORAGE AK 15 02-04 945A AST

PMS REPRESENTATIVE BOB BRADLEY STATE HOUSE

POUCH V

174

JUN

CSHB509 TOO COMPLICATED, I FAVOR SIMPLICITY URGE

REVISION

IRENE BRADY 2032 BOREALIS ANCHORAGE ALASKA

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

1976 FEB 4 PM 6 45

02082 POM ANCHORAGE ALASKA 15 02-04 329P AST

PMS HON ROBERT BRADLEY

0178

JUN

BEING MEMORIAL COUNSELOR EIGHT YEARS FEEL STRONGLY

RE-ARRANGED MEMORIAL SERVICES ARE OF BENEFIT TO PUBLIC.

THELMA KENISON 4521 CORDOVA APT 1 99503

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC. FEB 4 PM 6 45
PHONE: 586-6440
JUNEAU, ALASKA 99901

02083 POM ANCHORAGE ALASKA 15 02-04 345P AST

PMS REP BOB BRADLEY
179

JUN

OPPOSE CSHB264 AND CSHB509 BECAUSE THEY RESTRICT OFFERING
PREPLANNED FUNERAL ARRANGEMENTS

KEN PIEPGRAS STAR ROUTE B BOX 115 PALMER

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.



Bruce Funeral Home

P.O. Box 2351
Anchorage, Alaska 99510

February 4, 1976

The House and Senate Commerce Committee
Alaska State Legislature
Juneau, Alaska

Re: Hearing on Mortuary Science and Related Bills

Dear Legislators:

HOUSE BILL 509:

HB 509 on Mortuary Science is not at all comprehensive and leaves too many areas up to others to decide its meaning. The lack of definitions will only place this bill, if enacted, in the courts for interpretation, which is what regulatory statutes are supposed to eliminate. Thorough study of other state laws would show that very definite guide lines must be set out in the statute, then allowing further rules and regulations to be adopted if needed. Alaska will be unique in that this profession will be regulated by three agencies: Commerce, Health and Social Services and Revenue, when other states have professional boards, made of of practitioners that adopt its rules and regulations. I do not advocate a board due to the limited number of practitioners, but feel the voice of the majority of practitioners must be listened to, in that we are the ones that will have to live with these laws both professionally and economically.

As an individual as well as a member and officer of the Alaska Allied Funeral Services Association, inc., I favor a dual license whereby the funeral director does not first have to be an embalmer; strong apprenticeship/practicum training requirements; special license provisions in case of the death of the licensee, so that a business that has taken many years of work to develop and large financial investments, is not eliminated and cause financial loss to the survivors; fair reciprocity requirements and a well structured cost disclosure clause included as a part of the body of the "Mortician" bill and not as a piggy back issue. I personally do not desire to see the educational standards raised so high that we cannot afford to get help and want to see eliminated the area where the department has the right to decide what courses should be taken in college prior to attendance at a school or college of Mortuary Science. No other state has this requirement.

HOUSE BILL 264:

Testimony was given to the House Commerce Committee last year regarding this bill. I feel that further study should be afforded this bill to cover all avenues concerning trusting of pre-need funeral services.

The House and Senate Commerce Committee
February 4, 1975
Page -2-

Presently the Federal Trade Commission is investigating laws such as this as a restraint of trade in denying the consumer the right of choice, of pre-planning and/or pre-paying their final rites. To establish a Trust Fund, we have been informed by local Anchorage area banking institutions, that a minimum of \$100,000 is required and an administration fee of \$500.00 is charged to administer that fund.

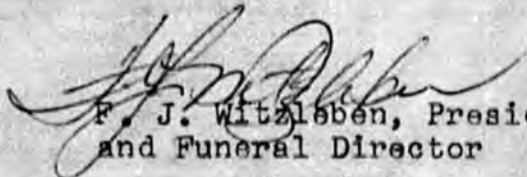
HOUSE BILL 271:

Testimony was given to the House Commerce Committee also last year regarding this bill. This bill does not require any specific type of pricing, and still allows the funeral establishment to give a family one lump sum price and terms of payment. It would also make it impossible to even remove the remains from the place of death until all arrangements had been made and completed with the family and the contractual agreement signed. This is virtually impossible. We submitted a proposed substitute to you last year. During the interim of the legislature this bill, or its piggy back identical, was gone over many times.

As a practitioner in the field of funeral service, I feel that great revisions are needed to HB 509 and its piggy back issues or HB 264 or 271 which ever way they are presently written before I can support the bill.

I sincerely hope that serious consideration will be given to all testimony presented to this committee as well as a complete review of all testimony and materials submitted to the sub-committee on mortuary science over the past 5½ months.

Respectfully yours,


F. J. Witzleben, President
and Funeral Director



Bruce Funeral Home

P.O. Box 2351
Anchorage, Alaska 99510

February 4, 1976

The House and Senate Commerce Committee
Alaska State Legislature
Juneau, Alaska

Re: House Bill 509

Dear Legislators:

I, Kenneth D. Burton, duly licenses to practice the science of embalming in the State of Alaska, and being unable to represent myself, make the following statement.

I feel HB 509 as presently written is not in the best interests of my profession.

I favor:

1. Separate licenses for Embalmers & Funeral Directors (Dual License concept).
2. A comprehensive apprenticeship program for both Embalmers & Funeral Directors spelled out in the law.
3. Special, temporary licenses for widows and legal representatives for administrative purposes only.
4. Addition of definitions to prohibit loose structure and ability for private interpretation.
5. A tightly structured disclosure of costs and services section that will prevent practices that the FTC is now investigating.
6. A law that is reflective of testimony given and at least equal to the other laws of the other 49 states and is not reflective of the whims of a few.

I oppose:

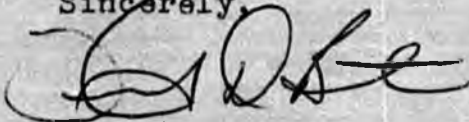
1. High academic requirements in the place of "career centered" training.
2. The loose structure of HB 509 that leaves too much room for private interpretation that may have to be settled in the courts.
3. Too much power given to the Department as outlined in the Bill. Example: the Department being given the power to decide what courses should be taken to meet educational requirements.
4. The clause in the reciprocity section that stipulates 1 year of practice prior to applying for reciprocal license.

Page-2

I did not favor HB 509 in its original state. Many changes have been made and much work has been done. However, I personally feel that HB 509 in its present form is inadequate, does not meet the needs of the practitioners in this state, nor does it meet the needs of the consumer.

If we are to develop laws, it is our duty as citizens and your duty as legislators to see that good laws are made for the benefit of all. Since HB 509 does not meet these requirements and, I feel, is just an updated version of the vagueness already on the books, I withdraw my support of it until further studies and changes are made.

Sincerely,

A handwritten signature in cursive script, appearing to read "K. D. Burton".

Kenneth D. Burton
Bruce Funeral Home

Valley Memory Gardens and Mausoleum

ALASKA'S MOST BEAUTIFUL MEMORIAL PARK

OFFICE: 236 W 10th AVE ANCHORAGE
907/272-6850



January 29, 1976
The Honorable Bob Bradley
Chairman House Commerce Committee
State of Alaska
Pouch V
Juneau, Alaska 99801

Ref. HB 264 and HB 509

Dear Representative Bradley:

Reference is made to the forthcoming joint and House hearings on HB 264 and HB 509. For some time the Federal Trade Commission has had under investigation, the funeral industry and trade practices and has published as of August 15, 1975, "Funeral Industry Practices, Proposed Trade Regulation Rule and Staff Memorandum". It is my understanding that hearings will be held sometime in April of this year.

HB 264 and HB 509, as proposed, will give legislative sanction to Alaska funeral directors to engage in the types and practices to be found by the FTC, harmful to the public.

In this regard, I would like to draw your attention to copies of pages 1-7 of the aforementioned report, containing discussions of some of these practices and especially pages 19-20, and 85-103 wherein funeral directors have monopolized and limited competition, in particular please note the information starting on page 86. HB 509 and HB 264, while appearing to protect the consumer is actually designed to restrict trade by means of making it impossible for companies to offer a pre-arrangement service while there is no immediate stress on a family because of a recent death, but rather such type legislation is designed to take advantage of the consumer by performing their services only when a family is distraught and not always thinking clearly. This is accomplished by legislating laws to require 100% of monies received for pre-need services to be placed in trust. What seller could operate with such absolute restrictions, notwithstanding the threat of loss of license to practice and making it possible only for licensed funeral directors to sell before need?

I am in complete agreement that there should be some type of constructive legislation restricting certain funeral practices, however, I can't help but feel that this is a far more complex matter than appears on the surface, requiring a considerable amount of further study as is being borne out by the FTC investigation.

If these bills are passed in their present form, the consumer will have been denied the right of choice as to when and under what conditions he will be allowed to make final arrangements for himself or his family.

Yours truly,


Arthur S. Richmond,
Valley Memory Gardens, Inc.

FUNERAL INDUSTRY PRACTICES

Proposed Trade Regulation Rule

and

Staff Memorandum



Division of Special Projects
Bureau of Consumer Protection

August, 1975

FUNERAL INDUSTRY PRACTICES

Proposed Trade Regulation Rule

and

Staff Memorandum

August, 1975

Arthur R. Anzel, Attorney
William P. Golden, Attorney
Susan C. Martell, Research Analyst
Thomas C. Nelson, Research Analyst

Division of Special Projects
Bureau of Consumer Protection

James V. DeLong,
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Director
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The staff wishes to gratefully acknowledge the editorial assistance of Ann Stahl and the work of Rita Allen, Roselyn Alston, Kathryn Hermann, and Lorraine Swint in typing the manuscript. A special thanks is owed to Mary Forster for her special efforts and invaluable services.

This memorandum was prepared by the staff of the Commission's Bureau of Consumer Protection, Division of Special Projects. The Commission has not adopted any findings or conclusions of the staff.

UNITED STATES GOVERNMENT

Memorandum

TO : Commission

FROM : Division of Special Projects
Bureau of Consumer Protection

SUBJECT: Funeral Industry - File 732 3057 (Program I-12)
Proposed Trade Regulation Rule

DATE: August 20, 1975

INTRODUCTION

This memorandum supports the Funeral Industry Practices Trade Regulation Rule which has been proposed to correct the unfair and deceptive practices identified in the course of the staff's investigation. These abuses are industry-wide, and staff is convinced that a Trade Regulation Rule is the most direct and efficient way to eliminate them.

The staff formally proposed the funeral investigation to the Commission in July, 1973 after several months of preliminary investigation into industry conditions and consumer abuses. Staff's 239 page planning memo to the Commission 1/ described, in considerable detail, the industry and a number of consumer problems, and forms part of the basis for the rule we are proposing.

Following Commission approval of the formal industry-wide investigation, the staff initiated, in October, 1973 a pilot funeral price survey in the District of Columbia, the results of which were released in February, 1974. The D.C. survey was the first systematic effort to get hard data on funeral prices and practices in a particular area, and to make that data available to the public. The D.C. survey produced much useful information. 2/ It also inspired a number of similar surveys all over the country--by state and

1/ Division of Evaluation, Bureau of Consumer Protection, Unfair Practices in the Funeral Industry: A Planning Report to the Federal Trade Commission, June 29, 1973 [hereinafter cited as F.T.C. Funeral Investigation Planning Memo].

2/ DIVISION OF SPECIAL PROJECTS, BUREAU OF CONSUMER PROTECTION, U.S. FED. TRADE COMM'N, SURVEY OF FUNERAL PRICES IN THE DISTRICT OF COLUMBIA (1974) [hereinafter cited as D.C. FUNERAL SURVEY].



local governments, 3/ consumer groups, 4/ and newspapers 5/ -- which have likewise yielded valuable data.

In addition to the price survey, the staff has obtained information from funeral directors, visits to funeral homes, industry employees and ex-employees, casket manufacturers, memorial society members, consumer interviews and complaint letters, trade journals, scholarly papers, and magazine and newspaper articles.

The information gathered by the investigation confirms the view expressed in our initial report that there are many serious abuses of consumers by large numbers of the nation's 22,000 funeral homes 6/ and consequently an urgent need exists for remedial action by the Commission.

Each year, millions of families are forced by the death of a relative 7/ to make one of the largest consumer

3/ E.g., Arkansas; Delaware; Florida; Iowa City, Iowa; Massachusetts; Minnesota; and Syracuse, New York.

4/ E.g., Indiana Public Interest Research Group; New York Public Interest Research Group; Consumer Action of Kansas City, Missouri.

5/ Newspaper surveys have been conducted by the San Bernadino Sun-Telegraph, San Bernadino, CA; St. Petersburg Times, St. Petersburg, FL; The Cincinnati Enquirer, Cincinnati, OH; The Louisville Courier-Journal, Louisville, KY; and the Northern Virginia News, Vienna, VA.

6/ The precise number of funeral establishments is not entirely clear. The most recent figures from the Department of Commerce, Social and Economic Statistics Administration indicate that there were 20,854 funeral service and crematory establishments operating in 1972. U.S. DEP'T OF COMMERCE, SUMMARY REPORT OF THE 1972 CENSUS OF SELECTED SERVICE INDUSTRIES. The industry's largest trade association, the National Funeral Directors Association has used the figure 22,500. NATIONAL FUNERAL DIRECTORS ASSOCIATION, FUNERAL SERVICE 13 (1974). The Labor Department has quoted a figure of 23,000 and has calculated that there were 45,000 licensed funeral directors and embalmers in 1972. U.S. DEP'T OF LABOR, OCCUPATIONAL OUTLOOK HANDBOOK 174 (1974-75).

7/ There were 1,977,000 deaths in the United States in 1973. U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE U.S., 51 (1974).

purchases, 8/ under severe handicaps of time pressures, emotional distress and lack of information or experience. 9/ As an FTC hearing examiner noted long ago, there are few, if any industries where the ultimate consumer is so disadvantaged or where his normal bargaining power is so diluted in a situation of such immediate need. 10/

The need for protections for funeral buyers is particularly acute because the funeral director plays two conflicting roles. His public relations image emphasizes his duties as a professional serving people at a time of particular desperation. His economic self-interest puts him in a different role: he is a salesman of goods and services to these same people; and, if he wants to prosper or even to survive, he must move his high profit lines.

This conflict is exacerbated because the image of disinterested professionalism makes the funeral director a more effective merchandiser. The more the public accepts the professional role, the less it will inquire, shop, or bargain, and the greater the opportunity for high mark-ups,

8/ Based on the D.C. funeral survey and similar surveys across the country, consumers pay funeral directors an average of \$1100 to \$1400. Cemetery and related expenses bring the average total for funeral and burial expenses to approximately \$2000. See sources cited in notes 2-5, supra; FFDA Statistical Survey Shows Few Ratio Changes, AMERICAN FUNERAL DIRECTOR 22 (July, 1975) (1974 average funeral director charge of \$1287).

Gross receipts for funeral homes and crematories have been estimated at \$1.91 billion for 1973, \$2.00 billion for 1974, \$2.12 billion for 1975, and are projected to reach \$2.80 billion by 1980. U.S. DEP'T OF COMMERCE, U.S. INDUSTRIAL OUTLOOK WITH PROJECTIONS TO 1980, 480 (1975).

Outlays for items such as flowers (approximately \$800 million, annually), cemetery expenses (approximately \$735 million, annually), monuments and markers (approximately \$450 million, annually), and burial vaults (approximately \$305 million, annually), bring the total annual expenditures for funeral related items to approximately \$4.2 billion. See MEDIA AND CONSUMER 14 (June, 1974).

9/ The disadvantaged position of the consumer in the funeral transaction was discussed, in detail, in the planning memorandum at 64-78. See note 1 supra.

10/ See In re Casket Mfrs. Assn., 52 F.T.C. 958, 971 (1954).

unnecessary services and unscrupulous practices. Consequently, the industry tends to promote the professional image and fight anything that would interfere with it or that would permit other than disinterested organizations to come between it and the consumer. The industry is well organized in terms of state boards of regulation and trade associations 11/ and uses its advantages to limit price disclosure, low cost disposition, pre-need arrangements, and price advertising, all in the name, of course, of professional ethics and good practice.

Once the consumer comes to the funeral home, a number of sales techniques of varying unsavoriness are used to increase the amount he spends. Some of these methods are common to many industries, and normally we rely on the forces of competition and the good sense of consumers to punish those who use them and reward those who do not. This does not work for funerals because the bereaved purchaser is not emotionally able to bargain 12/ and is seldom even aware that he is being deceived or exploited.

The nature of the funeral transaction and the incentives operating in the industry have been discussed extensively in prior memoranda, and need not be reiterated in detail here. It is enough to say that the general marketing strategy of much of the industry seems to follow the following precepts:

1. Eliminate low cost alternatives to the standard funeral through control of laws, regulations, and codes of ethics.

2. Use of any means possible - laws and regulations, propaganda, refusal to deal - to stunt the development of memorial societies or pre-need societies which can bargain on behalf of the customer in a non-emotional context.

3. Make it as difficult as possible for the consumer to obtain price information in advance of need or without coming to the funeral home.

11/ The anticipated argument that the Commission should not take action against abuses because of the presence of state regulatory boards is particularly hollow in the case of the funeral industry. See F.T.C. Funeral Investigation Planning Memo 17-30: One particularly revealing illustration is the fact that the general counsel (an active policy-maker) for the industry's largest trade association, NFDA, is also the general counsel to the conference of state regulatory boards, which proposes state regulations.

12/ Moreover, once the body is in the hands of a funeral director, the consumer is unlikely to take his business elsewhere.

4. When the purchaser comes to the funeral home, keep him confused about prices and options. Tie products together so he buys things he would not want if he thought about it. Sell him up the price line, and suggest that any thought of economy is inappropriate.

5. Because the funeral business depends heavily upon personal referrals, it is important that the confusion be total but subtle. The consumer must be confused about prices, options and requirements, but he must not be able to discern that he is being confused deliberately.

The rule proposed here attacks every part of this strategy. It is designed to provide the consumer with substantially more information on prices and choices, eliminate the devices used to obtain unfair leverage over the consumer, abolish the outright frauds and deceptions that have been structured into the industry, and free up the market so that the dealings between funeral director and customer will be more fair, and the growth of memorial societies and pre-need arrangements more possible.

Since the Improvements Act expanded the FTC's jurisdiction to cover practices that "affect" commerce as well as those "in" commerce, the Commission's authority to promulgate Trade Regulation Rules 13/ with respect to funeral abuses is beyond serious question.

Almost every funeral home has sufficient involvement in one or more of the following activities to satisfy the statutory jurisdictional prerequisites: 14/

13/ The Commission's authority to issue Trade Regulation Rules defining certain practices as unfair or deceptive has been explicitly recognized by case. See Nat'l Petroleum Refiners Assn. v. F.T.C., 482 F.2d 672 (D.C. Cir. 1973), cert denied, 415 U.S. 951 (1974), rev'g 340 F. Supp. 1343 (D.D.C. 1972). More recently, the Commission has received explicit rulemaking authority by statute (Magnuson-Moss Warranty/FTC Improvement Act, P.L. 93-637, Sec. 202 (Jan 4, 1975)).

14/ No specific amount of sales in or affecting commerce is required; only that the amount is not de minimis. In NLRB v. Inglewood Park Cemetery Association, 355 F.2d 448 (9th Cir. 1966), the Ninth Circuit held that \$3,086.31 in out-of-state purchases (out of \$500,000 in sales receipts) was not de minimis. The Seventh Circuit has held that \$2,000 is not de minimis. NLRB v. Aurora City Lines, Inc., 299 F.2d 229, 231 (7th Cir. 1962). In Surrey Sleep Products, the Commission rejected, as clearly without merit, the argument that \$5,000 in interstate sales was de minimis. See 73 F.T.C. 523, 553 n. 3 (1968).

- purchase from out-of-state suppliers of caskets, burial vaults, and other funerary merchandise sold to customers and purchase of equipment used; 15/
- use of media and interstate communications, including the United States mail and the telephone, in connection with the arrangement and sale of and collection for funeral services and merchandise;
- sale of funeral services and merchandise to customers from different states;
- advertising in newspapers or magazines with interstate circulation, in radio broadcasts transmitted to potential customers in different states, or on billboards located on interstate highways; and
- shipment of deceased human bodies by common carrier across state lines to funeral directors located in different states and receipt for burial or other final disposition of bodies shipped across state lines from funeral directors located in other states.

15/ Out-of-state shipment of caskets and other funerary merchandise was accepted as a sufficient basis for both "in" and "affecting" commerce jurisdiction in an antitrust action decided by a United States District Court in California. See Cathay Mortuary-Wah Sang v. Funeral Directors of San Francisco, 1965 Trade Cas. Paragraph 71, 505 (N.D. Cal.). But cf. Kalin Funeral Home v. Fultz, 313 F. Supp. 435 W.D. WA 1970), aff'd 442 F.2d 1342 (9th Cir. 1971). In Cathay it was alleged that 60% of all caskets used in San Francisco came from outside the state. The staff believes that the amount of interstate shipment of caskets would be equally high in most areas of the country.

The Cathay and Kalin decisions and the Commission's jurisdiction over funeral homes are discussed in greater detail in a 16 page memo from Arthur Angel to J. Thomas Rosch dated Jan. 17, 1975 (on file).

Given the existence of funeral problems throughout the country and the magnitude of the federal government's payments 16/ to the funeral industry, funeral practices are clearly a proper concern of the federal government.

The proposed rule is directed solely to practices of funeral directors (with the exception of the section against caskets for cremation, which must also be directed against crematories, and the section preventing interference with the market, which is directed at trade associations and others beside funeral directors).

The rule does not deal with a number of related but distinguishable consumer problems encountered in our investigation which involve funeral supply companies (casket and vault manufacturers) and cemeteries.

It is possible that some of these other kinds of problems (e.g., casket and vault warranties and manufacturer's promotional materials) can be adequately resolved by negotiation or other means short of Commission Trade Regulation Rules or lawsuits. The staff has confined its proposals to practices of funeral directors because we believe they are the most serious abuses, because we do not yet have sufficient information on cemetery and allied manufacturer practices, and because attempting to include cemetery and manufacturer abuses at the same time would make the proceedings cumbersome, overburdened and time-consuming. At some later date the staff may offer additional recommendations to deal with these other issues.

16/ Veterans' burial benefits payments totalled for fiscal year 1975, an estimated \$134,944,000. VETERANS ADMINISTRATION, GENERAL OPERATING EXPENSES, BENEFIT APPROPRIATIONS AND FUNDS 1976 Fiscal Year, vol. 1 at 5. Social security and other governmental benefits bring the federal government's annual funeral-related expenditures to nearly \$500 million.

§ 453.6 Interference with the market.

In connection with the sale or offering for sale of funeral services and/or merchandise to the public, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice for any funeral service industry member:

(a) [Offering of inexpensive funerals] or any person, partnership, or corporation, directly or indirectly, to prohibit, hinder or restrict, or attempt to prohibit, hinder, or restrict: (1) the offering, or advertising of the availability of, low-cost funerals, immediate cremation or other forms of disposition, or arrangements for funeral services in advance of need by any funeral director, memorial society, or other person, partnership or corporation;

(2) contracts or arrangements between memorial societies and any funeral director or other person, partnership or corporation providing services for the disposition of deceased human bodies.

(b) [Price advertising] or any other person, partnership or corporation, directly or indirectly, to prohibit, hinder or restrict, or attempt to prohibit, hinder or restrict, the disclosure of accurate price information regarding funeral merchandise or services by any funeral director, memorial society, or other person, partnership or corporation offering services for the disposition of deceased human bodies, whether such disclosure is made by means of advertisements in print media or broadcast media, or in any other manner.

(c) [Reliance on price advertising restrictions] to change, restrict, make or fail to make any disclosure of accurate price information about any funeral merchandise or service by print media, broadcast media, telephone, leaflets, mailings, or in any other way, because of or in connection with any law, rule, regulation or code of conduct of any non-federal legislative, executive, regulatory or licensing entity or any other entity or person whatsoever, including but not limited to professional associations.

(d) [Price availability notice] to fail to display prominently, in any advertising or promotional materials in print or broadcast media of funeral merchandise or services, the following notice:

"Funeral home prices vary substantially.
For information on our prices for funeral
merchandise and services, call:
[Telephone number]."

§ 453.7 Retention of documents.

To assure compliance with the provisions of this part and prevent future use of the unfair and deceptive practices it prohibits, all funeral homes subject to the provisions of this part shall be required to retain and to make available for inspection by Federal Trade Commission officials, upon request, true and accurate copies of the written disclosures or price lists required by § 453.3 (a)(2) and § 453.5 (b)(1), (d)(1), and (e)(1), and all revisions thereof, for at least three years after the date of their last distribution to customers, and a copy of each selection memorandum signed by a customer, as required by § 453.5 (f)(1), for at least three years from the date on which the memorandum was signed.

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Section 453.6 Interference with the market

The Practice

As is obvious from the foregoing discussion, much of the funeral director's power to force the consumer to increase his expenditures arises from the ignorance, confusion and emotional stress of the funeral situation. The problem is exacerbated because no individual consumer deals often enough with a funeral home to become knowledgeably wary.

The advantages of the funeral director could be offset in a number of ways. A potential decedent could make his own arrangements on a pre-need basis by entering into a firm contract arrived at in a less emotional context. While useful, the value of such a technique is limited. Most people do not like to make their own funeral arrangements, since it reminds them of some unpleasant facts. In addition, even if the decedent has entered into a firm agreement, the family is still vulnerable to the pressure of the situation, for arrangements can be revised.

A second useful offset to the funeral director's power would be price advertising, now almost nonexistent. ^{153/} Price advertising would give consumers information about the general standards and prices in the industry.

A third possibility, and possibly the most fruitful, is for consumers to organize. Memorial societies can develop the expertise necessary to bargain with funeral homes and can represent the interests of consumers in a way that funeral directors now profess to do.

^{153/} A 1967 survey found that only 2% of the nation's 22,500 funeral homes engaged in price advertising. Fulton, The Funeral and the Funeral Director: A Contemporary Analysis (1967), in STUDIES OF ATTITUDES TOWARD DEATH, FUNERALS AND FUNERAL DIRECTORS 39. However, there are indications that 2% may be a high estimate. For example, in a study conducted in Philadelphia, only one of the city's 364 funeral homes reported that it had advertised prices in recent years. G. Kissel, An Analysis of the Market Performance of the Funeral Home Industry in Pennsylvania 40, (1970) (unpublished Wharton School of Business M.B.A. thesis) [hereinafter cited as Kissel]. Another industry expert has stated that approximately 3% of funeral industry revenues are devoted to advertising, most of which is institutional rather than price advertising. Interview with Dr. Roger Blackwell, Professor of Marketing, Ohio State University, in Columbus, Ohio, May 12, 1975. What price advertising does exist, is likely to be highly concentrated in a particular region (e.g., Calif.) with most other areas having virtually none.

Two kinds of barriers exist to the use of these devices to reform funeral practices. The first consists of cultural barriers. It is far from clear that consumers are much concerned about the lack of price advertising. The psychological pressure to avoid death-related issues is strong. Additionally, much of the public has been conditioned successfully to eschew price considerations. Similar barriers exist to the use of pre-need contracts and memorial societies. Both require a consumer to advert to the future fact of his own death, an idea which most of us would prefer not to think about.

However, funeral directors prefer not to rely solely on these cultural barriers and have reinforced them with an elaborate web of state and private restrictions. Staff has more information on advertising restrictions than on the others, and the situation with respect to such restrictions is set forth in some detail. Other types of restrictions are then discussed to show the actual and potential existence of the same types of suppression of market forces.

1) The Practice: Price Advertising Restrictions

State restrictions on price advertising vary considerably. In several states, such as Massachusetts and Nebraska, advertising of prices for funeral goods or services is specifically prohibited by statute, while in others, such as Texas, statutes against solicitation of business by funeral directors may be used by state licensing boards to discourage price advertising. Similarly, price advertising is prohibited or severely restricted by regulations of the state licensing board in several states. ^{154/} Frequently, these administrative proscriptions are enacted pursuant to a legislative delegation of rulemaking power to the board, which exercises its authority by defining such statutory terms as "gross misconduct," "unethical behavior," and "false and misleading advertising" to include price advertisements. ^{155/} In other states, the staff believes

^{154/} E.g., Louisiana, Missouri, Oregon, Utah, Virginia, West Virginia, and Wyoming.

^{155/} In Quesenbery v. Estep, 142 W. Va. 426, 95 S.E.2d 832 (1956), the West Virginia Supreme Court upheld the validity of a board regulation which declared:

All price advertising is here declared to be unethical without exception...

95 S.E.2d at 837. Cf. Boydston v. State, 277 P.2d 138 (Okla. 1954): "Of course general advertising in itself is a character of seeking or soliciting business or patronage." At 142.

that the regulatory boards have a strong prejudice against price advertising. This bias, when coupled with the board's power to revoke or suspend licenses, effectively discourages any price advertising. 156/

Legal restrictions against price advertising are policed by the state morticians' licensing boards, which possess broad powers to revoke or suspend licenses. Composed in most states of funeral directors only, 157/ these boards have been used to protect the interests of industry members at the expense of competition and consumer interests. 158/ regulations creating barriers to entry and restricting marketing techniques have been used to suppress competition between industry members, and, explicitly or implicitly, price advertising has been opposed. 159/ It is, safe to

156/ In response to a staff request for information on state regulations and statutes related to the funeral industry, replies were received from the executives of most state boards. Some of these responses revealed an opposition to price advertising. South Dakota's Board replied that price advertising "is generally not done as it is considered unethical. At best it would be considered misleading." Letter from Donald B. Clements, Secretary-Treasurer, South Dakota State Board of Funeral Service, to Arthur Angel, January 15, 1974. The response from Arkansas stated that the only bar to price advertising there was "good taste, knowing there is no absolute way of price advertising in an ethical manner." Letter from John W. Baker, Secretary, Arkansas State Board of Examiners and Funeral Directors, to Arthur Angel, January 7, 1974..

157/ In all but eighteen states, the state board charged with regulating funeral practices is composed exclusively of funeral directors. Public representatives are included on the boards of six of the eighteen states: Massachusetts, California, Minnesota, Arizona, Delaware, and Michigan. The other twelve have a non-industry representative who usually is a government official such as a public health or vital statistics official.

158/ Kissel, supra note 153, at 73-77; BOWMAN 64-65; Blackwell, Price Levels in the Funeral Industry, 7 Q. REV. ECON. & BUS. 75, 80-84 (1967) [hereinafter cited as Blackwell]; Hearings on S. Res. 262 (Antitrust Aspects of the Funeral Industry) Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary, 88th Cong., 2nd Sess. passim (1964) [hereinafter cited as 1964 Hearings].

assert that state regulatory boards are antagonistic to advertising as a competitive weapon. 159/

When the price for risking the disapprobation of the board may be loss of one's livelihood, price advertising usually will be eschewed. Some challenges, however, have been mounted against state board regulations that prohibit price advertising. In Quesenbery v. Estep, 160/ a West Virginia statute which prohibited unethical advertising had been defined by a board rule to include a ban on all price advertising. Focusing primarily on the question of the validity of the delegation of the state's police power to the board, the court upheld the delegation of broad, discretionary rulemaking power to the board and held that the challenged rule was a valid exercise of that power.

More recent cases have declined to follow Quesenbery. Grissom v. Van Orsdel 161/ explicitly declined to follow the West Virginia decision in holding that the Florida board's restrictions on advertising exceeded its statutory authority and thereby "represented an unlawful restraint on the use and enjoyment of the defendant's business, in violation of the constitutional guarantees on which defendant relied." 162/ A similar regulation of the Connecticut State Board of Embalmers and Funeral Directors was declared invalid by a Connecticut court on the ground that a statute prohibiting unethical advertising provides no authorization for a regulation against price advertising. 163/ In two other cases, state courts have found statutes restricting price advertising to be constitutionally defective. 164/

159/ Blackwell, supra note 158, at 80-84.

160/ 142 W. Va. 426, 95 S.E.2d 832 (W. Va. 1956).

161/ 137 So.2d 246 (Fla. Dist. Ct. App. 1962).

162/ Id. at 248.

163/ Taylor & Modeen v. O'Connor, Civil No. 130602 (Conn. Super. Ct. 1963), in 1964 Hearings 241.

164/ Osborn Funeral Home v. Louisiana State Bd. of Embalmers, 216 So.2d 145 (La. Ct. App. 1968) (statute which prevented class of funeral directors from advertising credit terms denied class equal protection of laws); Needham v. Proffitt, 220 Ind. 265, 41 N.E.2d 606 (1942) (prohibition on print advertising was unconstitutional discrimination against print media).

Whether or not legal sanctions exist, price advertising is widely viewed by the industry as "unethical":

To speak of price advertising as being unethical or unprofessional may be accepting industry euphemisms for the policy of restricting competition; in any case, price advertising meets with strong disapproval in the industry. 165/

Trade associations have frequently sought to suppress such advertising either by adopting formal codes of ethics which oppose it or by using "moral suasion" to coax members to refrain from price advertising. Numerous instances have been reported whereby trade associations have expelled or otherwise harassed funeral directors who advertise the prices of their goods and services. 166/

These restraints have been legally challenged successfully. In a 1968 consent decree, the National Funeral Directors Association settled an antitrust suit brought by the Justice Department by agreeing not to keep anyone from advertising the prices of funerals. 167/ Prior to the entry of the decree, the NFDA disciplined and expelled price advertisers. The consent agreement required the Association not only to drop this practice but also to exclude any affiliated group which limits or restricts price advertising. The continuing absence of price advertising suggests that compliance with the order may be lacking. 168/

Before the Justice Department decree, a Wisconsin Circuit Court held that the NFDA and its state affiliate, the Wisconsin Funeral Directors Association, had violated

165/ Kissel, supra note 153, at 40. See also Blackwell, supra note 157, at 79; The Oak Ridge-Knoxville Way of Death, supra note 18, at 1.

166/ The Oak Ridge-Knoxville Way of Death, supra note 18 at 1; Sansing, Deathstyles, THE WASHINGTONIAN, Aug., 1973, at 54; J. RICH & L. PLATT, FUNERAL IN THE CITY OF SYRACUSE 62-63 (1973); interview with industry informant, supra note 18; interview with Jessica Mitford, author, in Berkeley, Cal., Jan. 9, 1973; interview with union members, supra note 45; CAL. DEP'T JUSTICE, THE FUNERAL INDUSTRY pt. II, at 12 (1970) (interview with funeral director).

167/ United States v. National Funeral Directors Ass'n, 1968 Trade Cas. Paragraph 72, 529 (D. Wis.).

168/ Kissel, supra note 153, at 29. See also sources cited in note 166 supra.

the state's antitrust law by engaging in a conspiracy to suppress competition among funeral directors in the pricing of services and supplies through a policy of refraining from cost advertising. 169/ Rejecting the defendants' contention that the "professional" nature of a funeral director's services justifies curbs on advertising, the court stated:

After a careful review of the record and analysis of the cases, the court has been constrained to the conclusion that the restraint of the code and by-law do not meet the test of the rule of reason either on the basis of professionalism, uniqueness, the public or quasi-public nature of the vocation or business, or a trade association regulation. 170/

This myriad of advertising restrictions contributes to the lack of price competition in the funeral industry--a condition acknowledged by industry consultants 171/ as well as scholarly observers. 172/ In an industry characterized by inelastic demand, competitive advertising would stimulate a redistribution of business, since new business cannot be generated. Recognizing this harsh fact of competitive life, funeral directors find it mutually advantageous to refrain from advertising prices.

The result of this non-competitive behavior has been considerable excess capacity and an oversupply of small firms. 173/ Since the individual entrepreneur's share of the market is insulated from the outside pressure of competition, inefficiencies lead directly to higher costs. Industry-wide data suggests that the industry is "operating at price levels which are based upon the cost curves of the

169/ Wisconsin v. National Funeral Directors Ass'n, 1967 Trade Cas. Paragraph 72,289 (Wis. Cir. Ct.).

170/ Id. at 84,720.

171/ A. RAPPAPORT, AN ANALYSIS OF FUNERAL SERVICE PRICING AND QUOTATION METHODS 7 (1971).

172/ Kissel, supra note 153; Blackwell, supra note 158.

173/ 1964 Hearings 35, 185; Kissel, supra note 153 at 54; Blackwell, supra note 158, at 76-78; HIGH COST OF DYING 17; AMERICAN WAY OF DEATH 41.

many small firms rather than upon the cost curves of large firms which can spread overhead costs over large volume." 174/

Inefficiency is protected, moreover, by the unique nature of the consumer transaction, a purchase in which the decision-making has been left solely to the seller--the funeral director. This phenomenon, which Kissel terms "one of the most significant aspects of market structure," 175/ has contributed to the formation of an industry market structure which Kissel describes as one composed of "atomistic monopolies" and which Blackwell calls "a composite of local markets which possess the characteristics of oligopoly involving a differentiated product." 176/ For the consumer, the effect of these market conditions is an artificially high price structure.

Although most funeral directors claim that funeral purchasers are not interested in price information, this self-serving statement may also be self-fulfilling, for few consumers have ever had an opportunity to obtain such information. Nevertheless, the consumer expenditure involved represents a substantial purchase by millions

174/ Blackwell, supra note 158, at 77. See also, AMERICAN FUNERAL DIRECTOR, 20 (May 1974) (remarks of Walter B. Chasen, an official of the National Funeral Directors Association):

"Why are costs so high for building occupancy? I blame overinvestment--funeral homes are being built that can only be described as monuments to the owners' pride. Structures are being planned without regard to potential income possibilities. In many smaller communities the funeral home is not in conformity with the life style of the area. When you read about these new structures in the journals, they proudly boast of expensive imported furnishings, Taj Manal landscaping, transmitters that will broadcast funeral services to distant points, sunken gardens, flaming torches, waterfalls, acres of parking. The net result is an investment ranging to four and five thousand dollars of real estate for every adult service conducted. It has been reliably estimated that over fifty percent of all funeral homes are overinvested.

175/ Kissel, supra note 153, at 9.

176/ Id. at 82; Blackwell, supra note 158, at 75.

of buyers every year. ^{177/} Frequently, funeral arrangements are made under severe time constraints by bereaved persons whose grief and disorientation preclude the exercise of normal care and judgment. Without knowledge of legal requirements or possible alternatives, funeral buyers in these circumstances are at an extreme disadvantage vis-a-vis the mortician.

In this context, price information is essential to enable consumers to make rational purchase decisions. Funeral purchasers need information about the prices, options and policies involved in selecting particular merchandise or services. Armed with such information in advance, the consumer will be in a better position to protect his own interest in negotiating a transaction with a mortician, for most purchasers deal with only one funeral director. ^{178/} Moreover, increased availability of cost data will enable consumers to shop comparatively if they so desire. The ability to shop comparatively in advance may also stimulate increased advance planning for funeral arrangements and permit greater consideration of purchase decisions before such decisions become imperative.

As indicated in the previous discussion of the anti-competitive effects of price advertising restrictions and the absence of competition in the industry, price advertising should spur competition. In striking down the price advertising restrictions imposed on the Wisconsin funeral industry, the court expressed its rationale:

The basis of the common law and statutory prohibitions against unreasonable restraint of trade is the theory that competition is the life of trade and benefits the public interest...

Advertising is a means or device calculated to stimulate competition in trade and generally benefiting the public. ^{179/}

^{177/} For 1974, funeral homes' gross receipts were estimated to be \$2.0 billion. U.S. DEP'T OF COMMERCE, U.S. INDUSTRIAL OUTLOOK--1975, WITH PROJECTIONS TO 1980, at 420 (1975). See also D.C. FUNERAL SURVEY 25-34.

^{178/} BOWMAN 52; 1964 Hearings 185; Kissel, *supra* note 153, at 9-12; A. RAPPAPORT, *supra* note 171; Madden, *supra* note 91.

^{179/} Wisconsin v. National Funeral Directors Ass'n, 1967 Trade Cas. Paragraph 72,289 (Wis. Cir. Ct.), at 84,720.

By increasing competition, firms would be able to obtain additional market share through the promotion of better facilities or lower prices. Inefficient firms would be weeded out of the marketplace, and the economies of scale associated with large-scale operations should be realized. 180/ Where competitive rivalry exists, the result should be lower prices for the consumer. 181/

It is recognized, however, that the elimination of price advertising restrictions will not necessarily result in an upsurge of such ads, for price advertising is scant or absent even in localities where such restrictions apparently do not exist. 182/ The reasons for this reluctance to advertise prices have been traced, as mentioned earlier, to the prevailing market conditions in the industry. Consequently, the proposed rule contains a requirement that the availability of price information be advertised. By proposing such a disclosure, the staff believes that the objectives aptly summarized by Blackwell will be promoted:

Because consumers are uninformed, purchase infrequently, and avoid prepurchase planning, regulatory codes should be rewritten to encourage rather than to discourage the type of marketing strategy which stimulates more attention to the funeral purchase decision and which disseminates information about comparative facilities, services, and prices. . . . Competitive rivalry is not restricted to price, of course. Other variables more valued by the consumer than price may be emphasized; but in a competitive market, the consumer should be the final judge as to which marketing mix best satisfies him. 183/

2) The Practice: Other Restraints

Attempts to limit or suppress competitive forces are not confined to price advertising restrictions. The introduction of cost-saving services, such as pre-need contracts and immediate cremations, has been hampered by a number of

180/ Blackwell, supra note 158, at 82-83; Kissel, supra note 153, at 54.

181/ Kissel, supra note 153, at 55, 116-117; Blackwell, supra note 158, at 83.

182/ See note 153, supra, and accompanying text.

183/ Blackwell, supra note 158, at 82-83.

public and private restraints similar to those encountered by potential price advertisers. In some cases, state board sanctions have curtailed the use of these marketing devices; 184/ in others, aggressive competition has been formally opposed by industry-wide associations. 185/ This part of the proposed rule does not purport to override any state laws or regulations in areas other than price advertising; it does, however, prohibit private interference with the offering or promotion of inexpensive alternatives to the traditional funeral.

Pre-need contracts, whereby a person makes funeral arrangements during his or her lifetime, have been hailed as an opportunity for the customer to make sensible purchasing decisions without the pressure imposed by time and bereavement at death. 186/ Since a clear-eyed purchaser may be apt to spend his money more carefully than grieving survivors, the industry has not looked kindly upon these transactions. 187/ Howard Raether, the Executive Secretary of the National Funeral Directors Association, cautioned his colleagues:

Are you ready, willing and able to become part of a program that is going to lower the quality of the average funeral service selected to the point where you will find it difficult, if not impossible, to stay in business rendering the service you now give?

If funeral directors insist on soliciting pre-need funerals, they are in fact prearranging the funeral of their profession. 188/

Because immediate cremation reduces the range of merchandise and services which can be sold, 189/ it presents a cheaper method of disposition than the traditional funeral

184/ E.g., Oklahoma ex rel. State Bd. of Embalmers & Funeral Directors v. Guardian Funeral Home, 429 P.2d 732 (Okla. 1967).

185/ E.g., Utah Funeral Directors & Embalmers Ass'n v. Memorial Gardens of the Valley, Inc., 17 Utah 2d 227, 408 P.2d 190 (Utah 1965); Cedar Memorial Park Cemetery Ass'n v. Personnel Associates, 178 N.W.2d 343 (Iowa 1970).

186/ See generally, Sher, Funeral Pre-arrangement: Mitigating the Undertaker's Bargaining Advantage, 15 STAN. L. REV. 415 (1963).

187/ See cases cited in note 185, supra.

188/ Cited in 1964 Hearings at 106.

189/ But see the discussion of the casket-for-cremation requirement supra, at 28-33.

service. The growth in popularity of cremations 190/ has, therefore, been viewed with apprehension by members of the funeral industry, whose opposition to cremation "clubs" has at times taken more active forms. In California, a low-cost cremation firm was harassed by the industry, which sought to induce crematories to cease dealing with the firm and which instigated an unsuccessful move to place the firm under the jurisdiction of the state funeral directors' board. 191/ Moreover, staff investigations revealed that one of the industry's largest chains established a competing subsidiary and indications that its purpose may have been to drive the independent firm out of business through predatory pricing. Other incidents of harassment by industry-dominated state boards have been reported in Florida and Arizona.

Several examples of industry interference with the operations of memorial societies have been documented. These groups, which contract with cooperating funeral directors to furnish various specified types of funerals to their members at prescribed prices, are sometimes able to secure more favorable rates by virtue of their collective purchasing power. Society leaders are familiar with funeral practices and have acquired expertise in dealing with morticians. These factors, which permit the consumer to make funeral arrangements in a more advantageous bargaining position, have created industry opposition to memorial societies and the funeral directors who cooperate with them.

In Massachusetts, the state board coerced seven cooperating morticians into severing their ties with the nonprofit New England Memorial Society, and the Society claims that no Massachusetts funeral director will enter into a written contract with a memorial society for fear

190/ See, e.g., Roberts, Cremation Gaining Favor in U.S., N.Y. Times, Dec. 6, 1970, at 1; Voelker, The American Style Funeral Fights for Its Life, Pittsburgh Post-Gazette, April 10, 1972, at 1; Bonin, Ashes to Ashes or Dust to Dust?, Miami Herald, April 21, 1974 (Tropic Magazine), at 18.

191/ The firm's president labeled the latter attempt as "having the railroads regulate the airlines". A Move to Embalm Cremation Clubs, BUS. WEEK, Sept. 21, 1974, at 89.

of license revocation. 192/ A Knoxville, Tennessee funeral director was ostracized by other funeral directors in the area for advertising prices and dealing with memorial societies. 193/ The harassment extended to an alleged boycott by local suppliers; one supplier who did deal with the funeral home was reportedly "cut off" by other funeral directors. Moreover, any Tennessee funeral director who contracts with a memorial society is threatened with loss of license by the state board. 194/

A San Francisco funeral director who was expelled from the NFDA alleged that his expulsion was due to his promotion of low-cost funerals, his price advertising, and his cooperation with the Bay Area Funeral and Memorial Society (whose founders included author Jessica Mitford and her husband). 195/ Since the mortician had been advertising prices for some time, there was speculation that his dealings with the memorial society prompted his expulsion. 196/

Such attempts to harass the activities of firms providing more economical funeral services help to continue the industry's insulation from the forces of price competition. Many of these efforts have been organized by industry members, who have sought to protect their status (and preserve their inefficiency) by limiting the choices that would otherwise be available to consumers. By declaring market interference on the part of private parties, whether on an individual or a group basis, to be unfair, the rule seeks to make the option of low-cost funeral services a viable one.

192/ Interview with Cmdr. R. F. Armknecht, Dr. George Richardson and Rev. Frances Caswell, Memorial Society of New England, in Brookline, Mass., Dec. 11, 1972.

193/ The Oak Ridge-Knoxville Way of Death, supra note 18, at 1.

194/ Id. at 3.

195/ See Cathay Mortuary-Wah Sang v. Funeral Directors of San Francisco, Inc., 1965 Tr. Cas. Paragraph 71,505 (N.D. Cal.).

196/ Interview with Jessica Mitford, supra note 166.

3) Discussion of Section 453.6

The Rule

(a) Offering of Inexpensive Funerals

or any other person, partnership or corporation, directly or indirectly, to prohibit, hinder or restrict, or attempt to prohibit, hinder or restrict,

(1) the offering, or advertising of the availability of, low-cost funerals, immediate cremation or other forms of disposition, or arrangements for funeral services in advance of need by any funeral director, memorial society, or other person, partnership or corporation;

(2) contracts or arrangements between memorial societies and any funeral director or other person, partnership or corporation providing services for the disposition of deceased human bodies.

Effect of the Rule

Paragraph (a) of Section 453.6 deals with private attempts to restrict the availability of alternatives to the traditional, costly funeral service. By expanding the application of the rule to cover any other "person, partnership or corporation", this rule provision, by definition, 197/ also applies to trade associations or other industry groups.

As the previous discussion suggests, lack of competition in the funeral industry is reflected by an oversupply of funeral homes. In such a setting, the low number of cases which this market structure allots to each home must yield a profit. To remain in business, therefore, a funeral home will usually have to sell more "Cadillacs" than "Volkswagens", (or charge "Cadillac" prices for Volkswagens) and the nature of the funeral transaction permits this tilt toward high-priced entries. When less expensive methods of human disposition have been introduced, therefore, the reception in the industry has been frequently hostile. Several examples presented to the staff during the course of the investigation reveal that antagonism toward cost-cutters, especially among some trade associations, has at times been transformed into overt interference with the former's methods of operation.

197/ See rule definition (d).

Under paragraph (a)(1) of the rule, private interference with the offering or advertising of cremations, pre-need contracts, and inexpensive funeral arrangements is declared to be an unfair act or practice. For example, activities which induce suppliers to cease dealing with funeral homes promoting low-cost funerals, cremations, or pre-need contracts would be prohibited, and trade association sanctions against funeral directors who offer these alternatives would also run afoul of the rule. Harassment of low-cost cremation companies by funeral directors or trade associations--exemplified by reported incidents in Florida and California--would likewise be prohibited by paragraph (a)(1).

Interference with the efforts of memorial societies to make funeral arrangements for their members and retaliatory acts taken against cooperating morticians are the targets of paragraph (a)(2). Memorial societies represent valued alternatives to many persons who prefer to deal with a group versed in experienced purchasing than with an experienced seller in an individual, emotion-wracking transaction. Because memorial societies can often offer substantial savings to their members, they are looked upon with disfavor from many in the trade, and those funeral directors who do enter into arrangements with them may be harassed by their colleagues. Under this paragraph, ((a)(2)), it is an unfair act or practice for any private party, including trade associations, to prohibit, hinder, or restrict any such existing contractual relations or any future transactions whereby memorial societies seek to obtain services for the disposition of their deceased members.

The Rule

(b) Price Advertising

or any other person, partnership or corporation, directly or indirectly, to prohibit, hinder or restrict, or attempt to prohibit, hinder or restrict, the disclosure of accurate price information regarding funeral merchandise or services by any funeral director, memorial society, or other person, partnership or corporation offering services for the disposition of deceased human bodies, whether such disclosure is made by means of advertisements in print media or broadcast media, or in any other manner.

Effect of the Rule

The foregoing analysis of price advertising restrictions in the funeral industry has indicated that price advertising is virtually non-existent. 198/ While state laws and regulations--which are addressed by paragraph (c)--have contributed to the absence of price advertising, self-policing by industry trade groups and pressure from other funeral directors share the responsibility for restricting the flow of price information to the public. 199/ Under paragraph (b), all restrictions by any person, partnership, or corporation on the disclosure of accurate price information about any funeral product or service are declared unfair acts or practices.

The purpose of this provision is to remove private impediments to the accurate disclosure of price information by funeral directors who choose to advertise. Unlike paragraph (d), it creates no specific duty to disclose any particular information, but seeks to allow funeral directors who choose to advertise prices to do so freely. Again, the rule's coverage is broadened to include any other "person, partnership or corporation" in the scope of its prohibition, so that efforts by trade associations or others to restrict price advertising by their members (e.g., codes of ethics with accompanying disciplinary sanctions) will violate the rule.

Paragraph (b) parallels proposed Rule I of the Disclosure Regulations Concerning Retail Prices for Prescription Drugs. 200/ As shown, similar extralegal and semi-official restraints on the advertising of prices exist in the funeral industry and deserve similar treatment by the Commission. Here, too, price advertising is widely regarded as unprofessional or unethical, and the consumer suffers from the dampening effect on competition and from an inability to compare alternatives. In both cases, the removal of private restraints is an essential step toward the increased disclosure of price information.

198/ Note 153 supra.

199/ Since the state regulatory boards are controlled by the industry (note 156 supra), it would not be incorrect to state that the industry, by one means or another, bears the entire responsibility for price advertising restrictions.

200/ 40 Fed. Reg. 24031 (June 4, 1975) (proposed Trade Regulation Rule).

The Rule

(c) Reliance on Price Advertising Restrictions

to change, restrict, make or fail to make any disclosure of accurate price information about any funeral merchandise or service by print media, broadcast media, telephone, leaflets, mailings, or in any other way, because of or in connection with any law, rule, regulation or code of conduct or any non-federal legislative, executive, regulatory or licensing entity or any other entity or person whatsoever, including but not limited to professional associations.

Effect of the Rule

Like paragraph (b) of the rule, this paragraph tracks the requirement imposed by the Prescription Drug Rule 201/ in order to overcome the same obstacles to price advertising: restrictive state laws and state licensing board regulations. In a number of states, the staff's investigation has found that price advertising is forbidden by statute, by licensing board regulations or by the board's interpretation of the statute or regulations. 202/ Similar treatment of these official restraints is accordingly proposed under the rationale espoused in the Prescription Drug Task Force Report. 203/

Under paragraph (c), it is an unfair act or practice for a funeral home to change, restrict, make or refuse to make any disclosure of accurate price information about any funeral product or service because of any law, rule or code of conduct of any non-federal legislative, executive, regulatory or licensing entity or any other entity or person, including trade associations. The purpose of this section is to create a duty on the part of funeral service industry members not to be influenced by or to rely upon such laws, regulations, or codes in making decisions on whether and how to make disclosures of prices of funeral merchandise and services. By forcing a conflict between this federally created duty and inconsistent existing state laws or state board regulations, this provision seeks to preempt repugnant state law. In promulgating the rule, the Commission is declaring federal law under the authority of the Federal Trade Commission Act; pursuant to the supremacy clause of the United States Constitution, this

201/ Id. Rule II(b)(1).

202/ See text at note 154, supra.

203/ FTC Staff Report, Prescription Drugs: Retail Price Disclosure (Jan. 28, 1975).

rule, as an interpretation of the Federal Trade Commission Act, will become the supreme law of the land on the matters it covers and within the confines of the Commission's jurisdiction.

This paragraph requires each funeral industry member to ignore any non-federal regulation relating to the accurate disclosure of funeral prices. At present, a funeral service industry member must weigh and consider the possible repercussions of violating both private and official restrictions if he wishes to disclose prices. Under this provision, a mortician must act as if there were no requirements governing funeral price disclosures other than the rule. His failure to eliminate all consideration of these state or private restraints in order to disclose price information adequately would therefore constitute an unfair act or practice under paragraph (c).

The Rule

(d) Price Availability Notice

to fail to display prominently, in any advertising or promotional materials in print or broadcast media of funeral merchandise or services, the following notice:

Funeral home prices vary substantially.
For information on our prices for
funeral merchandise and services, call:
{Telephone number}.

Effect of the Rule

Paragraph (d) requires that a funeral industry member who chooses to advertise or to distribute promotional material in any media must disclose that funeral prices vary and that telephone disclosure of the prices of individual products and services can be obtained by calling the funeral home. While the rule does not go so far as to mandate advertising, it does require that the price availability notice appear in all media promotional materials used by the funeral home.

The use of affirmative disclosures in advertising has been a remedial tool whose implementation is within the discretion of the Commission. In requiring health warnings on cigarettes to correct the effects of deceptive non-disclosure of the dangers inherent in smoking, the Commission stated:

The question of whether in a particular case to require disclosure in advertising cannot be answered by application of any hard-and-fast principle. The test is simple and pragmatic:

Is it likely that, unless such disclosure is made, a substantial body of consumers will be misled to their detriment? 204/

Although the Funeral Trade Regulation Rule is predicated on Section Five's proscription against unfair acts or practices more than deception, consumer injury likewise results from the widespread failure to advertise prices or the suggestion that price comparisons are inappropriate in purchasing funeral services.

As shown, the noncompetitive structure of the funeral industry market and the peculiarly captive nature of the funeral transaction have led to a unique situation in which there are too many sellers charging too high prices to buyers who have become accustomed to simply paying the final bill. Unlike the prescription drug industry, where large chains have long been clamoring for an opportunity to advertise prices, the funeral industry has maintained a virtually unanimous stance against price advertising. The apparent removal of public and private restrictions to such advertising in some areas has not stimulated promotional efforts in these localities. 205/ In an industry where price considerations have been purposely downplayed, the required message is essential to inform consumers that price information is an appropriate concern and is available. As a corrective measure, 206/ the disclosure requirement is reasonably related to the consumer injury resulting from the previous absence of funeral price information. If effective, the message will encourage price comparisons and price competition.

204/ Statement of Basis and Purpose of Trade Regulation Rule 408, Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking, 29 Fed. Reg. 8324, 8352 (1964).

205/ Notes 153 and 168 supra.

206/ Moreover, under Sec. 202 of the Magnuson-Moss Warranty--Federal Trade Commission Improvement Act, P.L. No. 93-637 (Jan. 4, 1975), a Commission rule may include requirements "prescribed for the purpose of preventing such [unfair or deceptive] acts or practices." The disclosure of the availability of price information may be viewed as a means by which the purchaser can minimize the seller's bargaining advantage (and use of unfair tactics) by familiarizing himself with aspects of the transaction.

At this point, the staff does not believe that the additional costs imposed by the requirement will be prohibitive. The rule does not require advertising, but those funeral industry members who choose to advertise must include the few words of the price availability notice. Comment shall, of course, be received on the cost issue during the rulemaking proceeding. Unless the ineffectiveness of the notice can be definitively shown, the staff believes that any additional costs will not be prohibitive in light of the anticipated beneficial effects resulting from the infusion, however limited, of price competition into the funeral marketplace.

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

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A UNIT IN THE ORIGINAL FILE.

From colonial days until the 19th century, the American funeral was almost exclusively a family affair, in the sense that the family and close friends performed most of the duties in connection with the dead body itself.

It was they who washed and laid out the body, draped it in a winding sheet, and ordered the coffin from a local carpenter.

It was they who carried the coffin on foot from the home to the church and thence to the graveyard and who frequently -- unless the church sexton was available -- dug the grave.

Funeral services were held in the church over the pall covered bier and a brief committal prayer was said at the gravesite.

Between the death and the funeral, the body lay in the family parlor where the mourners took turns watching over it, the practical reason for this being the ever present possibility that signs of life might be observed.

The first undertakers were drawn mainly from three occupations, all concerned with some aspect of burial. The livery stable keeper, who provided the hearse and funeral carriages, the carpenter or cabinet maker who made the coffins and the sexton, who was generally in charge of bell

colling and grave digging. In some of the larger cities, midwives and nurses advertised their services as occupational layers out of the dead and were so listed in city directories. The undertaker's job was primarily custodial. It included supplying the coffin from a catalogue or from his own establishment, arranging to bring folding chairs, taking charge of the pall bearers, supervising the removal of the coffin and loading it into the hearse, and in general doing the necessary chores until the body was finally lowered into the grave.

Shortly before the turn of the century, the undertaker conferred upon himself the title of "funeral director".²

Today, when a death occurs, a member of the family of the deceased calls the funeral director, who obtains such information as the name and age of the deceased, the name of the attending physician and the cause of death. The funeral director makes contractual arrangements for his services, secures the requisite information for newspaper

² Mitford, The American Way of Death, pp. 199-200 (1953).

funeral notices and obituaries, ascertains the names of the pall bearers and communicates with them, checks the availability of the officiating minister and the church and makes arrangements for the burial. He assists in conducting the funeral service and in moving the coffin to and from the hearse. If the body is to be shipped, he makes the arrangements.³

In an effort to promote respect for their calling, men within the occupation of funeral directing have fostered legislation demanding the highest standards of conduct for their members. However laudable may be the aim of winning recognition and respect, the result has been the creation of a patchwork system of revocation clauses calling for a standard of conduct higher than needed in many instances. (see listing of revocation sections in the Statutes of 50 States wherein "solicitation" is a ground for revocation or suspension of the funeral director's license).⁴

* The present revocation sections are unduly repressive in two ways. First, they do not provide the

³ Gholson v. Engle, 9 Ill2d 454 (1956).

⁴ See Statutes of 50 States, infra.

practitioner with any precise, clear cut standard to which
they can conform, second, they do not conform with the basic
justification for the regulation of funeral directing --
public protection.

License revocation is an exceptionally severe
penalty. Despite the prevailing attitude that revocation
proceedings are not penal in nature, it must be conceded as
a practical matter that loss of a license is one of the
harshest penalties that can be imposed on a practitioner.
It means to secure a livelihood should not be denied where
the denial is calculated to effect an aim of any less
importance than protection of the public. Further, license
revocation should not be tolerated unless the crime, act or
pattern of conduct of the licensee adversely reflects upon
his ability to perform properly the duties of his profession.
In this connection, practically all of the 50 states have
enacted legislation which provides that the solicitation of a
burial "after death or while death is impending", by a funeral
director constitutes "unprofessional conduct" for which action

the license of the funeral director may be revoked. A careful reading of the statutes, however, will reveal that the apparent legislative intent behind listing "solicitation" as a grounds for revocation is to protect the grieving family from the hands of the zealous funeral director at a time when the family may be exploited. In support of this contention, a California court has construed their statute, containing identical language to the above, thusly:⁵

The solicitation section is not arbitrary or discriminatory and bears relation to the public welfare. It is aimed at preventing the commercialization of death at a time when those concerned are emotionally upset and easily imposed upon. The legislature acted well within its powers in providing for the protection of the public from the annoyance of direct solicitation of the bodies of members of the family while death is impending or immediately thereafter. It is a matter of common knowledge that during that period the people involved are distraught and emotionally distressed. The obvious purpose of this section is to prevent funeral directors from taking undue advantage of their patrons when they are in no condition to withstand pressure. It is to be noted that the prohibition as to solicitation is not absolute. Solicitation by general advertisements is expressly permitted and solicitation while death is not impending by implication, also is permitted." (Emphasis added)

Dunnay v. State Board of Funeral Directors, 13 Cal 2d 75 (1939).

In accordance with the Drummey case, funeral directors and those who are not licensed to practice funeral directing have attempted to institute programs whereby persons are solicited to arrange for their own funeral on a pre-need basis. A pre-arranged funeral is simply a situation wherein a person agrees with a funeral director for the latter to furnish certain merchandise and services in connection with his own funeral. A pre-arranged funeral is totally advantageous to the purchaser in that he is provided an opportunity to discuss rationally both the mode and cost of his funeral.

Despite the advantages of making the pre-arranged funeral available to a large segment of our population by soliciting the public for such arrangements, the funeral directors and those acting on their behalf have been reluctant to engage in such solicitation for fear of reprisals in the form of license revocation.

Inasmuch as most states have not recognized the distinction between the evils behind solicitation of dead bodies and the advantages behind soliciting on a pre-need basis, the profession of funeral directing has been left to operate on an ad hoc basis with the hope of avoiding reprisals for their solicitation.

The real policy behind prohibiting funeral directors from soliciting patrons is best expressed in Mashburn v. Board of Funeral Directors and Embalmers.⁶

Respecting the solicitation of funeral business . . . we interpret the legislative prohibition to mean that the licensee funeral director shall not, by act of work or deed, entice, importune, allure, excite or ask for the funeral or embalming business respecting the dead body of a deceased person. The reason for this prohibition is clearly to protect those in the throes of deep grief at the loss of a loved one from being left unwittingly into commitments which they would not have entered into except for their grief and their consequent inability to follow an ordinary business transaction.
(Emphasis added)

⁶ Mashburn v. Board of Funeral Directors and Embalmers,
132 Cal App2d 126 (1955) at page 136.

There is no question that the states have a legitimate interest in preventing embalmers and undertakers from taking unfair advantage of their patrons at a time when such patrons are in no condition to withstand pressure. The problem to be discussed herein is whether the prohibition respecting the solicitation of dead human bodies can legitimately be extended to the solicitation of a patron to pre-arrange his own funeral.

THE "AT NEED" SITUATION

From time to time stories appear which evidence the success of the salesmanship of certain funeral directors. Perhaps the most publicized case of funeral directors taking advantage of their superior bargaining position occurred in connection with the 1947 coal mine disaster in Centralia, Illinois, in which 111 miners died. An investigation made by the United States Coal Mine Administration revealed that as much as \$1,178.50 was charged for a funeral; that the average cost was \$732.78; and that charges for identical caskets and services varied by several hundred dollars, in accordance with the magnitude of union welfare death benefits and state compensation.⁷ It was this spectre of funeral directors flocking to the 1947 coal mine disaster and other such disasters that prompted state legislatures to enact statutes providing for the revocation or suspension of the license of any funeral director soliciting a dead body.

Although dishonesty or abuse may not be widespread, economic factors force undertakers to do everything possible

⁷"New York Times", August 3, 1947.

to maximize the proceeds of each funeral handled. Both the funeral industry and its critics point out that the market for funerals is limited because there are only a certain number of deaths per year and the death rate is nearly static or has declined.⁸ There are a great many undertakers competing for business in this inelastic market, and the average number of funerals handled by most funeral directors is suprisingly low. Of the 790 firms that participated in the National Funeral Directors Association's survey for 1960; 61% conducted fewer than 100 funerals; 27% conducted 100-199; 7% conducted 200-299; and only 5% conducted more than 300 funerals.⁹ Since the funeral director's large operating cost and overhead must be met from the proceeds of these few funerals, it is easy to understand why many funeral directors think it imperative to sell the most expensive funeral that traffic will bear.

It is in this market situation, then, that the person who must arrange a funeral finds himself. Most often

Krieger, Successful Funeral Service Management, page 26 (1951).

National Funeral Directors Association, "Funeral Service Facts and Figures", page 10 (1961).

he is a relative or friend of the deceased and is too distressed to resist high pressure selling. Almost certainly, he will be disinclined to shop around for better prices or services and there is some doubt whether his position would be much improved even if he did. It is therefore quite possible that he may be influenced to choose expensive merchandise and services that he or the estate cannot afford and that, in the absence of emotional strain, he would not select. In short, one who must arrange a funeral is generally on the weak side of a most unequal bargaining situation. The result may be, from his point of view, a very bad bargain. For the same reasons he did not shop around and try to make a better bargain, it is unlikely that he will attempt to withdraw from the bargain once made. And should he later regret the expensive arrangement to which he has committed himself or the estate, the mere fact of high pressure salesmanship will not justify avoidance. If he could show that his consent to the agreement was induced by false representations, the contract obligation might be avoided. Though no decision has been found in which a funeral contract was attacked on this ground.¹⁰

¹⁰

See 15 Stanford Law Review, 415 (1962).

Traditionally, when the funeral director obtains possession of the remains of the deceased immediately subsequent to his death, the customer has already given up the greatest bargaining asset that he possessed in any transaction, namely, the privilege of declining all offers and seeking another seller. When he turned over the body to the funeral director he practically limited himself to that one practitioner. Seldom, if ever, is a body taken by the family from one establishment to another because of dissatisfaction or disagreement over the terms. Moving the body to the funeral parlor in the first place is done by the undertaker as a matter of course. The procedure is accepted by the family because of, first, its reliance on him for the proper steps to be taken, and, second, because of the almost universal desire to have the body out of the living quarters.

In order to improve the bargaining situation of those who must deal with funeral directors, the only realistic solution is pre-arrangement -- generally in the form of arrangements with undertakers who agree to make available

simple, moderately priced funeral. By making arrangements in advance, it is possible to insure that decisions are rational, as they frequently are not during periods of grief where there is a strong desire to escape reality and to ignore practical matters. Even when grief is not overwhelming, persons respond to sales pressures applied by members of the trade with greater readiness than in other circumstances.

Death strikes its most awful blow to the hearts and minds of those whose association has been most intimate and continuous with the person whose life has ended. All the defensive attitudes that may have been built up against its coming, all the rationalizations in which anyone may have indulged about its inevitability -- these are paper armor when the sad hour comes. Philosophy and faith may help to meet its crisis, they are, however, but ways of coping with it; the happening itself is tragedy. Death may be long in coming because of prolonged sickness or lengthened weaknesses of old age, until the final going is shorn of its most tragic features.

It is this procrastination of arrangements for one's own funeral that have allowed funeral directors the bargaining advantage when the time finally arrives. It is conceded that the state has the legitimate authority to protect the public from any unscrupulous funeral director at the time of need. Thus, statutes which impose sanctions for the improper securing or solicitation of business are definitely in the public interest.¹¹

The following is clearly the type of solicitation for which states have listed as cause for revocation:¹²

Turning to the evidence offered to support Count VI, there can be no question that said evidence was sufficient to show that Earle Wright, the manager for the plaintiff (funeral director), solicited for preparation the burial of the human dead body of M.E. Kemnitzer. Said Earle Wright heard of an accident and rushed to the scene, arriving there before the deputy coroner arrived. He falsely stated to the deputy coroner that he had a written order from a member of the family for the delivery to the plaintiff of the remains of said deceased.

¹¹ Louisiana Undertaking Company v. Louisiana State Board of Embalmers, 58 So2d 303 (La. 1953).

¹² Daggett v. Board of Funeral Directors, 44 Cal App2d 742 (1941).

When asked to produce it, he stated that it was at plaintiff's office. Wright then returned and aroused an employee from his sleep; told him that the deputy coroner was bringing the body to plaintiff's establishment; Wright told him that they might not be able to hold the body but to start embalming as soon as possible and at least the charge for embalming could be collected. Wright then rushed to the apartment house where the widow of the deceased resided. He was well acquainted with the operator of said apartment and, with her assistance, he met with the widow of the deceased and obtained from her an order for the coroner to turn the remains over to plaintiff. He then went to plaintiff's establishment where the deputy coroner was still waiting, delivered the order to him and said deputy coroner left the remains at plaintiff's establishment.

The court noted that this, in fact, was the type of solicitation that the California statute was designed to prevent.

To further illustrate the necessity and justification for revocation of licenses of funeral directors who engage in "legal ambulance chasing", I cite the following:¹³

¹³ Harmer, The High Cost of Dying, page 170 (1963).

In 1961, a report of an investigation of activities in the Los Angeles County Coroner's Office, which handles between 10,000 and 11,000 cases a year, revealed how assiduously undertakers have been working outside the law to obtain bodies. According to County Coroner Theodore J. Curphey, the investigation -- which later attracted the FBI's interest -- began in the summer of 1959, when they noticed that several Los Angeles funeral directors seemed to be picking up from the central morgue more coroner's cases than would normally be their share, when considering their total business handled in previous years. Since most of the cases checked revealed that there were no local relatives, it became apparent that some of the employees were turning over confidential information to undertakers. The undertakers then got in touch with distant relatives to solicit business . . . it was made more reprehensible by the informed undertaker's announcement to the distant relatives that he had the body, when it was actually still in possession of the coroner's office and could not be released without consent of the relatives. Needless to say, the mortician readily received authorization to conduct the funeral, and armed with that consent he went to the morgue and obtained the body.

Practices such as this have justifiably given rise to state legislation imposing sanctions for this type of action. However, the meaning of the "solicitation" cannot legitimately be extended to apply in those situations wherein a funeral director or his agents solicit a person to arrange a funeral on a pre-need basis. The basic difference

between the situations is two-fold: in the first instance the funeral director is depriving the survivors of their right to choose who shall provide for the disposition of the remains of the deceased. Pre-arrangement is a situation whereby a person is solicited to arrange his own funeral at a rational cost and under less strenuous circumstances. Thus, in the former case the solicitation can act to alter or deprive the choice of the survivor as to the care and disposition of the remains and cost of the funeral, while in the latter case the solicitation provides a person with an opportunity to make those very choices.

Important

PRE-ARRANGEMENT OF FUNERAL SERVICE

Too often people complain bitterly that they would have decided on more modest funerals for their loved ones if they had been given an unfettered choice. Many who have had to lower their standard of living because of a lavish funeral have discovered that their decisions have not been based on a rational assessment of the lasting value of funerals to the family. There is a very serious question that the lasting returns from the expensive funerals are commensurate with the outlay in any but a limited number of instances. The wished for result of large expenditures traditionally is the elevation of the status of the family in the community of acquaintances. But rarely is the status of a family raised in the opinion of neighbors and friends by ostentation at a funeral. Almost invariably it is recognized as a conspicuous display, whether it is approved or not. In order to avoid the ostentatious and conspicuous display at funerals and to further avoid the "grief syndrome" that accompanies these displays, an individual can arrange for his own funeral at a stated price on a pre-need basis.

Pre-arranged funerals, whereby a person while still
live specifies the mode and cost of his final disposition,
re, for obvious reasons, much less expensive than those
arranged by grieving and vulnerable survivors. The National
elected Morticians, an organization consisting of 800 members,
as determined that the average adult figure for a funeral
n 1970 was \$925.00. Surely, by pre-arranging a simple,
ow cost funeral for himself, in advance of death, this
figure can be largely reduced.

*1973 - National average overhead
cost to funeral home per adult
not including casket - funeral \$438. quoted in Progressive Mortuary
Method. November
Dec. 1974*

A pre-need burial contract has been defined as a
contract, which has for a purpose the furnishing or per-
formance of funeral services, or the furnishing or delivery
of personal property, merchandise or services of any nature
in connection with the final disposition of a dead human body,
or future use at a time determinable by the death of the
person whose body is to be disposed of. Traditionally, this
definition does not include the furnishing of a cemetery lot
or mausoleum.¹⁴ In recognition of the states legitimate
interest in promoting the pre-arrangement of funeral services,

*1974 figures will
not be available
until May*

¹⁴ Kentucky Revised Statutes, Section 316.103.

35 states have enacted legislation requiring that funds received pursuant to the sale of a pre-arranged funeral service be deposited in trust.¹⁵

Typical of these statutes is the Illinois Funeral or Burial Trust Fund Act.¹⁶ Illinois Revised Statutes Chapter 111-1/2, Section 73.101 provides:

Any payment of money made to any person, partnership, association or corporation upon any agreement or contract, or any series or combination of agreements or contracts, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of any personal property, merchandise or services of any nature in connection with the final disposition of a dead human body, for future use at a time determinable by death of the person or persons whose body or bodies are to be so disposed of, shall be held to be trust funds and the person, partnership, association or corporation receiving said payments is hereby declared to be a trustee thereof.

This statute also provides that all such trust funds must be deposited in the name of the trustee within 30 days after receipt thereof with either a bank or a trust company.¹⁷ In this connection, no person, firm, partnership,

¹⁵ See Note 3, supra.

¹⁶ Illinois Revised Statutes, Chapter 111-1/2 §73.101 et seq.

¹⁷ Illinois Revised Statutes, Chapter 111-1/2 §73.102

association or corporation may act as a trustee without first securing from the Auditor of Public Accounts a license to so act. Any license issued pursuant to an application is valid only at the address stated in the application for such applicant or at such new address as may be approved by the auditor. In addition, the applicant must submit a detailed statement of his assets and liabilities and a fidelity bond in such amount as the Auditor may require.¹⁸ The amount or amounts deposited, in trust, with interest thereon, if any, cannot be withdrawn until the death of the person or persons for whose funeral or burial such funds were paid, unless they have already been withdrawn and repaid to the person who originally paid the money under or in connection with said agreement.¹⁹ It should be noted that it is unlawful for any agreement or agreements to provide for forfeiture and retention of payments upon said agreement or agreements as and for liquidated damages for default therein in excess of 25% of the payments made or \$35.00, whichever sum is the larger.²⁰ The only reimbursement that the trustee and

¹⁸ Illinois Revised Statutes, Chapter 111-1/2, §73.103

¹⁹ Illinois Revised Statutes, Chapter 111-1/2, §73.104

²⁰ Illinois Revised Statutes, Chapter 111-1/2, §73.106

trustee's depository may receive from such funds that are deposited pursuant to such agreements are the reasonable expenses and the custody and administration of such funds and the usual and reasonable compensation for the services as such trustee and trustee's depository, provided that the combined expenses and compensation shall not exceed 5% of the principal fund and 5% of the earnings of the fund so deposited under each of the agreements or series of agreements.²¹

The Illinois Burial or Funeral Trust Fund Act has been upheld by the Supreme Court of Illinois as a legitimate exercise of the police power of the state.²² In the Smith case, the court stated:

"There can be no doubt that the act relates to a proper subject for the exercise of the police power. The public has a vital interest in the proper disposition of the bodies of its deceased members. Persons engaged in this business have been subjected to rigorous regulations specifying the

²¹ Illinois Revised Statutes, Chapter 111-1/2, §73.105

²² Memorial Gardens v. Smith, 16 Ill.2d 116 (1959)

place and manner in which their activities may be conducted in prescribing such activities without license or permit. This has been done not only out of proper respect for the dead, but in the interest of public health."

Other states are in accord with Illinois that statutes requiring that funds received pursuant to a sale of a pre-arranged funeral service be deposited in trust are a valid exercise of the state's police power.²³

In the Smith case, the court further stated at page 124:

There is nothing unique in requiring one who contracts for performance in futuro to give security for that performance

* * *

The contracts here involved are analagous to a form of insurance. By payments made during life, the purchasers seek to insure their burial. The net effect is the same as though a life insurance contract were purchased to provide a sufficient sum payable at death to accomplish that result.

like insurance

* * *

Practically, plaintiffs (sellers) will no longer be able to collect prospective profits in advance without furnishing an adequate guarantee for performance.

²³
Reserve Valut Company v. Jones, 234 Ark. 10, 11 (1962); Faulkner v. Memorial Gardens Association, 293 SW 2d 934 (Tex. 1967); Messerli v. Monarch Memorial Gardens, 88 Idaho 88 (1964); State ex rel Landertohn v. Anderson,

Accordingly, any one who sells a pre-arranged funeral service or merchandise in connection therewith, subject to the provisions of Chapter 111-1/2, §73.101, is subject to the Illinois Burial Funeral Trust Fund Act if he elects to collect funds pursuant thereto in advance of actual need. The state has a vital interest in securing that result and, insofar as the rights of sellers are effected, any considerations must yield to the paramount public welfare.²⁴

The interest that the various states have taken in promoting the pre-arrangement of funeral services is evidenced in the following section declaring the legislative intent of Florida:²⁵

It is the legislative intent that the provisions of this chapter shall be construed as a limitation upon the manner in which a licensed funeral director holding a license to operate a funeral establishment . . . is permitted to accept funds in pre-payment of funeral services to be performed in the future to the end that at all times members of the public may have an opportunity to arrange and pay for funerals for themselves and their families in advance of

Memorial Gardens v. Smith, supra

Florida Statutes, Section 639.19

need while at the same time providing all possible safeguards whereunder such pre-paid funds cannot be dissipated, whether intentionally or not so as to be available for the payment of funeral services arranged for. Further, it is the legislative intent that no person may offer, sell or negotiate for sale of a pre-need funeral service contract through anyone who is not licensed to make funeral arrangements or plan details of funeral services in accordance with the provisions of Chapter 470, Florida Statutes; as well as the provisions of this chapter . . ."

Accordingly, in connection with the sale of the pre-arranged funeral, the singular protection to be afforded the public is the guarantee that funds deposited pursuant to such contract will be available at the time of need. This is the one and only legitimate interest that a state has in regulating the selling of the pre-need service. In order to make the advantages of a pre-arranged funeral available to the public at large, it is likewise in the interest of the state to allow the profession to solicit the public to arrange for their funeral on a pre-need basis.

As we have seen, the abuse that the states have sought to remedy by enumerating solicitation as a ground for revocation or suspension of a funeral director's license is

based on the undue advantage that a funeral director has on those bereaved at the time of death. However, any such extension of the meaning of "solicitation" to include the pre-need situation cannot be justified as a legitimate exercise of the police power of the state as it neither bears a relation to the standards or ethics of the profession of funeral directing nor a substantial relation to the welfare of the public.

The very definition of "solicitation" is further evidence that its usual and customary meaning does not connote an application to the pre-need situation. Black's Law Dictionary defines "solicitation" as "an urgent request enticing" and adds that it is often used with phrases as "solicitation to bribery."²⁶

Furthermore, the language used in many of the statutes enumerating the employment of "cappers" or "steerers" by funeral directors as a ground for revocation admittedly has no application to the pre-need situation.²⁷

²⁶ 4th Edition, page 1564

²⁷ Colar Memorial Park v. Personnel Associates, Inc., 178 NW 2d 343 (Iowa 1970)

Black's Law Dictionary, Revised 4th Edition defines "capper" as a "decoy or lure for purpose of swindling" and "steerer" as "one who gains the confidence of the person intended to be fleeced and who may be said to steer or lead a victim to the place where the latter is to be robbed or swindled." While this definition may apply to the zealous funeral director employing persons in hospitals or institutions to channel business to said funeral director, it obviously does not apply to the pre-need situation.

As noted above, 35 of the 50 states of the union have seen fit to adequately protect the rights of the public by enacting statutes whereby funds received pursuant to the sale of a pre-arranged funeral service are deposited in trust to insure guarantee of the funds at the time of need. Any further prohibition on the rights of a funeral director or his agents to solicit said funeral pre-arrangements is clearly outside the scope of the police power. There is nothing to indicate any danger to the public health in permitting a person, whether a licensed funeral director or unlicensed, to solicit the public to pre-arrange their own funeral. The care of dead human bodies and their

disposition by burial or otherwise is admittedly so closely related to the health and general welfare of a community that the business of caring for and disposing of such bodies is to be regulated by license and special regulations under the general police power of the state.

The danger that may arise from the body of a person who has died from infectious, contagious and communicable disease or otherwise is to some extent obviated by the sanitary regulations of local Board of Health; but regulations relating to the transportation of dead bodies, permits for burials in locality where the person has died, and a compilation of vital statistics are quite inadequate to protect the health, and general welfare of the community unless the person who comes into immediate contact with the dead body, and upon whose care and skill the public are principally dependent in preventing the spread of infection or contagion and protecting the health, good order and general welfare of a community, is selected with special reference to his skill, knowledge, and experience. The opportunity which undertakers frequently have to aid in covering up or uncovering the

evidences of crime also constitutes a reason why they should be selected with reference to their character and integrity.²⁸

A statute passed pursuant to this police power, however, must be reasonable. Its real purpose must be to protect the public health, morals, or general welfare. A statute or ordinance may not under the guise of the police power, impose arbitrary or unreasonable restrictions upon the use of private property or the pursuit of useful activities.²⁹ In order to be valid, the statute must bear some real or substantial relation to the public health, safety, morals or general welfare of the area affected.³⁰

*Good
purpose -
statute
regulating
pub. health
Not restaurant
trade*

There is no question that a pre-arranged funeral by which a person while still alive specifies the mode and cost of his final disposition is much less expensive than those arranged by sorrowing survivors. However, it seems that some funeral directors themselves are intent in

²⁸ See People v. Ringe, 197 N.Y. 143 (1910)

²⁹ Carter v. City of Bluefield, 132 W. Va. 331 (1949); Lawton v. Steele, 152 U.S. 133 (1928); Anderson v. Jester, 206 Iowa 452 (1935); Merrill v. City of Wheaton, 356 Ill. 457 (1935).

³⁰ Forbes v. Hubbard, 343 Ill. 166 (1932); People v. Weiner, 271 Ill. 74 (1913).

perpetuating the expense and burden to the family of arranging funerals on an at-need basis only. Howard C. Raether took note of this fact at a National Funeral Directors Association Convention some years back. In discussing an analysis of funeral sales, he said:

"If it were possible to tabulate all the pre-arranged funeral services on record, how do you suppose the average of all of them would compare with the average adult figure shown here? (Average adult figure means average price on adult's funeral). Are you ready, willing and able to become part of a program that is going to lower the quality of the average funeral service selected to the point that you will find it difficult if not impossible to stay in business rendering the service you now give? He added, it is good for those who survive to have the right and duty to make the funeral arrangements. Making such arrangements, having such responsibilities, is essential. It is part of the grief syndrome. Part of the therapy of mourning.

It is the positive hook upon which the hat of the funeral service is hung. Why should we tear it down by saying that funerals for the deceased, therefore he or she should make the arrangements? . . . If funeral directors insist on soliciting pre-need funerals, they are, in fact, pre-arranging the funeral of their own profession." 31

Mitford, The American Way of Death, p. 91 (1963).

In connection with the above statement, a study made for the National Funeral Directors Association, a large number of people were asked about their need as they saw it when they went to a mortician immediately after a death had occurred. 99% of those interviewed responded that they were "at a loss as to what steps to take".³² This is the key to the problem of the undertakers advantage over his clients. It is not a high degree of skill on his part, nor is it a lack of competence on the part of the members of the bereaved family, it is merely that they, through the failure of common knowledge and customer experience, do not know what to do.

The public has finally become aware that there is a reasonable alternative to the expensive funeral in pre-need planning. In response to their own tragic experiences and public comment various groups have been formed to bring modesty and simplicity back to the funeral and funeral service.³³

³² National Funeral Directors Association, "Analysis of Attitudes Toward Funeral Directors" 1948, as reported in Bowman, The American Funeral p. 41, 1959.

³³ Ruth Harmer in her book The High Cost of Dying, 1963 stated: "Most persons, however frugally they may have lived, are dying beyond their means."

The ideal of obtaining lower prices through pre-need planning has been adopted by large numbers of consumer groups throughout the country. Typical of the cooperative societies that have arisen, mainly in the Northwest Central area of the country, is that of the Cleveland Memorial Society which was established in 1948. Plans have been worked out by societies such as this to enable members of the society and their families to obtain simple services at a modest cost from funeral directors in the area.

The Cleveland plan, based on that of the Minnesota Cooperative Plan, has been widely followed. One member of the family joins the society and pays the family membership fee of \$10.00. There are no annual dues. The members and each person in the family fill out cards indicating which funeral director they prefer, whether memorial services are desired, and the type of funeral service they wish. The Type I Service provides that a funeral establishment will transport the body without embalming to a crematory for cremation. Total cost is not to exceed \$200.00.³⁴ The

³⁴ Based on 1963 figures

Type II service includes transportation to a funeral home, embalming the body, if necessary, placing it in a modest coffin selected by the funeral director and private burial before the memorial service. The cost of that is not to exceed \$300.00. The cards are then filed with the funeral director, ready for use when needed. No negotiation is required about price, and payment is made when the services are rendered.³⁵ One member of a Bay area cooperative group in Berkeley, California reported in 1963 that eight months before he joined the cooperative association, he arranged for the burial of his mother through a mortuary. A few months after joining, he had to arrange for the burial of his father. Services for the former, he said, were inferior to the services he received through the association, and the cost had been \$800.00 in contrast to the \$150.00 cost for his father's funeral.³⁶

What legitimate interest could any state possibly have in threatening to revoke the license of a funeral

³⁵ The High Cost of Dying, Harmer, page 192-193 (1963).

³⁶ Ibid, page 27.

director for soliciting contracts which reduce the cost of burial and maintain equality in the negotiation process? What legitimate interest does the state have in revoking the license of a funeral director employing people to solicit the public to arrange for their own funerals on a pre-need basis? There is seemingly no legitimate ground by which revocation may be justified in either of these instances. In the first place, by refusing to allow funeral directors the opportunity to offer pre-need contracts, the state is depriving a large segment of the population of one realistic alternative to the "at need" bonanza now being enjoyed by some funeral directors.

The very vagueness of the revocation section of the statutes of the various states has prevented funeral directors or those acting on their behalf from engaging in the solicitation of the pre-need service. A statute which includes "unprofessional conduct" as a ground for revocation and includes in the definition of "unprofessional conduct" the solicitation of funeral business by a licensee "whether such solicitation occurs before or after death" must be stricken as an unreasonable limitation on the funeral director's

right to maintain his business. It is common knowledge that the "before death" or "while death is impending" or "while death is imminent" language contained in these revocation sections refers to that period immediately prior to the demise of a person. By no stretch of the imagination can the term "before death" be extended to include that time when a person is at the peak of his health and is being solicited by a funeral director for a rational discussion as to the final care and disposition of his body. Various states have decided that those unlicensed to practice funeral directing or embalming may solicit pre-need funeral arrangements. There is no reason why a funeral director, who is the most qualified to discuss such plans with the prospective purchaser should not also be so allowed. 37

37 Utah Funeral Directors and Embalmers Association v. Memorial Gardens of the Valley, Inc., 17 Utah 2d 227 (1965); Boydston v. State of Oklahoma, 277 Pacific 2d 138 (Oklahoma, 1954)

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

THE FOLLOWING PAGES WERE TREATED AS
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JUNEAU ALASKA

Alaska State Legislature House

This is to inform you that on February 6, 1976 the House and Senate Commerce Committees will be meeting in joint session to consider House Bills 264, 271, and 509, dealing with the practice of mortuary science.

As this legislation is considered a fundamental reorganization of the regulation of mortuary science within Alaska, we are endeavoring to obtain broad comment on the possible effects of the proposed law.

If you cannot present oral testimony at the hearing, the committees will accept written comments for their consideration.

The exact time and place of the hearing will be announced on Monday, February 2, 1976.

Sincerely,

Representative Bob Bradley, Chairman
House Commerce Committee

Senator Ed Willis, Chairman
Senate Commerce Sub-Committee
on Mortuary Science

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AGENDA

JOINT COMMERCE COMMITTEE'S
HEARING ON MORTUARY SCIENCE
FEBRUARY 6, 1976

- 8:00 a.m. - Introduction and opening by Representative Bob Bradley
- 8:10 a.m. - Summary of pending legislation by Bill Berrier
- 8:30 a.m. - Testimony from the public in the following order:
1. Individuals from out-of-town, as called by the Chair
 2. All remaining individuals, as called by the Chair

(All questions of persons giving testimony will come from the Joint Committees.
Any questions from the floor will be in writing and will be submitted to the Joint Committee Chairman for response)

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH V, STATE CAPITOL
JUNEAU, ALASKA 99811
465-3800

January 16, 1976

Senator Genie Chance
Capital Building
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Juneau, AK 99801

Re: Final Report of the Interim Committee on Mortuary
Science

Dear Senator Chance:

The assignment of the Interim Committee on Mortuary Science was to refine the occupational licensing bill (HB 509) and after consideration if the need for an occupational licensing statute appeared, to prepare a committee substitute. The committee met on September 27, December 2, and December 19. Prior to these meetings a suggested revision was prepared and distributed to all the persons currently licensed to practice embalming in this state and to other interested groups. Notices of the workshop meetings were sent to each of these groups. There was substantial attendance from the profession at each of the first two meetings.

As a result of these, a proposed committee substitute for HB 509 has been prepared and a copy of the bill is attached.

Essentially the bill adopts a dual licensing system; that is, licenses are issued separately for the practice of funeral directing and for the practice of embalming. The administration of the occupational licensing was put in the Department of Commerce. The committee's feelings were that an occupational licensing board would not be a good solution and that the Department of Commerce was a logical alternative.

The proposed substitute also sets substantial educational qualifications as a prerequisite to licensing. Under existing law, no qualifications exist. For this reason a "grandfather" provision was inserted which allows persons who are currently licensed as an embalmer to obtain a license as an embalmer under the new act and a person who has actively practiced as a funeral director to obtain a license as a funeral director under the new act without requiring that the newly imposed qualifications be met.

A substantial area covered in the act was a regulation of pre-need sales. The primary thing this regulation does is require that funds received from pre-need sales be deposited in an account in the name of the purchaser and that both the principal and interest in this account remain the property of the purchaser until time of need.

Since pre-need sales are made by other than professionals, and since an enforcement mechanism is essential, this section was made part of the consumer protection statute.

In addition, the bill contains a disclosure of cost section which requires that in broad categories the cost of the services be disclosed to the purchaser. The bill was prepared as a proposed committee substitute for Commerce Committee since the bill was currently lodged in Commerce Committee. The committee strongly recommends that both House and Senate Commerce Committees, preferably jointly, hold other hearings on this bill. During the hearing the committee indicated to the interested parties that if such a hearing were held, notice would be given to these parties.

Very truly yours,

Edward C. Willis
Chairman

ECW:bh

Attachment

**SUCCESSFUL
FUNERAL
SERVICE
PRACTICE**

Edited by **HOWARD C. RAETHER**
Executive Secretary
National Funeral Directors Association

PRENTICE-HALL, INC.

Englewood Cliffs, N. J.



ABOUT THE EDITOR

Howard C. Raether holds a Ph.B. and J.D. from Marquette University in Milwaukee, Wisconsin. He has been involved in funeral service for thirty years and Executive Secretary of the National Funeral Directors Association since 1948. He was consultant to the United States Government Department of Transportation, National Highway Safety Bureau, and is on a committee serving the Department of Health, Education and Welfare. He was given the highest honor the U.S. Army makes to a civilian—the Distinguished Civilian Service Award. He also is a member of the National Council on Tissue Transplantation and Utilization. He is editor of the NFDA monthly journal, *The Director*, and creator of the *Reference Manual* for funeral directors. In addition his recent writings include, as co-author, *A Compendium of Basic Information on Funeral Establishments and Funeral Establishment Employees and The Fair Labor Standards Act, as Amended* (1968); *Organ and Tissue Transplantation and Body Donation* (1970); and *Personnel Guidance Manual for Funeral Service Practice* (1970).

THE PREARRANGING AND PREFINANCING OF FUNERALS

*Thomas H. Clark
and
Howard C. Raether*

A Brief Background

In the chapter "The Law and a Funeral Service Practice" reference is made to changes in the law to permit an individual during his lifetime to take steps to get the kind of funeral he desires and to determine the method and place of final disposition of his body.

There have been developments toward this new concept for many years, but it has been only since the end of World War II that a significant impact of the move was felt. It was not until 1952 that the National Funeral Directors Association felt the situation warranted a policy statement which concluded with the recommendation which has led to laws controlling and regulating prefinanced funeral contracts being enacted in a large majority of the states.

The Sociology of Life and Death

The funerals for most people are selected at the time of death. Unless one knows when, where and under what circumstances he is going to die, it is difficult for him to prearrange his own funeral, either alone or with a member of his family, and feel that it will be as planned.

There are few people who are sure things won't change sufficiently to upset pre-arranged plans. And in cases when they are changed and are different, problems are often created instead of being solved.

A national study showed that in 1967 less than 1% of all funerals conducted, except in the Pacific and Mountain regions, were prearranged. It also revealed that from 25% to 33% (depending on the region) of the funerals conducted in 1967 that were prearranged were changed by the survivors. However, about 50% of funeral directors said at that time that prearrangements were on the increase.

Why?

There are those who feel, as is pointed out elsewhere herein, that our society is changing from a family culture to a generation culture. Families are being separated by age, by distance, by knowledge and by philosophy.

Sometimes an elder member, especially if living alone, wants to make sure he or she gets the kind of funeral he desires. Often a surviving spouse will make arrangements for the same kind of funeral that was just conducted for the husband or wife.

Sometimes differences in a family are such that segments thereof feel they have to protect themselves against each other as to funeral arrangements and costs.

Sometimes cost is the primary reason for the prearrangement and prefinancing. There are those who want a moderate to expensive service and who want to be sure they get it. Often prearranging is done in an attempt to keep costs down, to indicate to the family or other survivors that they should not go "overboard" in the prearranger's opinion.

Finally, there are those who prearrange and prefinance their own funeral because they want a specific type of service involving a particular church and/or clergyman and/or funeral director and/or any one of many other reasons trivial to some but important to the person doing the prearranging.

Prearrangements are a part of just about every funeral director's files and practice. They must be recognized as an aspect of present-day funeral service, and important facets of the overall picture must be understood.

Psychological Aspects

Some who have studied death, grief and bereavement say that following death there is a therapy in doing things and in having responsibilities. When most of the details of a funeral have been worked out and perhaps paid for by the deceased, this could leave the survivors with little to do in the actual at-need planning and decision making.

Equally important, survivors and the community may want to do some last thing or things in honor and/or respect and/or in recognition of the deceased. There may be the feeling this shouldn't or can't be done when the person has made his own arrangements. Or, there may be some things that the deceased has arranged which might affect the sensibilities of a survivor, or survivors, and bother them for years, but they won't suggest a change lest they "offend" the departed and his memory.

The Promotions of the Fifties

The idea of the prearranged or prefinanced funeral was not first conceived in the early fifties, but it was then that it became the basis for promotions to sell the idea of prearranging and prefinancing funerals.

Some of these promotions were built around package deals covering the funeral

service, funeral merchandise, flowers, burial vault, cemetery lot, opening and closing of the grave, and the grave marker.

Sales crews were trained and often blanketed an area pushing door bells and at times offering an item of merchandise free to get into the door to make their presentation.

In this presentation the alleged high cost of dying, peace of mind, and a special purchase price of the prearranged service and merchandise were usually stressed.

These developments led to two separate actions which although not related complemented each other.

The Association of Better Business Bureaus, now the Council of Better Business Bureaus, came out with three publications on the subject in seven years. In the same period many states enacted laws to control the prearranging and prefinancing of funerals.

The ABBBI publications are:

1. *Facts Every Family Should Know About Funerals and Interments.* Some paragraphs were devoted to package deals therein.
2. *Questions You Should Ask About Cemetery Lot Promotions.* Since many promotions—pre-need and otherwise—were cemetery initiated, this leaflet was prepared.
3. *Facts You Should Know...Questions You Should Ask...The Prearrangement and Prefinancing of Funerals.*

All three of these publications are kept current and their widespread distribution continues.

Because the last-mentioned booklet is pertinent to this chapter, the following excerpts from it are quoted:

In recent years a growing number of individuals, firms and groups have sought to stimulate public interest in prearranged, prefinanced funeral plans. Among them have been sales organizations and promoters outside the funeral profession who seek to interpose themselves as third parties in the traditional personal and confidential relationship between the funeral director and the survivors of the deceased. Grievous disappointments and severe financial losses have resulted from some unsound promotional schemes foisted on a credulous public by armies of high-pressure salesmen.

* * *

Sometimes, belief that a funeral has been fully prearranged and paid for can create a false sense of security for survivors.

* * *

The simplest way to prearrange a funeral is to leave written instructions for those who will make the arrangements. If advance payments are involved under a contract which does not permit the individual to alter the prearrangements to meet changing circumstances, the possibilities...can lead to serious problems. What assurance do you have that the funds deposited will be intact when the time for their disbursement arrives or that they will be available to you if you want them? Who will receive the interest on your money during the many years which may intervene between the date of deposit and the date of death? Will such interest revert to you? Will you be better off by depositing the money in your own bank where you will get the benefit of all interest earned? You also are free to withdraw your funds in an emergency.

* * *

Savings claims and promises of "bargain" rates are stressed in selling many of these promotional plans. Weigh carefully any representation that a "plan" will give you adequate services for less than you can obtain them from other funeral directors against the fact that the sales commissions and costs must be added to the cost of the funeral under the plan.

The material in these excerpts pinpoints the problem for many of the public.

The State Pre-Need Trust Laws

The questions which the Association of Better Business Bureaus was asking in its booklet on prefinanced funerals were often asked across the country during the fifties and sixties as many states considered legislation to regulate and control the contracts as to such funerals. The chart which is Appendix X gives the names of all the states within the continental limits of the United States. It shows the majority of them with a statute which in some way regulates these contracts. It also gives the basics of each state's statute.

The breakdown of state laws and/or opinions shows, as the Better Business Bureaus point out, that most of these statutes require that all money, or a major share of all monies, paid in advance for funeral merchandise or services, and accruing interest thereon, must be deposited in trust with an approved financial institution until the need for disbursement arises. In most of these states monies paid in advance for burial vaults must also be entrusted and there have been opinions of attorney generals and of state supreme courts upholding this requirement. In some states amounts paid for markers and mausoleum space sold in advance of death must also be placed in trust.

A West Virginia statute was held to be unconstitutional and a new law passed since. The constitutionality of the Arkansas, Idaho, Iowa, Illinois, Kansas, Utah and Texas statutes has been upheld by the supreme courts of those states.

Some promoting prefinanced funerals object to putting in trust or reserve 100% of monies paid in advance for funeral merchandise and services. In the Illinois case one of the suggestions made was that a lesser amount be deposited. The supreme court of the state in its decision points out that the plaintiff cemetery entered the "prearrangement business by choice" and that its procedures invite "regulation of a stringent nature." The matter was appealed to the Supreme Court of the United States which refused to consider the case.

Some Present-day Thoughts About Prearranged and Prefinanced Funerals

In the previously referred to Illinois decision the supreme court of that state said:

In the long interval between full receipt of the purchase price and contract performance the opportunities for fraud are great and risk of insolvency, with consequent inability to perform, apparent.

It is doubtful whether anyone has or will doubt the validity of this statement. And in many areas there has been a slackening of pre-need promotion activity. The economics of the situation has much to do with this for reasons funeral directors know.

The Plan with the Special Price

ABBBI queries a \$795 funeral being sold in advance for \$595. In its brochure an arrangement is cited "between one sales organization and 'participating' funeral homes (in which) the latter are required to represent that a designated funeral, available to customers of the 'plan' at the 'reduced price' of \$595, is 'regularly' priced at \$795. The actual price to the company selling the plan is only \$420."

The BBB asks, "Do you believe that a funeral home can afford to sell services and merchandise honestly priced at \$795 for little more than half that amount and still make a profit?"

Supposing that there was no sales organization, could a funeral home with a plan of providing a \$795 service for \$595 come out ahead with that amount?

If this is in a state where the interest on the monies paid in advance cannot accrue to the benefit of the funeral firm, the amount paid will not increase. Even in those states where the interest can accrue, as earned, to the benefit of the funeral firm, unless the entire amount, or a sizable portion of it, is held for a long period of time, the increment is not large enough to close the gap between the "before-need" and "at-need" figures if both are realistic.

Another factor of importance is the annual increased cost of providing the service. This is especially true if the components of the funeral and a particular casket are spelled out. Few things have gone down in price or remained stable in a number of years. Therefore every cost increase decreases the actual amount available for the funeral.

Finally, if the pre-need contract was solicited by a salesman, it is estimated that 15 to 30% of the total contract price will be used to absorb sales and administration costs.

Income for Federal Tax Purposes

When a funeral is prefinanced, if the firm to whom that money is paid has constructive, permissive or actual use of the money, the money is taxable as income by the federal government for the year in which the money was received. This is true whether the amount is a partial payment or the entire prepaid price of the service.

What to Do

This chapter shows that many states have enacted laws controlling and/or regulating the contracts made in advance of need for funeral services and/or merchandise. This coupled with significant variations in the pre-need laws and the divergent opinions which exist among funeral directors warrants the following recommendations:

1. Pre-need contracts and their solicitation *are* fraught with the danger of fraud and funeral directors should avoid any contract or plan which could harm their clientele or their service or place in the community.

2. Those who wish to prearrange their own funeral or one for someone for whom they have responsibility should be able to do so.
3. When a funeral is prearranged and monies are paid in advance of need for funeral services and/or merchandise including burial vaults, *all* such monies should be deposited in a trust fund with the person or persons prearranging having the control thereof to be entitled to the earnings therefrom. Furthermore such prearranger shall have the right to terminate the contract at any time without forfeiture of any of the funds which have been paid or earnings accrued.
4. Where a contract is entered into it should be in accordance with the laws of the state in which the prearrangement is made. Some state funeral directors associations have prepared contract forms. If there is no pre-need law and/or if no form is available—the suggested wording for one is at the conclusion of this chapter. In all such contracts the funeral director should bind himself only to the kind of funeral and merchandise which will be available at the time of need for the face amount of the contract.
5. Funeral directors should carefully consider the potential negative effects and cost of allowing a third party to step between themselves and their firm and the family through the representations of a third party soliciting a pre-need program or plan which will be serviced by the funeral home when the person for whom the service was prearranged dies.
6. No funeral business should be purchased which has the liability of providing funerals which have been prefinanced in whole or in part until the purchaser of the business is sure the monies paid in advance are on hand for the funerals which will have to be provided.

It is not the intent of the writers of this chapter to discourage individuals and families from discussing funerals and perhaps making tentative plans for a funeral or funerals. This is encouraged especially when there is a family or close friends and they share in the discussion. Death is not as commonplace as it once was. Millions of people in the country today have never experienced a death and funeral of someone close to them. They don't know what is involved and they should.

There is a big difference between tentative arrangements considering survivors and formal agreements which might disregard and adversely affect the sensibilities of those who will mourn.

Where there is no family or its members are disinterested or feel specific prearrangement is good, a formal agreement in line with the following contract suggestion will not only be proper but may also be helpful.

* * *

THIS AGREEMENT made and entered into this _____ day of _____ 19____, by and between _____, party of the first part, hereinafter sometimes referred to as "Funeral Director," and _____, party of the second part, sometimes hereinafter referred to as "Buyer."

WITNESSETH:

WHEREAS, party of the second part desires and hereby requests to enter into a contract to pro-

vide for payment for funeral merchandise and/or services in advance of death, which merchandise and/or services are to be delivered and performed subsequent to the death of _____, hereinafter referred to as Beneficiary as follows:

Professional services and casket

NOW, THEREFORE, in consideration of the mutual promises, it is hereby agreed as follows:

1. Funeral Director will supply to Beneficiary out of the funds deposited by Buyer the services and/or merchandise as set forth above for the sum of \$_____, payable as follows:

2. Said funds as aforesaid shall be placed with _____ hereinafter sometimes referred to as "Trustee" within ten days after receipt thereof. In the event, upon the death of Beneficiary, said funds are inadequate to provide for the services above described, then the funds shall be used by the Funeral Director to provide professional services and/or merchandise of a type as nearly similar as may be purchased with said funds at the time of Beneficiary's death.

3. Upon the death of Beneficiary, the said funds shall be released by the Trustee forthwith to the Funeral Director upon receipt of a certified copy of certificate of death or other evidence of death satisfactory to said Trustee and where required by State Law, an affidavit by the Funeral Director that the funeral services and/or merchandise which has been contracted for have been so provided and that the cost was not less than the amount on deposit. Any amount on deposit not required to pay for funeral services and/or funeral merchandise shall be returned on request to the Buyer if living, or if not living to the estate of the beneficiary.

4. Said funds shall remain on deposit with the Trustee and shall remain intact as a fund until the death of the Beneficiary, or until withdrawal by Buyer as hereinafter provided; and said funds may be withdrawn only for the full amount thereof and not in part, and said withdrawals must comply with the rules and regulations of said Trustee; provided, however, that the Buyer may, at any time upon complying with the rules and regulations of the Trustee, withdraw the funds deposited to date with the Trustee pursuant to this contract. In the event of withdrawal the Buyer shall notify the Funeral Director within twenty-four hours prior to such withdrawal, and in the event the withdrawal is completed, the Funeral Director shall be relieved from any of the obligations contained in this agreement.

5. It is mutually agreed that the said Trustee is only the repository of said funds and is not liable for the fulfillment of the contract by the Funeral Director, and upon payment over to said Funeral Director of the said funds, or repayment to Buyer, the Trustee's liability shall terminate.

6. Interest earnings which may accrue on said funeral fund shall be added to and become part of said fund.

7. Upon the death of Buyer, in the event the said funds shall exceed the amount required to provide services set forth above, any surplus shall be paid over to Beneficiary's estate (or) to _____, by the Funeral Director.

8. This Agreement shall be binding upon the heirs, administrators, executors and assigns of the parties hereto.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first above written.

THE WHOLE-MAN TOTAL-FUNERAL CONCEPT

*Howard C. Raether
and
Robert C. Slater*

Example: John J. Jones dies of a disfiguring malignancy. He is survived by his widow, one son, two daughters, one daughter-in-law, one son-in-law and two grandchildren. At the time of his death his married daughter is less than a month from having her first child. His unmarried daughter is engaged. Her fiance is in the army on duty within the country.

During the first contact with the son who is handling arrangements tentatively awaiting final plans for the funeral, four areas of concern of the family become apparent. They are:

1. Will restoration of the father's face be such that viewing will be possible?
2. The pregnant daughter was her father's favorite. How will she hold up? To what extent should she participate in the arrangements and during the various periods of the funeral.
3. What about the son-in-law to be? Might he get an emergency leave to be at the funeral? He could be a real comfort to his future bride.
4. The two grandchildren are ages 7 years and 10 months. The boy, 7, the first grandchild of the deceased, loved his "Bompa" very much. Should he be allowed at the funeral home? Should he see the casketed body of his grandfather? Should he go to the service?

This hypothetical situation could well be a real one. It could be more complex or consist of only one or two "concern areas." It is spelled out not to present some problems and the solutions to them. Rather it is outlined to introduce what happens

daily in funeral homes and two ways of considering what the funeral home owner(s) and other licensees should know and do in this situation.

Two Schools of Thought

There are two basic schools of thought regarding the serving of families and the role of funeral service licensees and the education necessary for them to fulfill their tasks. One is known as the whole-man-total-funeral concept. The other is the owner-manager-technician concept. A statement on how two funeral homes, one using the whole-man concept and the other the owner-manager-technician concept, might serve this family is essential to any present-day appraisal of funeral service practices.

Before spelling out this appraisal it should be made clear that this is not a discussion of the philosophies of funeral homes with a sizable number of funerals annually and those with a small volume. There are large firms with the whole-man-total-funeral concept. There are small firms with the owner-manager-technician philosophy, firms which use service companies to do some of the things involving personal contact even when the funeral-director-owner or an associate is available.

The Whole-Man-Total-Funeral Concept

In a funeral home where the whole-man-total-funeral concept prevails, after the receipt of the call on the death of John Jones the funeral-director-owner and/or manager or one of his staff would have the responsibility to follow through with the family. This licensee would provide the person-to-person professional service outlined in another chapter. He would tell of the advantages of viewing the deceased and if he did not do the restorative work to make the viewing possible, he would check on it periodically.

The person "waiting on" this family would alert the others on the staff to the condition of the pregnant daughter. Throughout the arrangements and period of the funeral he would watch for signs that would indicate the mother-to-be ought to be momentarily removed from the central scene. If need be, he might suggest calling her doctor.

This funeral director also could suggest contacting the Red Cross, or he might do it himself if the fiance asks for emergency leave and can't get it. He might also talk to the clergyman to see if he feels it important enough to call the chaplain for the fiance's army unit about the leave.

He undoubtedly would counsel with the family about the grandson's viewing the body and his part in the funeral, if any. There again he would talk to the clergyman and if the youngster knows the cleric well, he might be one of the two or three with the boy as he goes to see his "Bompa."

The whole-man-total-funeral concept makes one person licensed to practice funeral service responsible to a family to try to meet all their needs in relation to the total funeral. While there undoubtedly will be some delegation of duty and authority, the person "waiting on" the family is responsible for the funeral of the one they loved. And if the funeral home owner is not the one, he will at some time or times check with the licensee responsible and the family to see how things are coming.

The Owner-Manager-Technician Concept

When the original death call is received by a funeral home administered under the owner-manager-technician concept there are variations in what might happen depending on the size and practices of the firm. But unlike the previously described concept, the same licensee will not be involved in all facets of the funeral. Rather there will be one or more persons with specialized knowledges or skills who will perform their tasks and having done so their responsibility for that "service" ends. For instance, at the time of the removal a family may ask about several matters pertaining to funeral arrangements which the specialized technician may not be able to answer, necessitating a referral to another staff person.

In some funeral homes with this concept there are persons who do the arranging, there are others who are with the family for the casket selection, there are those who only embalm, and there might be some who just direct the actual funeral service.

Most times these individual functionaries report to a central office or person. Sometimes that person is not a funeral service licensee. What complicates the situation is that anyone of these individuals will find he must act alone sometimes without support from anyone else.

Following the death of John Jones the areas of concern might become apparent to those associated with the funeral home with the owner-manager-technician concept. But those who argue for the whole-man concept--as the authors of this chapter do--say that the chances are less that they will for two reasons. First, the departmentalized or specialized services of the funeral home bring no single staff member in constant communication with the family so as to allow them a total picture of what is happening and what is needed. Second, because the family sees and makes various arrangements with two or three people, they are less likely to get sufficiently close to one of them to make some requests they might have, or to "unload" some of their feelings.

Rabbi Dr. Earl A. Grollman, who is a well-known pastoral psychologist, paraphrased an article for clergymen in the following manner: "The word *cure* has its root in a word that originally meant *care*. The funeral director is someone who cares about, who takes care, and who takes care of. He is called upon to cure, to encourage as well as to console, to overcome soul-wounds. His is part of a meaningful care-taking profession."

This definition fits most funeral service licensees. But its ultimate more often than not is found in those practicing with the whole-man--total-funeral concept.

Licensing—Education—Recruitment

It is estimated that approximately 75% of all persons licensed in funeral service hold a funeral director's and an embalmer's license, or a combination of both. There are seven states which do not license funeral directors as such. There are eleven states where there is a single license law covering both funeral directors and embalmers, or where the requirements for funeral directors include embalmer prerequisites.

The whole-man--total-funeral idea is best served when the licensee is educated *and* licensed to do all that is done or might have to be done in a funeral service practice.

The reasoning for this is valid when looking outside of funeral service and when

realistically confronting the facts within funeral service.

It is admitted that there are men and women who prefer the technical aspects of the profession. They like to embalm and do restorative work. It is also true that some licensees seldom prepare a remains because their personal contact and administrative duties keep them fully occupied.

There are physicians who specialize in surgery. There are lawyers who do nothing but tax work. There are dentists whose practice is limited to extracting teeth and pharmacists who are research chemists. But in each of these fields the *general* education and license is that which must first be obtained and the specialization follows.

In funeral service the reasons are as logical and compelling.

It is helpful in the serving of people for all licensees to be fully qualified. As an example, the owner or manager should have the basic knowledge if not the experience to understand an embalming problem and perhaps help solve it, or at least to be able to relate it to someone.

Likewise a licensee specializing in technical functions should be able to fill in in other capacities in the absence of those who do this normally. He should also be able to serve those who may want him as their funeral functionary.

The following chapter deals with personnel practices. But it is pertinent at this point to state that for the funeral to continue with care taking personalized service given by licensed personnel there must continue to be an influx of such personnel to replace those who die, retire, or leave the field.

As long ago as 1957 the Joint Commission on Mortuary Education said in its report that the concept of the person licensed to practice funeral service must reintegrate the embalming with the funeral directing function. Also the role of the licensee must be expanded to include services which have a therapeutic and mental health value performed for the living.

The Commission was formed in April 1956 "to examine the bundle of tasks that have been socially and legally assigned as the occupational province of present-day American funeral service personnel with a view to determining the educational experiences, both preparatory and in-service, needed for their efficient and satisfactory performance."

The conclusion previously stated was predicated on the finding that embalmers were faced with an occupational dilemma—with ambiguous status. The reasons for this were summarized in the following manner:

1. Embalming in the minds of funeral service personnel is associated with the "back room" of the funeral home.
2. Dealing with the clientele "out front" is valued by funeral service staffs.
3. While not all who are primarily embalmers are discontented, those who are are critical in a manner symptomatic of frustrated career aspirations.
4. Funeral directing only in the dual license sense (funeral director and embalmer) means management, personal contacts and funeral direction. Paradoxically in many states this requires the least formal education and training.
5. Embalmers and other technicians have had little success in organizing associations other than unions.

There is one other point that the Commission made more than a decade ago which might be viewed as prophetic. In its analysis the Commission used the phrases "house of management" and "house of labor." It is our opinion that the whole-man-total-funeral concept with the single license will discourage a division of personnel whereas the owner-manager-technician concept will encourage it to the point where there may be a separation of "management" and "labor" in a funeral home.

A funeral home owner must face up to the following facts:

"Back room" men can be obtained, but often they must be paid as much or more salary as are qualified personnel. Also, these men *do* represent the funeral home and the owner(s) for better or worse. However, it is rare that a man who will make a worthwhile staff member can be recruited to be a "back room" man, a "second class citizen." There are times when the owner is away and one or more staff members fill in for him. Or he may be busy. The funeral is just as important to the people served by these staff members as it is to those served by the owner or manager. Irreparable harm can be done by a mistake or mistakes. There is no doing it over. The greater the education of a survivor or survivors the greater the possibility of his expecting good service by an equally or better educated person associated with the funeral home. The more closely a man fits the requirements of the whole-man concept the greater his chances are of meeting the challenge and needs of those of the "new" generation.

Paul R. Keenan, now of the University of Missouri, put it well when he said in his "Education for Tomorrow" :

If the funeral service practitioner of today and tomorrow is to be successful in his contacts with other members of his community, he will be expected to meet them on an equivalent academic basis. If he does not, not only will he be at some disadvantage, but many opportunities both personal and professional which he might otherwise enjoy will not be available to him.

We must also be aware that the basic fund of knowledge is increasing in this day and age at a rate in which it is doubled every ten years. This has resulted in many changes in sociological and professional practices. In many fields it has resulted in computer storage of information—in others it has established specialties, and sub-specialties within professions and occupational groups. Employment opportunities unknown ten years ago are commonplace today, and this has contributed much to the complex situation in which today's citizen must function and which he hopes to understand.

There is no doubt, unless some unforeseen circumstance arises, that knowledge will continue to become available at a constantly accelerating rate, accompanied by a comparable complexity of life; and the person who finds himself unprepared for it will experience some difficulty in keeping abreast of new developments in everyday living. If this is true of citizens attempting to find a place in life which is satisfying to them, it will also be true of the professional who will find the many faces of society constantly changing, and who will have to cope with these changes if he is to survive. It should be remembered that he must operate both as a member of his society and also as a professional person to satisfy special needs of the community in which he elects to function.

Funeral service has been comfortable in the knowledge that it has developed according to specific customs based on the needs of the people, but no one can adequately predict the lines on which it will develop further. It does not, however, require a soothsayer to

predict that funeral service will be subjected to changes because the needs and demands of the public are changing, and will continue to change.

In the almost 100 years of licensing the funeral functionary, there have been three basic steps of progression to meet the *needs and demands of change*, with a fourth now developing fast:

1. The embalmer-public-health concept.
2. The advent of the funeral director license to embrace more than embalming and to place responsibility for actions beyond preparation of the body.
3. The dual license law in most states with most licensees being both funeral directors and embalmers, or holding a combination license.
4. The single license to practice funeral service predicated on the whole-man-total-funeral concept to encompass services essential to the place of the licensee as a "care-taker," or "care-giver," or "gate-keeper" in America in the last third of the twentieth century.

APPENDIX X

Basic Data on State Pre-Need Trust Laws

STATE	PRE-NEED STATUTE	STATE CONTROL AGENCY	PERMIT REQUIRED	AMOUNT OF PAYMENTS PUT IN TRUST	AMOUNT OF INCOME PART OF TRUST	AMOUNT BUYER CAN WITHDRAW
1. ALABAMA	no law					
2. ALASKA	no law					
3. ARIZONA	yes	yes	no	100%	100%	100%
4. ARKANSAS	yes	yes	yes	100%	100%	none
5. CALIFORNIA	Funeral directors only	yes	no	100%	Used to pay expenses and forfeitures	100% of payments
6. COLORADO	yes	yes	yes	85%	Up to 15% of contract	Amount of payments & interest accrued.
7. CONNECTICUT	Insurance law governs	yes	yes			
8. DELAWARE	Participation in such activities considered grounds for suspension of revocation of license.					
9. DISTRICT OF COLUMBIA	no law					
10. FLORIDA	yes	yes	yes (only licensees can arrange)	100%	100%	100%
11. GEORGIA	yes	yes	yes	100%	100%	100%
12. HAWAII	no law					
13. IDAHO	yes	no	no	100%	100%	100% less cost of operating trust
14. ILLINOIS	yes	yes	yes	95%	95%	Amount in trust account less 25% or \$35.00 whichever is greater.
15. INDIANA	yes	yes	yes	100% less trustee's expense	100% less trustee's expense	Amount in trust account less 10% or \$35.00 whichever is greater
16. IOWA	yes	no	no	80%	100%	Amount in trust account on mutual consent

STATE	PRE-NEED STATUTE	STATE CONTROL AGENCY	PERMIT REQUIRED	AMOUNT OF PAYMENTS PUT IN TRUST	AMOUNT OF INCOME PART OF TRUST	AMOUNT BUYER CAN WITHDRAW
17. KANSAS	yes	no	no	100%	100%	100%
18. KENTUCKY	yes	yes	yes	100%	100%	100%
19. LOUISIANA	Participation in such activities possible grounds for revocation of license.					
20. MAINE	yes	no	no	100%	100%	100%
21. MARYLAND	yes	no	Licensed funeral director and embalmer only	100%	100%	100%
22. MASSACHUSETTS	no law					
23. MICHIGAN	yes	no	no	100%	100%	100%
24. MINNESOTA	yes	no	no	100%	100%	100%
25. MISSISSIPPI	Pre-need contracts limited severely and controlled by Insurance Commissioner					
26. MISSOURI	yes	yes	no	80%	none	73%
27. MONTANA	yes	yes	no	100%	100%	100% on mutual consent
28. NEBRASKA	yes	yes	no	100%	100%	100%
29. NEVADA	Life insurance law governs					
30. NEW HAMPSHIRE	no law	Burial associations prohibited				
31. NEW JERSEY	yes	no	no	100%	100%	100%
32. NEW MEXICO	Life insurance law governs					
33. NEW YORK	yes	yes	no	100%	100%	100%
34. NORTH CAROLINA	yes	yes	yes	100%	100%	100%

STATE	PRE-NEED STATUTE	STATE CONTROL AGENCY	PERMIT REQUIRED	AMOUNT OF PAYMENTS PUT IN TRUST	AMOUNT OF INCOME PART OF TRUST	AMOUNT BUYER CAN WITHDRAW
35. NORTH DAKOTA	yes	yes	Can be engaged in only by operators of licensed funeral establishments	100%	100%	100%
36. OHIO	yes	no	no	100%	100%	100%
37. OKLAHOMA	yes	yes	yes	90%	100%	100% of amount paid into trust fund
38. OREGON	yes	no	no	100%	100%	100%
39. PENNSYLVANIA	yes	yes	no	last 70%	100% on deposit	last 70% of payments
40. RHODE ISLAND	no law - Pre-need arrangements may be grounds for suspension or revocation of license					
41. SOUTH CAROLINA	no law - funeral directors may not collaborate with life insurance companies in this area					
42. SOUTH DAKOTA	yes	no	no	100%	100%	100%
43. TENNESSEE	yes	yes	no	100%	100%	100%
44. TEXAS	yes	yes	yes	90%	100% less trust expenses	All of payments held in trust - no interest
45. UTAH	yes	yes	yes	at least 75%	100% of trust	90% of the amount placed in trust
46. VERMONT	no law					
47. VIRGINIA	yes	no	no	100%	100%	Mutual consent
48. WASHINGTON	Insurance law governs					
49. WEST VIRGINIA	yes	yes	no	95%	95%	Amount in trust less 25% or \$35.00 whichever is greater

STATE	PRE-NEED STATUTE	STATE CONTROL AGENCY .	PERMIT REQUIRED	AMOUNT OF PAYMENTS PUT IN TRUST	AMOUNT OF INCOME PART OF TRUST	AMOUNT BUYER CAN WITHDRAW
50. WISCONSIN	yes	no	no	100%	100%	100%
51. WYOMING	Commissioner of Insurance sets out rules and regulations					

Funerals: A Bitter Note

WASHINGTON — (AP) — An organization of eight million retirees charged yesterday that the funeral industry has engaged in "exploitative, unfair and deceptive practices" against bereaved customers.

Dr. Esther Prevey of Kansas City, Mo., told Congress that the National Retired Teachers Association combined with the American Association of Retired Persons strongly endorses proposed Federal Trade Commission regulations requiring full disclosure of funeral costs.

"The many graphic examples of unfair and deceptive practices we have already received

from our members tend to confirm our belief that large numbers of older Americans have already suffered serious economic and emotional harm under the present system," Dr. Prevey said in testimony for a House small business subcommittee hearing.

She cited as examples some of the more than 2,000 complaints the association and the FTC have received:

—A Falls Church, Va., man was charged \$1,000 for two burial vaults he learned later could have been purchased for about \$40 each.

—A person in Tennessee was charged \$1,591 for unspecified funeral

services in addition to the cost of a casket, vault, clothing and obituary notices.

—A Chicago woman was about to pay \$550 for a death certificate and pick-up and delivery of the body, until she learned the same services could be obtained elsewhere for \$155.

—Several persons were charged for embalming and cemetery plots for bodies that were cremated.

"We are not talking about isolated instances of abuse by a few so-called small businesses," said Dr. Prevey, a member of the association's legislative council.

"The issue here is a

widespread pattern of misrepresentation, non-disclosure of price information and anticompetitive practices in a multibillion industry encompassing more than 22,000 funeral homes."

Under the present system, she added, the bereaved "are often forced to make one of the largest consumer purchases of their lives under severe time pressure and emotional distress and with an almost complete lack of information or experience."

The Federal Trade Commission plans to open hearings in April on the question of forcing funeral homes to tell if local laws do not require embalming, sealer caskets or an outer burial receptacle.

Howard C. Raether, executive director of the National Funeral Directors, said Wednesday such rules could force one-fourth of the funeral homes out of business and bring higher burial costs to the public.

Funeral director seeks stronger state regulation

By SALLY W. JONES
Daily News Staff Writer

An Anchorage funeral director is meeting with state legislators today in an effort to introduce a bill that would further regulate such businesses.

Richard Rome, a partner in the Evergreen Memorial Chapel funeral home here, will present a draft bill to key legislators for introduction during the current Juneau session.

THE BILL WAS drafted after the chapel discussed with other funeral directors statewide existing funeral home and embalming regulations in the state and what needs to be done to strengthen them.

Alaska statutes now cover only embalmer's licenses and include no clear provision for revoking a license for misconduct or other ethical or criminal violations.

A bill proposing more stringent funeral home and embalmer's laws was introduced in the last session of the legislature, but died in committee.

THAT BILL, requested by then-Gov. William Egan, followed a much-publicized case concerning an

Anchorage funeral director, Gordon Green, and the five funeral homes he operated in and near Anchorage.

Green was indicted last year on criminal charges of embezzlement and holding a body for debt. The embezzlement charge stemmed from allegations he resold a casket. He was found guilty of both charges. The funeral director also was the subject of civil suits and an attorney general's action to have his license revoked.

The law being sought by Evergreen Chapel today would strengthen many of the regulations that prevented prosecutors last year from taking further actions in cases such as Green's.

UNDER PRESENT statutes, a funeral director can maintain his holdings in a funeral home even though his license has been revoked. Current laws also allow licensed directors and embalmers from other states reciprocal licensing rights here, even if other states' licensing regulations are weak.

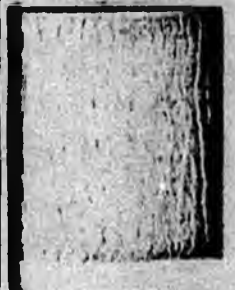
The bill proposed by the chapel here also would require a person to train for at least one year in a licensed mortuary

before obtaining an embalmer's license. Testing procedures for prospective licensees also would be strengthened by requiring familiarity with funeral law, accounting, psychology and management. And if the bill is approved and signed by the governor, funeral homes would be required to itemize funeral costs and services to clients.

Also included in the law are penalties of up to six months in jail and \$5,000 for violating provisions of the act.

THE LAW WOULD allow all current license holders to retain their licenses, to be renewed yearly; and would provide a permit system for bush residents who now care for and dispose of the dead.

Lee Moeglein, an Evergreen funeral director and spokesman, said the chapel decided to seek the legislation because little has been done to strengthen funeral regulations since the Green case came to light. He said the bill Evergreen is proposing was drafted using model legislation compiled by the National Funeral Directors' Association and the states of Oregon and Minnesota.



LAW OFFICES

LAPIN, PANICHI & LEVINE, LTD.

SUITE 1200-100 NORTH LASALLE STREET

CHICAGO 60602

HARVEY I. LAPIN
RICHARD M. PANICHI
AARON LEVINE
LAWRENCE A. ROBINS
LAWRENCE M. GRITTON

January 20, 1976

William G. Berrier, Esq.
Legislative Affairs Agency
State of Alaska
Pouch Y, State Capitol
Juneau, Alaska 99801

Dear Mr. Berrier:

Pursuant to our telephone conversation, please find enclosed a copy of the Federal Trade Commission Report on the Proposed Funeral Industry Trade Practices Rule. The Commission is presently scheduling hearings on the Proposed Rule throughout the country to consider opinions concerning their comments.

H.B. 509 as proposed will give legislative sanction to the Alaskan funeral directors to engage in the types of practices found by the FTC to be harmful to the public. In this regard, we wish to draw your attention to pages 1 through 7 of the Report which contain a discussion in general of some of the practices found to be harmful and pages 19-20 and 85-103 which discuss the manner in which funeral directors have interfered with the market so as to limit competition. In particular we draw your attention to the discussion starting at page 86 about how the funeral directors have reinforced cultural benefits with an "elaborate web of state and private restrictions."

We are, as I advised you, special counsel to one of the national cemetery associations as well as several state cemetery associations. I personally am a member of the Advisory Board to the Comptroller of the State of Illinois (who has jurisdiction of the Funeral and Burial Laws of the State of Illinois), special counsel to the Louisiana Cemetery Board (whose Cemetery Act I drafted). We also represent numerous cemeteries and funeral homes throughout the country.

William G. Berrier, Esq. -2-

January 20, 1976

What's the story!

It is surprising that the State of Alaska does not have extensive legislation on the subjects of funeral homes as well as cemeteries and we are in agreement that some legislation is required. However, H.B. 509 is the type of legislation which while appearing to protect the consumer is designed in fact to provide protection for a few people against free competition and to restrict the marketplace in order to allow the funeral director to continue to take advantage of the public by performing their services only at the time of a death, when the consumer's ability to make rational choice is severely diminished. These protections and restrictions are accomplished simply by doing the following: first by providing that only licensed funeral directors can make sales; secondly by prohibiting solicitation in advance of need by making it a basis for loss of a license and third by requiring that 100% of the funds paid in on a pre-need sale must be placed in a trust with the consumer having an unlimited right of refund.

Obviously, what seller is going to make sales when they know they could lose their license, be required to put all the funds into a trust so that any sales costs would have to be borne from other sources with the customer being allowed to terminate the sale at any time without any compensation to the seller.

Alaska is most fortunate that it has the opportunity to review the extensive legislation in the other states which have dealt with these subjects in a realistic manner and so avoid the pitfalls of the restricting legislation which as illustrated by the FTC Report has severely harmed the public.

H.B. 509 unfortunately contains many of the restrictive provisions intended to accomplish those goals which the FTC has recognized have harmed the public. H.B. 509 also does not reflect the extensive modern legislation throughout the country which has both allowed the public the opportunity to consider alternatives at a less emotional time and yet be protected from the pitfalls by accepted means which do not prevent the seller from entering the marketplace.

LAPIN, PANICHI & LEVINE, LTD.

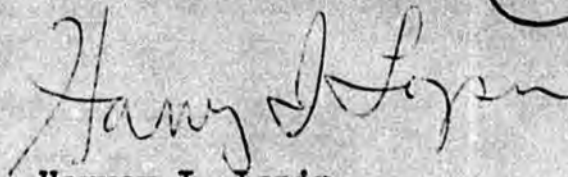
William G. Berrier, Esq. -3-

January 20, 1976

I hope that you can see the legislature of Alaska is embarking onto an area on which very careful study is required before adequate legislation can be enacted. We would strongly suggest that H.B. 509 does not accomplish the intended goals and as such should be sent back for further consideration in order to allow the opportunity for you to review other state legislation. In this regard, I would be happy to give whatever assistance were required.

Cordially,

LAPIN, PANICHI & LEVINE, LTD.

A handwritten signature in cursive script, appearing to read "Harvey I. Lapin". The signature is written in dark ink and is positioned above the typed name.

Harvey I. Lapin

HIL:cb

enc

LAW OFFICES

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SUITE 1200-100 NORTH LASALLE STREET

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HARVEY I. LAPIN
RICHARD M. PANICHI
AARON LEVINE
LAWRENCE A. HOBINS
LAWRENCE M. GRITTON

January 20, 1976

att.
Jlu —

Representative Robert Bradley
House of Representatives, State of Alaska
Pouch V, State Capitol
Juneau, Alaska 99801

Re: H.B. 509

Dear Representative Bradley:

Pursuant to my discussion with Mr. Berrier, I am enclosing a copy of my letter to him with a copy of the Federal Trade Commission report.

We would appreciate your advising us of the status of this Bill as well as when the next hearing will be so that we may attend.

Cordially,

LAPIN, PANICHI & LEVINE, LTD.

Harvey I. Lapin

Harvey I. Lapin

HIL:cb

encs

ALASKA PLANNING AND MANAGEMENT

Consulting Service

Bernard L. Marsh, President

505 W. Northern Lights Blvd.
Suite 101
Anchorage, Alaska 99508
Tel. (907) 279-3195

January 30, 1976

Rep. W. E. Bradley, Chairman
House Commerce Committee
State Senate
Pouch "V"
Juneau, Alaska 99801



Dear Bob:

As a consultant I have conducted several feasibility studies in the field of mortuary science, and have learned quite a bit about the funeral director business. I would like to make some comments about CS for HB-509, which underwent public hearing between sessions and will be heard again by the joint commerce committees next week.

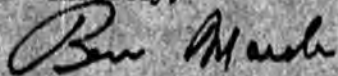
I believe the dual licensing system is the most logical, and would be fairest to the existing funeral directors in Alaska. There should be one license for embalming and preparation of human remains, and a separate license to operate a funeral business. The two functions are separate and distinct, the first requiring training in a technical skill, and the second requiring business acumen and public relations skills. That is not to say an individual could not hold or obtain both licenses, but many persons are suited to one role and not the other.

If a law is enacted requiring funeral directors to be licensed embalmers, several successful and well-run businesses in this state would be immediately placed under a cloud and in this sensitive profession would be at a competitive disadvantage. Such a requirement would serve no useful purpose that I can see, and would do considerable harm.

It appears to me that those who are pressing for a single license system requiring funeral directors to also be licensed embalmers are doing so with ulterior motivation. They want to restrain free competition in this field by hampering or freezing out their competition.

I expect to testify at the joint committee hearing on behalf of the Alaska Allied Funeral Services Association.

Sincerely,



Bernard L. Marsh, President
Alaska Planning & Management, Inc.

BLM/ap



JUNEAU ALASKA

Alaska State Legislature House

From the office of Representative Bob Bradley
Chairman of the House Commerce Committee

FOR IMMEDIATE RELEASE

A joint hearing on House Bills 264, 271 and 509, dealing with mortuary practices will be held by the House and Senate Commerce Committees. It will take place on Friday, February 6 at 8:00 a.m. in Room 120 of the Court Building in Juneau.

The committees invite all interested persons to present testimony at that time. Representative Bob Bradley (D-Anchorage) Chairman of the House Commerce Committee stated, "In the past we have heard largely from members of the industry. We are particularly interested in hearing about good and bad experiences citizens have had with those engaged in the practices of mortuary sciences following the death of their loved ones".

Written testimony will also be accepted. It should be addressed to Representative Bob Bradley, Pouch V, State Capital, Juneau, Alaska 99811.

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
 Second Session - Ninth Legislature

I. REQUEST

Bill No. House Bill 509 (proposed CS)
 Title: An Act relating to funerals and the practice of mortuary science
 Requested by: House Commerce Committee Date: _____
 Return Date Requested: _____
 Agency: Commerce Program: Licensing Professions

II. FISCAL DETAIL

Budget Request Unit(s) Affected: Regulating and Licensing of Professions

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100 PERSONAL SERVICES						
200 TRAVEL		6.0				
300 CONTRACTUAL		5.0				
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		11.0	.0	.0	.0	.0

B. FUNDING: (Thousands of dollars)

GENERAL FUND		11.0	.0	.0	.0	.0
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	0 /	0 /	0 /	0 /	0 /
MAN MONTHS (P./T.)	/	0 /	0 /	0 /	0 /	0 /

From the office of Representative Bob Bradley
Chairman of the House Commerce Committee

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A joint hearing on House Bills 264, 271 and 509, dealing with mortuary practices will be held by the House and Senate Commerce Committees. It will take place on Friday, February 6 at 8:00 a.m. in Room 120 of the Court Building in Juneau.

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Written testimony will also be accepted. It should be addressed to Representative Bob Bradley, Pouch V, State Capital, Juneau, Alaska 99811.



JUNEAU ALASKA

Alaska State Legislature House

February 3, 1976

MEMORANDUM

TO: All Members of the House Commerce Committee

FROM: Representative Bob Bradley, Chairman
House Commerce Committee

The Commerce Committee will meet Friday, February 6th at 8:00 a.m. in Room 120 of the Court Building for a public hearing on House Bills 264, 271 and 509 dealing with mortuary practices.

This will be a joint House and Senate Commerce Committee meeting.

February 18, 1976

Mr. Robert Mellin
3414 Knik
Anchorage, Alaska 99504

Dear Mr. Mellin:

Thank you for your letter concerning the mortuary science bill which is presently in my committee

The committee has expressed their desire to hear from the public and their experiences with businesses. I will relay your experiences and personal views to the committee.

Again thank you for expressing your views on this matter.

Sincerely,

Bob Bradley

Bu

r

t

DEAR REPRESENTATIVE BRADLEY,

MY WIFE AND I HAVE SOME THOUGHTS ON THE MORTUARY SCIENCE BILL. AS ONE WHO HAS HAD TO SELECT A CASKET IN RECENT TIMES I WOULD LIKE TO POINT OUT THAT THE SELECTION WAS POOR. FAR TOO EXPENSIVE FOR THE AVERAGE FAMILY FACING A DRASTIC CHANGE WHEN A BREAD EARNER IS LOST TO A FAMILY.

ALSO, IT SHOULD BE LAW IN ALASKA THAT A MORTUARY MUST OFFER A RENTAL PROGRAM OF A REASONABLE NATURE. THERE ARE THOSE WHO WANT TO BE CREMATED IN A VERY INEXPENSIVE BOX OR CASKET YET FOR VIEWING PURPOSES RELATIVES DO DESIRE SOMETHING BETTER.

WE DO NOT WISH TO SEE ANY BUSINESS OVERLOADED WITH UNNECESSARY REGULATION BUT THE " MORTUARY BUSINESS " HAS NOT COOPERATED TO THE EXTENT WE BELIEVE THEY SHOULD, WITH THE PUBLIC.

BELIEVE YOU CAN RESOLVE THIS IN THE PUBLIC'S INTEREST AND YET NOT BURDEN THE BUSINESSMAN.

SINCERELY,

Bob Mellin
3414 Knick
Anch.

SPENARD HEIGHTS MORTUARY and CREMATORY

3804 SPENARD ROAD

• SPENARD, ALASKA •

279-3741

FEBRUARY 13, 1976

REPRESENTATIVE BOB BRADLEY
CHAIRMAN, HOUSE COMMERCE COMMITTEE
POUCH V
JUNEAU, ALASKA 99801



DEAR REPRESENTATIVE BRADLEY:

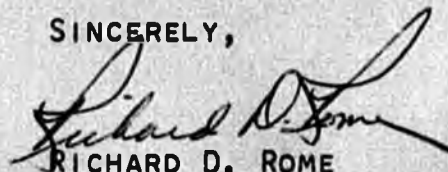
CONCERNING HOUSE BILL 509, THERE ARE TWO ITEMS THAT I THINK ARE IMPORTANT TO THE PUBLIC AND SHOULD BE KEPT IN THIS BILL.

ONE IS TO LICENSE BY A SINGLE LICENSE METHOD ALL PRACTITIONERS IN FUNERAL SERVICE. SOME 75 TO 80% OF ALL PRACTITIONERS THROUGH OUT THE NATION HOLD BOTH LICENSES. IT HAS BEEN PROVEN THAT A PERSON HOLDING A SINGLE LICENSE TO PRACTICE ALL SEGMENTS OF MORTUARY SCIENCE DOES NOT DEMAND A HIGHER WAGE SCALE. FUNERAL HOMES SERVING COMMUNITIES OUTSIDE OF THE LARGE METROPOLITAN AREAS REQUIRE PEOPLE WHO HOLD BOTH LICENSES, AND FACTUALLY ARE NOT INTERESTED IN A PERSON WHO HAS JUST A LICENSE TO PRACTICE FUNERAL DIRECTING OR JUST A LICENSE TO EMBALM. YOU HAVE LETTERS ON YOUR DESK WHICH INDICATE THAT EVEN THE PROPONENTS OF THE DUAL LICENSE ARE INTERESTED IN HIRING PERSONS ABLE TO PRACTICE ON A "WHOLE MAN" BASIS. SOME OF THE PRESSURE TO LICENSE DUALY IS FROM THOSE SEEKING TO LICENSE A SPOUSE AS A FUNERAL DIRECTOR THROUGH THE GRANDFATHER CLAUSE IN THE LAW. IT SHOULD ALSO BE NOTED THAT A GREAT DEAL OF THE DEFINITION AND HAIR SPLITTING PROBLEMS IN ATTEMPTING TO DEFINE THE FUNERAL DIRECTOR, WOULD BE ELIMINATED FROM THE BILL SHOULD YOU GO TO A SINGLE LICENSE SYSTEM. ADMINISTRATION OF THE LICENSING PROCEDURES WOULD BE GREATLY REDUCED FOR THE COMMERCE DEPARTMENT.

TWO IS THE PORTION OF THIS BILL RELATING TO THE SALE OF PRE-NEED/PRE-FINANCED FUNERALS. THIS IS SOUND AND WELL WRITTEN. THE PUBLIC AT PRESENT RECEIVES NO PROTECTION IN THIS AREA, AND THE SALE OF THESE FUNERALS IS ON THE INCREASE IN ALASKA. THE LAW HAS BEEN PROVED CONSTITUTIONAL TIME AND TIME AGAIN IN OTHER STATES. IT DOES NOT TAKE AWAY THE ABILITY OF THOSE DESIRING TO PRE-ARRANGE AND PRE-FINANCE FUNERALS TO DO SO. THESE SERVICES HAVE ALWAYS BEEN A PART OF EVERY FUNERAL HOME THROUGH OUT THE STATE, AND WILL CONTINUE TO BE OFFERED. IT SHOULD BE NOTED ALSO, THAT NO ONE WILL BE PUT OUT OF BUSINESS BY THE PASSING OF THIS LEGISLATION. THERE IS NO FUNERAL HOME PRESENTLY OUT SELLING (DOOR TO DOOR) PRE-FINANCED FUNERALS. THOSE CEMETERIES THAT HAVE ENTERED THIS FIELD STILL HAVE THERE PRE-NEED AND AT-NEED CEMETERY LOT SALES TO STAY IN BUSINESS.

I HOPE THAT YOU AND YOUR COMMITTEE WILL CONSIDER THESE POINTS, AND THAT HB 509 CAN BE PASSED OUT OF YOUR COMMITTEE TO THE RULES COMMITTEE WITHIN THE NEXT TWO OR THREE WEEKS.

SINCERELY,



RICHARD D. ROME

SPENARD HEIGHTS MORTUARY and CREMATORY

3804 SPENARD ROAD

• SPENARD, ALASKA •

279-3741

February 14, 1976

Mr. Billy Berrier
Legislative Affairs Office
Capital Building
Juneau, Alaska 99801

Dear Mr. Berrier:

There has been much discussion on HB 509 relevant to the requirements that an applicant for licensure must first meet to obtain a license to practice in Alaska. We have discussed at great length the amount of college credits, type of courses, examinations and apprenticeship requirements. This is good, and I think has proven fruitful in making some important decisions.

X There is one small word, the word "or" placed at the end of section (a)(1) of 08.42.070 RECIPROCIITY, that renders the whole licensure requirement question moot!

What this "or" does is take away all of the educational standards from the license for those who wish to practice in our State by reciprocity. They do not now have to meet requirements substantially equal to the requirements of this bill. They need only be 18 years of age, not convicted of a felony, be licensed in another state (any state) and to have practiced in that state for one year AND pass the examination on our Vital Statistics law, the provisions of this chapter and the regulations promulgated by the department under this chapter.....

As you know, 100% of all license presently held in Alaska come either from reciprocity or grandfather rights. Not one person has taken the State examination in obtaining his license here. This is a trend that will not suddenly cease to exist. There will be no, or few, applicants for examination in the coming years. All those seeking licensure here will continue to do so through reciprocity. With a whole in our reciprocity law so large you could drive a truck through it we do a dis-service to the public by allowing it to exist.

We have three alternatives as I see it. 1. Take out the "or". 2. Add under (b) of section 08.42070 the requirement to pass the examination provided by the Conference of Funeral Service Examining Boards of the kUnited States. 3. Require simply that a person desiring licensue hold a "legal license" from another state, and that that license was obtained by examination rather than by a grandfather clause or by reciprocity.

To do anything but one of the above three would be a great injustice to the public.

Sincerely,

Richard D. Rome
Richard D. Rome

cc: Ed Willis & Bob Bradley

File Bob, This really fouls up the whole purpose of the licensing statute - we keep our some status - no standards!

DAVID BONNERUP
1301 INLET PLACE
ANCHORAGE, ALASKA 99501

FEBRUARY 13, 1976

REPRESENTATIVE BOB BRADLEY
CHAIRMAN-HOUSE COMMERCE COMMITTEE
POUCH V
JUNEAUS, ALASKA 99811

DEAR REPRESENTATIVE BRADLEY,

I AM WRITING IN REGARDS TO HOUSE BILL 509. MY NAME IS DAVID BONNERUP, AND I AM A LICENSED EMBALMER IN THE STATE OF ALASKA. JULY FIRST I ALSO WILL BE LICENSED IN THE STATE OF MINNESOTA. I AM PRESENTLY SERVING AN APPRENTICESHIP UNDER A MORTICIAN, IN ANCHORAGE, WHO IS LICENSED IN BOTH STATES. I GRADUATED FROM THE UNIVERSITY OF MINNESOTA, WITH A B.S. DEGREE, MAJORING IN MORTUARY SCIENCE.

I WILL SPECIFICALLY ADDRESS MYSELF TO THREE AREAS OF THE BILL. 1) SINGLE LICENSE AS OPPOSED TO A DUAL LICENSE? 2) PRE-FINANCED TRUST LAW 3) PERMITS FOR THE OUTLYING RUSH COMMUNITIES.

I SUPPORT THE PROPOSAL FOR A SINGLE LICENSE REGULATING EMBALMING AND FUNERAL DIRECTING. I FEEL KNOWLEDGE IN ALL PHASES OF FUNERAL SERVICE IS TO THE BEST INTEREST OF THE PUBLIC. THERE OFTEN ARISE OCCASIONS WHERE THE FUNERAL DIRECTOR IS FACE WITH A QUESTION, FROM A FAMILY, CONCERNING THE EMBALMING OPERATION. THE QUESTION SHOULD BE ANSWERED HONESTLY, AND ALSO ETHICALLY, BY THE FUNERAL DIRECTOR. I FEEL TO DO THIS, THE FUNERAL DIRECTOR MUST HAVE A WORKING KNOWLEDGE OF THE TECHNICAL ASPECTS OF EMBALMING PROCEDURE.

THERE HAS BEEN SOME DISCUSSION CONCERNING THE POTENTIAL OF INCREASING THE SALARY OF FUTURE EMPLOYERS, BECAUSE OF THE EXISTING EDUCATIONAL REQUIREMENTS. I GRADUATED IN JUNE OF 1975, AND WAS ACTIVELY EMPLOYED IN SEVERAL EMPLOYERS, IN ALASKA, MINNESOTA, AND IOWA. I WAS OFFERED SEVERAL JOBS, AND THE SALARY RANGED FROM \$500 TO \$900 MONTH PLUS HOUSING. I ALSO EMPLOYED BY A NUMBER OF MY ACADEMICS, AND THE SALARIES WERE ALL IN THAT RANGE. THIS LEADS ME TO BELIEVE THE EMPLOYERS OFFERED A SET SALARY, NOT BECAUSE OF EDUCATION, BUT BASED ON HOW MUCH THERE WERE THEY COULD AFFORD.

I ALSO FEEL THAT ALASKA HAS A CHANCE TO ADOPT A GOOD LAW, AND I FEEL ALASKANS DESERVE THE BEST, AND THE SINGLE LICENSE IS THE BEST.

Evergreen Memorial Chapel, Inc.

737 E. STREET TELEPHONE 579 5477
P. O. BOX 537 ANCHORAGE, ALASKA

THE PRE-FINANCE TRUST LAW IS IN THE INTEREST OF THE CONSUMER. IF A PERSON WISHES TO PAY MONEY FOR A FUTURE FUNERAL, THAT PERSON SHOULD EXPECT THE MONEY TO BE AVAILABLE WHEN THE NEED ARRIVES! THE MONEY SHOULD BE THERE EVEN IF THE FUNERAL HOME INVOLVED HAS GONE OUT OF BUSINESS.

THE PERMIT FOR THE BUSH COMMUNITIES IS A PRACTICAL IDEA. WHEN AN INDIVIDUAL DECIDES TO TAKE CHARGE OF BODIES, FOR COMPENSATION, THAT PERSON SHOULD BE MADE OF POTENTIAL HEALTH HAZARDS ASSOCIATED WITH THAT BODY, AND PROPER PROCEDURES TO FOLLOW. THROUGH THIS PERMIT THESE INDIVIDUALS CAN BE MADE AWARE OF THESE SITUATIONS.

THANK YOU FOR YOUR TIME.

SINCERELY,



DAVID BONGERUS

Evergreen Memorial Chapel, Inc.

737 E STREET TELEPHONE 279-5477
P O BOX 537 ANCHORAGE ALASKA

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.



February 10, 1976

Mr. Billie G. Berrier, Staff Counsel
Legislative Affairs Agency
State of Alaska
Juneau, Alaska 99801

Dear Mr. Berrier:

At the request of Mr. Thomas H. Clark, enclosed you will
find the document regarding pre-need.

Very truly yours,

(Mrs) Margaret Schenz
(Secretary to Mr. Thomas H. Clark)

PRESENTATION IN RE PRE-NEED STATUTES

The question of pre-need funeral sales has been an item of importance in the funeral service field going back to 1950. Presently today, there are 35 states which have statutes which in some way affect the sale of pre-need contracts.

The promotion which we call pre-need started more than thirty years ago in the West, where some 90% of the pre-need funerals in this country are sold annually. It is the people of this same area which, according to a survey of Dr. Robert Fulton, Associate Professor of Sociology at Los Angeles State University, have the worse impressions and feelings as to funeral service and funeral directors. This survey showed that this is in no small part due to pre-arrangement sales. Most of the western states have now taken steps to correct this evil and to give to their citizens the protection to which they are entitled from the promoters and schemers. A few years ago California, which previously had had the highest amount of pre-need sales in this country, passed a pre-need law. During the last few years, the State of Idaho, which has had a statute, found reason to enforce this statute to protect its citizens and the case arising out of this enforcement will also be referred to later. More recently, the State of Colorado, through its insurance commissioner, has had to put tighter reins on the sales of pre-need because of flagrant abuses of the law and advantages taken of its citizens. Back in 1953, after many citizens had lost substantial sums of money by reason of uncontrolled pre-need sales, the first law was passed in the State of Minnesota. Since that time, the other 34 states have followed suit. These laws were drawn to handle sales of pre-need contracts by any person, partnership or corporation whosoever so that it is not a law to favor or disfavor any seller of pre-need contracts. It puts those actively engaged in funeral service under the same restraint as it does those outside the funeral service. According to the

Better Business Bureau which has issued a strong pamphlet on this matter to which we will refer later, most of the problems of pre-need sales have arisen where the sellers were not funeral directors.

The citizens and public officials of Wyoming need only look back a few years to see a prime example of how the public can suffer. More recently, however, the State of Kansas, and this is documented in the Supreme Court case of Kansas to which we will refer later, found that many hundreds of thousands of dollars of pre-need funds had been paid to ten corporations owned by a Denver operator.

The Court indicated that less than \$100.00 of this money was under the jurisdiction of the State of Kansas, and that should these corporations go out of business or be otherwise dissolved, that the money paid by the purchasers would be lost although it was paid in good faith. The Court reminded the participants that, although the loss had not yet occurred, the Court would follow the well advised decision of the State Legislature in not waiting for the loss to first occur. The Court in effect said that it was not willing to lock the barn door after the horse was gone, but that the Legislature had the right to legislate to prevent the horse from escaping.

The profiteering by sellers of pre-need contracts should never be underestimated. Let me relate to you two instances which indicate the extent to which those not actively engaged in the practice of funeral service will go to sell pre-need and/or circumvent present pre-need laws. There have been instances where caskets which have been sold to families, where the casket was the sole item sold under the pre-need contract, were immediately delivered and stored in a warehouse in the name of the purchaser who could at any time he so desired withdraw the casket from the warehouse. It is obvious that the caskets could be needed any time from one day to 25 years hence. If some time did elapse, what would be the condition of the caskets and would not the storage charges exceed the wholesale value of that casket which, on a national average, is \$122.00?

There have also been instances where vaults have been immediately delivered and buried in an individual's back yard because the law regulated "sales of funeral merchandise to be delivered in the future." Is it in the public's interest that the purchaser would be required to dig up the vault and take it with him if he moved or have it transported to the cemetery in event of death? As these cases easily illustrate, the welfare of the purchasing public from the high pressure of salesmen must be of prime consideration.

You are requested to consider adoption of a revision in your Pre-Need Law. The public interest and the public welfare are evident when we remember that purchase of a funeral is not like purchasing a car or a washing machine on the installment basis. This is because the average purchaser of a funeral is not fully conversant with what is included or not included in a funeral, and the relative cost thereof, nor is he likely able to compare comparative qualities, services and prices. 98% of the funeral services are provided by a chosen funeral director according to the survey of Dr. Robert Fulton for one of two reasons; the closeness of the funeral director's location or because the funeral director had buried another member of the decedent's family.

Because the present generation and the generations to come are becoming more mobile - that is we die not near the place where we wish to be buried or die away from the place where we lived most of our lives, none of us is sure of the whereabouts or conditions of our death. This is another of the reasons why proper pre-need laws are generally acknowledged to be desirable. These laws must contain certain basic elements, such as holding the funds received in trust, making sure the funds may not be used by the recipient prior to fulfillment of the contract and the ability and the right of the purchaser to withdraw these funds, which is usually done because of change in circumstances, change in choice of funeral director or change in domicile. The law which is recommended to you adequately covers these points, and later on it will be pointed out to you where laws of less restriction do not adequately provide for them.

For many years the opponents of pre-need statutes have advocated open pre-need sales without legislative restrictions. In the latest two instances where states passed pre-need legislation, this approach was changed and they now acknowledge that some pre-need legislation is necessary. However, the legislation which they advocate is of such a nature as to make pre-need sales immediately profitable to them; however, the profit should not be through profiteering nor should it be as a result of a contract made by an uninformed public where the possibility of non-performance on behalf of the Seller is extraordinarily great.

The proponents of pre-need sales tell us that pre-need contracts reduce the cost of the funeral merchandise or funeral service. A perfect example was the testimony of the plaintiff in the Illinois Supreme Court case where he stated "successful operation of their business (selling pre-need contracts) required the immediate deduction from payments of 32.1% for commissions and over 36% for other optional expenses." If the purchaser is to receive the same quality funeral for the same price that that funeral would have cost him had he died at that time, who is going to pay for the expenses incurred by the seller of the contract. The Court pointed out that the only answer can be that the result is a funeral of less quality - in other words, the purchaser is not getting that for which he contracted. The prime example of the questionable cost statements appears in the testimony of Mr. Richard N. Carpenter, Assistant Attorney General of the State of New Mexico, who appeared before the United States Senate Sub-Committee in Washington, D. C. in 1964, which Committee was investigating fraud and misrepresentations affecting the elderly. Mr. Carpenter stated that, "Sales are made door to door and are upon the installment basis", and that the sellers were selling only caskets and that the "total purchase price has usually been \$637.50." Mr. Carpenter then stated that the President of the selling company had indicated to the Attorney General's office in New Mexico that the wholesale cost of the casket was \$96.50. This is important when we realize that the average funeral

service provided in the Rocky Mountain Region, which includes the States of New Mexico and Wyoming, during the year 1965 was, according to a national survey of Eugene F. Foran, \$605.00 and that the wholesale cost of that casket was \$106.00. The survey covered over 100,000 funerals. The sales in New Mexico did not include a full funeral service, although the price was more than such an average service. Mr. Carpenter stated that upon investigation they found that the purchasing public thought that a full service was included. It should be pointed out here that pre-need funeral service contracts are available to every citizen. They merely have to call a funeral director of their choice and make such an arrangement. Under these arrangements, there is no cost to or by the funeral director and, therefore, all of the money paid by the purchaser can go to the providing of that quality funeral which is as chosen at the time it is needed. In this same regard, it should be noted that the word "professionalism" is used in some laws which license funeral directors. Because of this unique nature, they are willing to serve the public to the public's benefit and to accept profit only at the time they are entitled thereto.

The proponents of pre-need sales have indicated on occasion that there is a crying need by the public for pre-need sales. A Sub-Committee of the United States Senate had a hearing on May 19, 1964 in Washington. At this hearing before the Sub-Committee called "The Sub-Committee on Frauds and Misrepresentations affecting the elderly of the Special Committee on Aging of the United States Senate", Mr. W. Dan Bell, Manager of the Rocky Mountain Better Business Bureau of Denver, Colorado, stated that between "8 to 10 million dollars in pre-arrangement funeral contracts have been sold. Of this money, much of it is sold on an installment contract." This is extremely important when we find that there is a 46% lapse factor to insurance figures on the completion of such contracts. So that much of the money paid for an item that may not be due for a period of twenty or twenty-five years finds its way into the hands of the promoters. Another statement before the same Committee concerning

the need of such contracts was made by Mr. Bell and goes as follows:

"I recall back in Cleveland, Ohio when I was much younger, that the cemetery lot promoters moved into Cleveland during the depression, and they sold cemetery lots on the basis of trading the elderly people out of their pass-books, their savings pass-books, and at that time, they sold more than - well, they sold enough cemetery lots in the city of Cleveland to bury all of our dead for a period of 200 years."

When we look to the states which have properly regulated pre-need contracts, we find that the funerals provided pursuant to such contracts amount to only 1% of the total funerals provided. Thus, does this indicate there is a need?

The third objection of opponents to pre-need legislation, such as has been adopted in most of the other 34 states to which we have referred, is that such legislation in effect prohibits the carrying on of a lawful business activity and, therefore, such legislation is unconstitutional. As indicated above, there have been 6 states whose Supreme Courts have upheld the constitutionality of pre-need statutes. Each of these cases have dealt with the problem of whether such statute was unconstitutional by reason of this objection. In the case of J. M. Falkner, Banking Commissioner of Texas versus Memorial Gardens Association, Inc., the Texas Supreme Court said:

"The fact that the Act requires all funds collected under the contract to be deposited in a trust fund is a mode of regulation of the business and does not prohibit its conduct."

Also, the problem was mentioned in the Illinois case which was Memorial Gardens Association, Inc. versus Elbert S. Smith, Auditor of Public Accounts wherein the Illinois Supreme Court said that the defendants,

"Assume no risk in connection with the increase of the cost of merchandise or services and receive the income from the sums retained. Such procedure invites regulations of a stringent nature."

Continuing, the Court said:

"A large discretion is necessarily vested in the legislature to determine not only what the interests of the public welfare require but what measures are necessary to secure such interest. We do not believe the present

statute operates to prohibit plaintiff's legitimate business. It does regulate the manner in which the business may be conducted. Practically, plaintiffs will no longer be able to collect prospective profits in advance without furnishing adequate guaranty for performance."

Continuing the Court said:

"There is nothing unique in requiring one who contracts for performance in the future to give security for that performance."

Continuing the Court said:

"The public has a vital interest in securing that result and, insofar as the rights of plaintiffs are affected, those considerations must yield to the paramount public welfare."

The next case which mentioned this is the Arkansas case of Reserve Vault Corporation versus Clint Jones wherein the Court said:

"It would be most unusual to expect, or require, prospective purchasers to furnish or advance capital funds necessary for the operation of a business."

The next case to be decided was a case in the State of Idaho which was Messerli versus Monarch Memory Gardens, Inc. wherein the Court said:

"The trust fund provisions of the statute in question are designed to require reserves sufficient to assure the purchasers that the Companies with which they are dealing will be able to complete their contracts when the time for performance arrives."

After the Idaho case, the Supreme Court of Utah in the case of Utah Funeral Directors and Embalmers versus Memorial Gardens of the Valley, Inc., without discussion, simply stated that based on prior decisions the law was constitutional and was a regulatory statute and not a confiscatory statute.

A labor case to be decided in this regard was the case of State of Kansas versus Norman Anderson. The Court in that case stated simply that whether the purposes of a particular statute should be obtained by limited regulation or by absolute prohibition is a question to be answered by a legislature and continued by saying:

"It may again be pointed out that under their contracts, aside from the so-called merchandise trust which is under their control, defendants are not required to make any expenditure for merchandise until after request and after

full payment. The particular merchandise need not be held by defendants at the time of the making of the contracts, or even to be in existence. We would not deprecate promotion or sales costs in the operation of a business but these are not ordinarily permitted to become so burdensome as to put one out of business if advance profits be not drawn. That the statute may seem onerous to defendants in its operation does not render it unconstitutional."

All of these six decisions agreed with each other that the objection that the law was confiscatory and prohibited an otherwise legal enterprise had no foundation.

A seventh case was in West Virginia and was one of the earliest cases and the decision in that case was a 4 to 3 decision against the constitutionality wherein the Court held that the purpose clause did not set forth public regulation power. In each of the six cases which we have herein noted, the dissenting opinion in the West Virginia case is quoted at length and said to be the better view. Subsequently, the legislature of the State of West Virginia has passed a new pre-need statute very similar to the statute which is recommended to you and the legality of that statute has not been questioned.

In each of the six cases referred to earlier (this does not include the West Virginia case), the Court discussed at some length the need and the constitutionality of legislation in the pre-need field. Some quotations from these six cases are as follows:

In the Texas case, the Court said:

"Clearly the Act applies alike to all individuals and corporations desiring to sell pre-arranged or pre-need funeral services or funeral merchandise to be delivered at an undetermined future time dependent upon the death of the contracting party. It is actual classification by the legislature and it is made to apply to all persons and corporations in the class."

Continuing the Court stated:

"Senate Bill 52 was enacted in the public interest."

In the Illinois case, the Court said:

"The enactment of statutes having for their object the prevention of fraud, deceit, cheating and imposition is within the police power of the State."

"The public has a vital interest in the proper disposition of the bodies of its deceased members. Persons

engaged in this business have been subjected to rigorous regulation specifying the place and manner in which their activities may be conducted and prohibiting such activities without license or permit. This has been done, not only out of proper respect for the dead, but in the interest of public health. Such regulatory statutes have not been confined to the business of undertaking and embalming."

The next case to be decided was the Arkansas case, and the Court there said:

"In determining the constitutionality of a statute bearing on its face clear indication that it was designed to prevent fraud, the Court may not give weight to the fact that fraud was neither charged nor proved."

The Court then decided,

"We think unquestionably the Legislature, in passing the Act, had in mind the protection of the public."

From this decision you can see that the legislature did not wait for fraud to exist but kept the public interest in mind and enacted the so-called "ounce of prevention."

Again referring to the Arkansas case, the Arkansas Court agreed with the Illinois case in that "the trust fund provisions of the Act in question are designed to accomplish the same purpose" as insurance laws. "That is to assure the purchasers that the companies will be able to complete their contract when the time for performance arrives."

The next case in order of time was the case in the State of Idaho which stated:

"Mr. Lloyd, president and sole owner of Monarch, testified that the company's average contract runs approximately four and one-half to five years before it is paid out. When we consider that the contract payments are to be made within a short period of time as compared to the average lapse of time until performance of the pre-need contracts; that during the long interval between full receipt of the purchase price and contract performance, the possibilities for fraud are great and risk of insolvency, with consequent inability to perform are inherent, it is then that the wisdom of the legislation becomes apparent."

As to Utah case:

The Court simply stated that the defendants were in violation of:

"these statutes which are obviously made for the protection of the payor-purchaser in obtaining the funeral services contracted for."

The last of the six cases was the Kansas case wherein the Court said:

"Approximately ninety per cent of these sales are on an installment plan basis with payments extending for as much as seventy-two months and approximately ninety per cent also include the sale of a burial vault and memorial marker."

The Court also said:

"It must be remembered defendants operate as a business venture, for profit, and there are many possibilities whereby money received from the sale of lots might be diverted without adequate provision for maintenance and care of the cemeteries, which is exactly what the statute seeks to prevent."

Continuing along the same line of thought, the Court said:

"There is a public interest in the protection of funds intended for a particular purpose, from whatever hazard, whether the normal vicissitudes of business or plain fraud and deceit."

Continuing the Court quoted 68 A.L.R. 2nd 1251 which said:

"Pre-need burial insurance contracts have become quite common in this country, and since they present opportunities for fraud and frequently cater to people most easily duped by fraudulent schemes, many states have attempted regulation of such contracts."

In concluding the Court's decision of public interest, it concluded:

"The whole enterprise presents a fertile field for fraud and imposition and is clearly subject to the police power of the State."

From this it should be clear that there is public need for proper pre-need legislation, and that such legislation where it required a 100% deposit is both desirable and constitutional.

Many other things have been said about the desirability of pre-need legislation which requires 100% deposit. One of the last legislatures to pass such a law was the State of Kentucky. That bill is extremely similar to the bill which you are considering. General feelings as to this bill are echoed by the statement of the Commissioner of the State of Kentucky. He stated simply that never before had he seen legislation so much in the public interest, and that he would be remiss in his duties if he did not advocate passage of this legislation.

That same sentiment is in essence expounded by the Associations of Better Business Bureaus which is the national association for the local associations of Better Business Bureaus. In 1960 the Association issued a pamphlet entitled, "Facts you should know Questions you should ask about The pre-arrangement and prefinancing of funerals."

In 1963 and again in 1966, this pamphlet was brought up-to-date. There is no question that it advises regulations such as contained in most of the state statutes.

Earlier reference was made to a hearing of a sub-committee of the United States Senate on frauds and misrepresentations, and the conclusion of its report reads as follows:

"Preliminary inquiry by the sub-committee has revealed actual and potential losses resulting from the sale of pre-need burial services across the state lines or through the mail. Often, victims are elderly persons who have sought to make certain that they themselves, rather than their survivors, will bear such costs. The threat of such losses, and the cruel nature of the deception, calls for broadened investigation by this sub-committee."

You might ask why we do not ask for federal regulation as to the pre-need contracts. As a matter of principle, we believe it is better for the states to regulate where they can rather than look to the Government in Washington and, in following this reasoning, when this question was brought to the attention of the Federal Trade Commission in Washington, the Commissioner simply stated, "that the matter of funeral service is a matter for local legislation on a local level."

Besides the moral and legal questions as to the public interest and constitutionality, persons selling pre-need funerals fail to notify the family of the decedent of two rights. First, the right to a social security lump sum death benefit, and that benefit in the event there is no spouse, can only be used toward payment of a funeral bill. Presently social security benefit is \$255.00. If a funeral is prepaid and no spouse survives, the social security benefit is lost. It cannot be collected. Secondly, a veteran is also entitled to a death benefit of \$250.00 but his

family also cannot recover any part of it if the funeral has been paid for prior to death. This means that the next of kin, where there is no surviving spouse, would receive no social security death benefit even though the wage earner had paid his social security taxes, and that the family of a deceased veteran, whether it was his wife or children, would not receive the last token of appreciation from those the decedent served while a member of the Armed Forces.

Six times those who oppose proper regulations and laws for pre-need sales have presented their arguments to State Supreme Courts only to have those arguments refuted in the public interest. It is felt that an attempt along this line will be made so far as this Committee and Legislature are concerned.

It is sincerely hoped that the events in other parts of the country both as to abuses and court decisions will not allow your judgment, which should be based on what is best for the citizens of your state, to be blinded by those who are concerned only with profits and who have no consideration for the public welfare.

Prewitt Enterprises

GENE & GAYE PREWITT, OWNERS ♦ PREWITT FUNERAL HOME ♦ ISLAND BUS CO.

BOX 1001 - SITKA, ALASKA - 98835

February 10, 1976

Representative Bob Bradley
Chairman House of Commerce Comm.
Pouch V
Juneau, AK 99811

File

Dear Representative Bradley:

Let me take a few moments to say thank you for the consideration and effort you and your committee have put into House Bill 509, and also for the opportunity for some of us in the funeral profession to voice our opinions.

I would like to summarize my feelings with respect to HB 509:

- 1) I feel that one year of college should be sufficient in addition to apprenticeship, mortuary school and state board examinations. This would not make our requirements greater than the majority of the States and unnecessarily limit the potential areas from which we could seek prospective employees in the event need arises.
- 2) We very firmly support the pre-financed trust law. I operated the mortuary in Fairbanks a number of years ago after a cemetery promoter (now deceased) had pre-sold a large number of clients. Unfortunately the funds were not in trust and by spring we had the remains of six or seven deceased individuals in temporary storage awaiting funds to even open and closed the acquired graves. It should not be necessary to describe the mental anguish and hard feelings experienced by the purchasers of these contracts. A situation such as this should never again happen in our State of Alaska.
- 3) The permit system would not take authority from the office of the Coroner, but assure him that there would be someone in the villages making certain that a burial or cremation would not take place until a death certificate had been filed and a burial permit secured from the magistrate. A burial would not take place until all medical or legal investigations would be complete. This would appear to be an insurance policy for the office of the Coroner.
- 4) The single license provision would assure a more professionally trained person in the field of mortuary science, as well as lessen the burden of paperwork some of the departments are now sharing.

Sincerely yours,

Marvin J. Krause
Marvin J. Krause

Walsh Mortuaries

Robert Britt, Funeral Director
Member of National Funeral Directors Association
P. O. Box 5
KENAI, ALASKA 99611

SEWARD
Ph: 224-3677

KENAI
Ph: 283-7777

February 10, 1976

Rep. Bob Bradley, Chairman
House Commerce Committee
Pouch V
Juneau, Alaska 99811

File

RE: House Bill #509

Dear Rep. Bradley;

I am writing to you in regards to House Bill # 509, and I hope your committee will consider these points I have listed before voting.

The first point I want to mention is a single license requirement is needed. If not a single license I would favor of 1) embalmer's license being issued and 2) a funeral directors license issued, as long as the embalmer's license is received first. I am licensed in this matter in another state. This type of a license system would help streamline and fly by night operators from existing. As a result, only licensed professionals will be working with families and funds that is sent for to be used for the funeral home.

Second, in remote areas of the state the points issued by the state for practicing are necessary and should be issued in areas where needed.

Third, pre-need sales laws are needed. All with these contracts must be able to maintain control of the contract and the right to terminate the contract at any time, without forfeiture of any monies paid or benefits accrued. There should be a 100% refund made to the family.

Very truly yours,
Robert S. Britt, Jr.
Robert S. Britt, Jr.
Owner-Funeral Director

February 10, 1976

File
1

Rep. Bob Bradley
House Commerce Committee
Chairman
Pouch V
Juneau, Alaska 99811

Dear Bob:

We know that you are getting close to final decisions on House Bill 500.

Please consider the people of the State and the quality of the funeral service practitioner who will be serving them in the future.

Set the standards high, and you'll get the kind of people serving Alaska that they deserve and are paying for. Set them low and you'll generally attract people of the same low caliber.

The State boards in those States where the requirements are highest are looking at more applicants for licensure than there are positions available. Just contact a few of them to verify this. College trained and educated people don't demand more money - they'll often work for less. One need only look at the example of nurses and teachers to know that this is so.

Please license with a single license. It is the public's best guarantee of a fully qualified person.

Please include the provisions of our statute so that the survivors of our loved ones will not be terribly disappointed.

Our position for a single license, a high merit system, and the trust law is supported not only by us but by the following locally licensed practitioners:

1. Robert Britt Britt, Eimer & Home
 Yessie, Alaska
2. John Welch Welch Mortuary
 Juneau, Alaska
3. Nellie Henderson Popper, Della Mortuary
 Cordova, Alaska

Evergreen Memorial Chapel, Inc.

737 E. SIRETT TELEPHONE 279-5477
P.O. BOX 517 ANCHORAGE, ALASKA

4. Marv Krause Prewitt Funeral Home
5. Gene Pruitt Sitka, Alaska
6. Charley Roselle Stikine Funeral Homes, Inc.
Petersburg and Wrangell, Alaska
7. Art Moll Ketchikan Mortuary
Ketchikan, Alaska
8. Mary Lou Rottler Practiced in Alaska from 1972 to 1974, will
return to practice here this summer after two
years as an instructor at the State University
of New York.

Each of the above will also personally inform the committee of their position.

P. J. Franke

P. J. Franke
President
Evergreen Memorial Chapel, Inc.
Alaska Licensee

Greg Jerich

Greg Jerich
Evergreen Memorial Chapel, Inc.
Alaska Licensee

Richard D. Rom

Richard D. Rom
Member
Evergreen Memorial Chapel, Inc.
Alaska Licensee

David Bonnerup

David Bonnerup
Evergreen Memorial Chapel, Inc.
Alaska Licensee

Vic MacCallister

Vic MacCallister
Evergreen Memorial Chapel, Inc.
Alaska Licensee

Dale Rosenborg

Dale Rosenborg
Evergreen Memorial Chapel, Inc.
Alaska Licensee

Evergreen Memorial Chapel, Inc.

737 F STREET TELEPHONE 278 5477
P. O. BOX 587 ANCHORAGE, ALASKA

AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 19____, by and between EVERGREEN MEMORIAL CHAPEL, sometimes hereinafter referred to as "Funeral Director", and _____, sometimes hereinafter referred to as "Beneficiary",

W I T N E S S E T H:

WHEREAS, Beneficiary desires and hereby requests to enter into a contract to provide for payment of funeral merchandise and/or services in advance of death, which merchandise and/or services are to be delivered and performed subsequent to the death of Beneficiary.

NOW, THEREFORE, in consideration of their mutual promises, it is hereby agreed by and between the parties as follows:

1. Funeral Director will supply to Beneficiary out of the funds deposited by Beneficiary the funeral merchandise and/or services specified in paragraph 2 of this Agreement for the sum of \$ _____, payable as follows:

2. The funeral merchandise and/or services to be supplied under this Agreement are as follows:

3. The sum referred to in paragraph 1 of this Agreement shall be deposited with _____, Anchorage, Alaska, within fifteen (15) days after receipt thereof as a separate trust account in the name of Beneficiary as Trustee for Funeral Director, which account shall be payable to Funeral Director upon the death of Beneficiary. If at the time of the death of Beneficiary, such sum is inadequate to provide for payment for the funeral merchandise and/or services specified in paragraph 2 of this Agreement, then such sum shall be used by Funeral Director to provide funeral merchandise and/or services of a type and quality as nearly similar to the funeral merchandise and/or services specified in paragraph 2 of this Agreement as may be purchased with such sum at such time.

4. Upon the death of Beneficiary, such sum shall be released by such bank forthwith to Funeral Director upon receipt of a certified copy of a certificate of death or other evidence of death of Beneficiary after the funeral merchandise and/or services specified in paragraph 2 of this Agreement have been provided.

HUGHES, THORNSNESS,
GANTZ, POWELL
& BRUNDIN
ATTORNEYS AT LAW
65 WEST THIRD AVENUE
ANCHORAGE, AK. 99501
(907) 274-7522

5. Such sum shall remain on deposit with such bank and shall remain intact as a trust fund until the death of Beneficiary or until withdrawal by Beneficiary as hereinafter provided. Such sum may be withdrawn only in full, and not in part, and such withdrawal must comply with the rules and regulations of such bank; provided, however, that Beneficiary may, at any time upon complying with the rules and regulations of such bank, withdraw such sum from such bank in accordance with this Agreement. In the event of withdrawal Beneficiary shall notify Funeral Director within twenty-four hours prior to such withdrawal and in the event the withdrawal is completed, Funeral Director shall be relieved from any obligation under this Agreement.

6. Any interest which may accrue on such sum from time to time shall be added to and become part of such trust fund.

7. Upon the death of Beneficiary, in the event that such sum shall exceed the sum required to provide for payment for the funeral merchandise and/or services specified in paragraph 2 of this Agreement, any surplus shall be paid to, and become part of, the estate of Beneficiary.

8. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Alaska.

9. This Agreement constitutes the entire agreement between the parties, and no other oral or written agreements, statements or promises made by any party, or by any agent, servant, or employee of any party, which are not contained in this Agreement shall be binding or valid on the parties.

10. This Agreement shall be binding upon the heirs, personal representatives, and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

EVERGREEN MEMORIAL CHAPEL

By _____

By _____

FOREST LAWN MEMORIAL CHAPEL INC.

P O BOX 6187 ANNEX - ANCHORAGE ALASKA 99501

SEWARD HWY AT KLAIT ROAD TELEPHONE 44-1497

February 5, 1976

Bob

To you, our friends:

The Federal Trade Commission (FTC) has issued what we feel is an unfair indictment against all funeral directors in the United States. The FTC, through power to regulate invested in them by Congress, actually proposes to pre-empt any and all conflicting state laws, which would negate many of Alaska - carefully considered and developed over the years by our own Legislature.

We do not think this was ever the intent of Congress. At this very point in time our own Alaska Legislature is considering and holding public hearings on 3 or 4 bills involving the funeral service profession. If FTC rules were adopted right now - today - these bills would be negated even before they become state law.

We do not think this was ever the intent of Congress. It would appear that there are a minimum of six forms that the grief sufferer would be required to read and sign before a funeral could even take place. Incredible!

Under the proposed rule, to remove the decedent from a hospital, care home, or any other place of death, would be impossible without expressed oral or written consent of the next of kin. This could work a severe hardship on any care-taking institution, state and city police, local coroner, particularly where sudden and unexpected death occurs and the immediate next of kin cannot be located. My 25 years on the firing line with grief tells me that once the next of kin could be located, this would intensify his grief.


A careful analysis of the FTC rule as proposed indicates it will undoubtedly cause the price of funerals to the Alaskan consumer to increase at a time when we are desperately at grips with trying to hold costs down. We think it should be of particular interest to everyone that, with one exception, no complaints have been filed against a funeral director for years. It is also interesting to note that laws governing the practice of our profession and the rights of Alaskan consumers are really working. The satisfied consumer proves this.

We have a heritage of concern for our families because we value them all. Such rules will interfere with this relationship by mandating a blizzard of paper forms be placed between those for whom we are concerned and the Forest Lawn staff.

If you feel as we do - that such rules are unfair, contain no compassion and are unworkable, then we urge you to write to the FTC before February 29, 1976, in our own defense. Your letter should include the statement that you "ask that it be part of the public record", and addressed to: Assistant Director of Rule Making, Funerals, Federal Trade Commission, Washington, D. C. 20580. Thank you!

P.S. Understand FTC rep. will be in Juneau in near future to testify on the above. The rules, if adopted will be just for openers, others will follow till they have us in a corner.

Sincerely,


Alfred O. Kehl



ALFRED "FRED" KEHL
President

Member 
THE ORDER OF THE GOLDEN RULE

DOROTHY E. KEHL
Secretary Treasurer

George Mason. Carter Mort., Juneau

(g) "funeral director", as used in this chapter, shall be construed to mean a person required to be licensed to practice the profession of funeral directing under the laws of this state, who meets the public, displays and sells or offers to sell funeral supplies for present use and delivery, who plans details of funeral services with members of the family and minister or any other person responsible for such planning, or who directs, is in charge, or apparent charge of, and supervises such services in a funeral establishment, church, cemetery or other place; who enters in the making, negotiation, or completion of financial arrangements for funerals for present need, including, but not limited to, the sale and selection of funeral supplies, or who uses in connection with the profession of funeral directing the words or terms, "funer director", "undertaker", "funeral counselor", "mortician" or any other word, term or picture or combination thereof when considering in the context in which used, from which can be implied the practicing of the profession of funeral directing or that the person using such words, terms or picture can be implied to be holding himself out to the public as being engaged in the profession of funeral directing:

NAME

~~John Robert C. Sletten~~
~~John C. Sletten~~
 Richard D. RHEE
 Edward J. [unclear]
 Harold S. Plummer
 George M. Mason
 Martin J. [unclear]
 Margaret M. [unclear]
 Alfred D. Kehl
 [unclear]
 Harvey J. [unclear]
 Stanley D. [unclear]
 Dick [unclear]
 Clifford [unclear]
 Sullivan

- REPRESENTING -

University of Minnesota
 Licensed Practitioner
 Evergreen Men Chapel
 All Allied Funeral Services
 Northern Light Mortuary Freshbush
 Carter Mortuary - Junction
 Park St. Home - S. H. S.
 Dearest Home - [unclear]
 Forest Lawn Mort. Crematory - Hutch.
 Valley - [unclear]
 Dept. of Health & [unclear]
 Coroner's Office ^{District Court} _{Courts Magistrate}
 Hall Street Teacher Union
 House

* [unclear]
 [unclear]
 [unclear]

February 16, 1976

Mr. Robert Bradley
Chairman, House Commerce Committee
Pouch V
Juneau, Alaska 99811

File
HS 509

Dear Mr. Bradley:

I would like to comment on some proposed laws that would enable the funeral service profession to police itself.

I endorse the single licensing law, sometimes called the mortician's license or a license to practice mortuary science. Years ago, as funeral service came into practice, a man or woman undertook specific duties -- hence the name undertaker, funeral director, and embalmer and the necessity for one license. Today funeral service has progressed to a point where one category will and should cover all areas. One should be schooled and knowledgeable in all areas of funeral service to prepare a human remains for disposal, and at the same time deal with a family. Viewing a loved one has a psychological effect on the family. Therefore one who is engaged in the practice of funeral service should be able to preserve, disinfect, and restore the deceased to a life-like appearance to assist the family in the grief process.

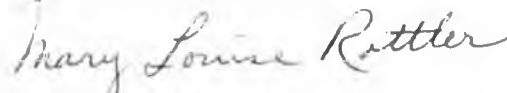
The 100% Pre-Finance Trust Law for pre-need funeral arrangements will protect the consumer. All monies in the possession of a funeral director, cemetery, or other person, firm, or corporation should be deposited within thirty days after receipt and in an account that is controlled by the one in trust or by the family concerned. The amount together with accrued interest, if demanded, should be refunded. A funeral director, cemetery, or firm who has possession of such monies has no right to spend that money nor use the accrued interest. There is so much talk about consumer protection. There should be laws that will help protect the consumer.

My last comment is for the support of the bush permit. By awarding bush permits, the State of Alaska has given someone with responsibility the right to make proper disposal of a deceased in areas that are remote and not easily accessible to the city. The responsibility lies with the person who holds such a permit and can be controlled by the State Department of Health. Ideally, a licensed person should carry that responsibility, but we must be realistic about the sparsely settled areas.

You might ask my concern. I practiced in Alaska for two and a half years and have taken an educational leave of absence for the past two years. I am presently an instructor of Mortuary Science at the State University of New York, and expect to return to Alaska next year and to active practice.

Mr Bradley, these laws will not only protect the consumer from unfair practices, but also protect the funeral service profession from unprofessional and unethical funeral directors.

Sincerely yours,

A handwritten signature in cursive script that reads "Mary Louise Rottler". The signature is written in dark ink and is positioned above the typed name.

Mary Louise Rottler

MLR:d1m

737 E STREET
P O BOX 537
ANCHORAGE ALASKA
TELEPHONE 279-5477

Evergreen Memorial Chapel, Inc.

Respectfully,
Gregory A. Jorich
Mortician

I am writing to you in regard to House Bill 500, pertaining to the licensing of Morticians. It is my opinion that a single license and high educational standards should be required by the state for the practice of mortuary science. This would serve to protect the consumer at a time, in most instances, when they can not make an objective selection of services because of their grief. Also, a single license for mortuary science would tend to reduce the cost of funerals to the consumer, instead of inflating them, because fewer personnel are required to perform overlapping duties. In addition, it is also my opinion that 10% of all funds submitted by a consumer for a pre-financed funeral, be put into a trust account. This requirement that all of these monies would still be available at the time of need.

In closing, I would like to say that this session of the Alaska Legislature has an opportunity to pass legislation that will definitely benefit the public. I hope many more in the future - as well as the present. Your consideration of these comments will be greatly appreciated. Thank You.

Representative Bradley,

Re: House Bill 500

Room 628
Court Building
Pouch V
Juneau, Alaska 99801

February 16, 1976



UNIVERSITY OF MINNESOTA
TWIN CITIES

Department of Mortuary Science
114 Vincent Hall
Minneapolis, Minnesota 55455

February 13, 1976

Representative Robert Bradley
Senator Ed Willis
Co-Chairmen, Joint Committee on Commerce
State Capitol
Juneau, Alaska 99801

Gentlemen:

Inasmuch as I have been on the road since appearing before your committee on February 6, this letter to you has been delayed, and even now is being dictated by long distance telephone call back to my office where my secretary will type, sign and mail it for me.

May I express to each of you my appreciation for the privilege of having appeared before your committee. I trust that the testimony was helpful as you proceed to draft the final copy of your licensure bill for the practice of mortuary science.

I have in the interim requested Mr. Thomas H. Clark, General Counsel for the National Funeral Directors Association, to forward to Mr. Berrier a twelve-page compendium of judicial review relative to the court tests on the 100% pre-made statute. I had occasion to visit with him by telephone, and he offered to be of whatever further assistance was possible.

I have also researched and found that thirty-six states now have the type of disclosure requirement that you have in the law, including a declination of services not desired, and it is working well for them. My major concern in a strict itemization mandate would be the increase in the total cost of funerals to the consumer.

I trust that in your markup session you will give serious consideration to a single license, which would appear to meet the needs of Alaska much more efficiently than dual licenses. Due to the demography of Alaska, the whole man concept is most appropriate.

In regard to reciprocity, I think you should consider carefully whether or not you insert the word "or" between the first two guidelines. I think it would be much more appropriate if both of these were used rather than one or the other.

Having been involved in education and licensure for the past quarter of a century, I am most concerned that the consuming public have the greatest amount of protection from the licensing laws which are designed for their ultimate good.

Thank you once again for the privilege of sharing my thoughts with you.

Sincerely,

A handwritten signature in cursive script, appearing to read 'R. C. Slater'.

Robert C. Slater
Professor and Director

RCS:kn

cc: Mr. Billy G. Berrier HEALTH SCIENCES
Representative Helen Beierne

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

Fell

POUCH # STATE CAPITOL
JUNEAU, ALASKA 99801

MEMORANDUM

February 18, 1976

SUBJECT: Rome's Letter dated February 14, 1976 Concerning
House Bill 509

TO: Representative Bob Bradley *BBB*

FROM: Billy G. Berrier
Director, Legal Services

Attached is a copy of the letter from Richard D. Rome concerning the reciprocity provisions of House Bill 509. He is, of course, incorrect in assuming that the "or" to which he refers is an accidental drafting error. As you will recall this matter was discussed and a clear decision was made that there be two types of admission by reciprocity. This is implemented by the language in 08.42.070(a)(1) in that section:

(i) allows admission by reciprocity, simply on a showing that the applicant is licensed in a state with requirements substantially equal to the requirements of this act.

(ii) is an alternate to this requirement and sets out specific criteria that is required if the applicant is from a state in which the licensing requirements are not substantially equal to the requirements of this chapter. One of the requirements in the latter case is at least one year practice in another state prior to the date of application.

This is, of course, of a policy decision and the policy question was specifically raised and discussed at the committee workshops, and at one of the workshops it was specifically pointed out that many states, including California, do not have legal requirements adequate to qualify an applicant. Of course, the specific question of inclusion of the word "or" at the end of line 23 on page 4 was not brought up. However, an "or" would clearly be implied in context since if these were read conjunctively instead of disjunctively they would make absolutely no sense. The "or" is therefore simply good drafting technique.

If as a policy matter, it was decided that reciprocity would only be granted to applicants from states with educational requirements equal to the requirements in this chapter. The entire alternative section would have to be deleted.

BGB:smh

Attachment

cc: Senator Ed Willis

SPENARD HEIGHTS MORTUARY and CREMATORY

3804 SPENARD ROAD

• SPENARD, ALASKA •

279-3741

February 14, 1976

Mr. Billy Berrier
Legislative Affairs Office
Capital Building
Juneau, Alaska 99801

Dear Mr. Berrier:

There has been much discussion on HB 509 relevant to the requirements that an applicant for licensure must first meet to obtain a license to practice in Alaska. We have discussed at great length the amount of college credits, type of courses, examinations and apprenticeship requirements. This is good, and I think has proven fruitful in making some important decisions.

There is one small word, the word "or" placed at the end of section (a)(1) of 08.42.070 RECIPROCITY, that renders the whole licensure requirement question moot!

What this "or" does is take away all of the educational standards from the license for those who wish to practice in our State by reciprocity. They do not now have to meet requirements substantially equal to the requirements of this bill. They need only be 18 years of age, not convicted of a felony, be licensed in another state (any state) and to have practiced in that state for one year AND pass the examination on our Vital Statistics law, the provisions of this chapter and the regulations promulgated by the department under this chapter.....

As you know, 100% of all license presently held in Alaska come either from reciprocity or grandfather rights. Not one person has taken the State examination in obtaining his license here. This is a trend that will not suddenly cease to exist. There will be no, or few, applicants for examination in the coming years. All those seeking licensure here will continue to do so through reciprocity. With a whole in our reciprocity law so large you could drive a truck through it we do a dis-service to the public by allowing it to exist.

We have three alternatives as I see it. 1. Take out the "or". 2. Add under (b) of section 08.42070 the requirement to pass the examination provided by the Conference of Funeral Service Examining Boards of the United States. 3. Require simply that a person desiring licensure hold a "legal license" from another state, and that that license was obtained by examination rather than by a grandfather clause or by reciprocity.

To do anything but one of the above three would be a great injustice to the public.
other side....

Sincerely,

Richard D. Rome
Richard D. Rome

cc: Ed Willis & Bob Beadley

I talked with Lee Moeplein about this - neither one of us ever remembers any discussion about putting in that "or" in any of the hearings we attended. Hopefully it is an oversight and that you really did not intend to keep it or put it in the final draft of HB 509. It's really a baddy!

Thanks for listening.

A handwritten signature in cursive script, appearing to read "Rick Stone". The signature is written in dark ink and is positioned below the typed text "Thanks for listening.".

STATE OF ALASKA THE LEGISLATURE

FOURTH FLOOR STATE CAPITOL
JUNEAU ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 1, 1976

SUBJECT: HB 509 - Mortuary Science

TO: Representative Bob Bradley, Chairman
House Commerce Committee

FROM: Billy G. Berrier, Director *BGB*
Legal Services Division

You have asked for a summary and analysis of the changes between the CS for HB 509 drafted for the Commerce Committee and the proposed CS for HB 509 drafted by the Mortuary Science Subcommittee of the Legislative Council. The changes made are:

1. On page 2, lines 4, 5 and 6 of the proposed CS, language reading "This person must have taken and passed an examination conducted by the Department in the subjects set out in sections 60(a)(9) and (10) of this chapter" was deleted. This change was made in conformance with testimony at the hearing to conform to existing practices and in recognition of the fact that other state law adequately provides for the measures which had been required. The primary other law is that when a person dies without medical examination a coroner be called in. It was pointed out at the hearing that if the sentence remained in, in many small villages there would be no person who could arrange for the care and disposition of dead human bodies. (This language would have appeared following the period in line 4, page 2 of the Committee CS)
2. On page 4, in section 08.42.070, the reciprocity licensing provision was changed substantially. Under the provision in the proposed bill, a person who met certain of the criteria, not including the educational criteria, and who had practiced in another state for one year, could be admitted by reciprocity. The effect of the change is that a person admitted from another state must meet all of the criteria, except for the examination and apprenticeship.
3. On page 5, line 29, and page 6, lines 1 and 2 of the proposed CS, using profane, indecent or obscene language in the immediate hearing of relatives of the deceased as the grounds for refusal to issue or renew licenses or for suspension or revocation was deleted. (This

language would have appeared following AS 08.42.090(6) on page 5, line 27 of the Committee CS.)

4. On line 28, page 6, the word "if" replaced the word "whether" and on line 1, page 6, the phrase "or sales made on a pre-need basis" was added. Questions were raised at the hearing that the proposed language could be interpreted to forbid pre-need sales. While this was not the intent of the proposed language, the new language is much clearer. On line 5, page 6 of the proposed CS, the word "general" was deleted. The effect of this would be to allow advertising, including price advertising. (This would have appeared between the words "prohibit" and "advertising" on line 29, page 5 of the Committee CS.)
5. On page 7, the definition of mortuary science in section 08.42.110(3) was narrowed. The primary effect of this narrowing is to exclude the operators and crematorians from the licensing requirements of this bill.
6. On page 8, lines 5-20, an itemization of services taken from the proposed FAA rules, was added making the disclosure of costs considerably more specific.
7. On page 9, lines 12 and 13, under the pre-need section, the sentence "cemetery lots and markers are not properly included in this paragraph" was added. Again, this addition was made to accommodate the question raised by cemetery operators who felt that otherwise there was an ambiguity in this section. This does not change the intent of the section.

BGB:bh

"An Act relating to funerals and the practice of mortuary science; and providing for an effective date."

COMMITTEE REPORT

HOUSE

Mr. Speaker:

Date _____

The Committee on _____ has had _____

under consideration. A Majority of the members of the Committee

recommends it DO PASS

recommends it DO NOT PASS

recommends it DO PASS WITH ATTACHED AMENDMENT(S)

recommends it BE REPLACED WITH CS FOR _____ AND THAT

CS FOR _____ DO PASS

"and" recommends it BE REFERRED TO THE _____

COMMITTEE

reports it back WITHOUT RECOMMENDATION

"other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Chairman

February 27, 1976

Mr. Harvey Lapin
100 N. LaSalle Street
Suite 200
Chicago, Illinois 60602

Dear Mr. Lapin:

Regarding the information you requested on House Bill No. 509, Mortuary Sciences.

I have enclosed a copy of the Committee Substitute for House Bill No. 509 for your perusal.

The Commerce Committee members are as follows:

Senate: Jalmar Kerttula, Chairman; Edward Willis, Vice
Chairman; Robert Ziegler, Sr.; Mike Colletta; W. E. "Brad"
Bradley

House: R. E. "Dob" Bradley, Chairman; Tim Wallis, Vice
Chairman; Ramona Kelley; Helen Fischer; Rick Urton; Lisa
Rudd; Joe McKinnon; Oral Freeman; Leo Rhode

If you need any further information, please do not hesitate to contact this office.

Sincerely,

Terry Berman, Administrative Assistant
House Commerce Committee

Enclosure

JOINT HOUSE & SENATE COMMERCE COMMITTEE MEETING
HB264, HB271, & HB509
MORTUARY SCIENCES
February 6, 1976

The Joint House and Senate Commerce Committee meeting on HB264, HB271 and HB 509 was called to order by the Chairman, Representative Bob Bradley.

The Chairman requested that the prime sponsor, Representative Helen Beirnes testify first. Rep. Beirnes testified that a committee of two, Senator Ed Willis and herself, along with Mr. Berrier of Legislative Affairs had held meetings during the summer to hear public opinion of the practice of mortuary science. She stated that she did not wish to testify on any particular points at this time. She did wish to publicly thank Senator Willis and Mr. Berrier for the time they spent on this bill during the summer.

The Chair then asked Senator Willis if he wished to say a few words in regard to the bill and the proposed Committee Substitute to House Bill 509.

Senator Willis stated that there were many policy decisions made as a result of the interim committee meetings held last summer. The areas which major policy decisions were made were concerned with the dual licensing and the pre-need sections. He asked that the committee hear testimony with an open mind and that the two areas he described would have to be considered.

Chairman Bradley they call the first witness, Mr. Lee Moeglen of Evergreen Memorial Chapel in Anchorage. Mr. Moeglen stated that before he introduced a guest witness, Dr. Slater, he wished to make a few comments. He stated that he and Richard Rome, both of Evergreen Memorial Chapel, had retained legal counsel to assist them in writing a bill which would regulate the practice of mortuary science. Their purpose in having such a bill drafted was due to the inadequacy of present statutes which establish the lowest standards in the nation. After considerable research they decided to write the bill themselves and wished to publicly thank Representative Helen Beirnes for sponsoring the bill. They were pleased with the results of the bill and the subcommittee meetings. Educational standards were good and penalties were stiff as they should be. They were however, disappointed on the decision to include dual licensing. The original bill called for one license and the purpose for this was simply less cost to the State and the practioners. They had asked for proof of need for dual licensing and had not received any answers. Senator Willis had explained that he felt the need for two due to they were two completely different skills. Mr. Moeglen stated that this was difficult to agree to. In many areas of the state it was hard to substantiate one let alone two. It was impractical to have only one of the skills. In larger metropolitan areas it was possible. Who were we writing the bill for; the licensee or the public? Should be the public. Less than two years ago the trust between the public and the practioner was broken. He felt that there was a need to prevent this from happening again. Mr. Moeglen gave an example of a friend who was just an embalmer in Viet Nam. The friend stated that he would never again be just an embalmer because he lost touch with the public. There is a need to have the clinical background to explain problems to the

family. Why not go first class on this and what was best for the public. The administration of dual licensing could require twice as much work and cost for enforcement. The National Joint Committee on Mortuary Science report stated that a person who practices embalming must include the skills of a funeral director. He asked Senator Willis and Representative Beirnes is this was wise. Mr. Moeglen then introduced Dr. Robert C. Slater, Education Director of Mortuary Sciences at the University of Minnesota. Dr. Slater was an educational consultant for the National Funeral Directors Association since 1962. He came not as an outsider but a person interested in helping get the best possible legislation for Alaska.

Dr. Robert Slater was welcomed by Chairman Bradley on behalf of the committee.

Dr. Slater thanked the Chairman and stated that he was pleased to be here making this the fiftieth state he had appeared in to speak to legislation such as this. He stated that he did not have any written statement because he had just received a copy of the proposed committee substitute. He stated that the committee represented a state which was starting from scratch, an advantage over other states. He looked at all licensing as being for the public interest first not for the licensee. The public was aware of the legislative process and the restrictions placed on their way of life. The public was aware of what they were entitled to. Also he wished them to consider why they were licensing. That it was not just for the licensee. There was more to funerals than the selling of plots, etc. but the service too. With that in mind, you must remember that you represent many people who come from different ethnic groups, religions, and traditions. You must consider the entire funeral when you consider the licensee. When you consider the educational requirements consider three things: what existed prior to the day this becomes law, what exists today and write the law for tomorrow. There is a great deal of concern over the educational requirements. People consider what is now and not what they should have for the future. You cannot think of this group as not needing education; the kind of education basic to every citizen. Education does not, however, make a person qualified but is a big part. Citizens select a person who is involved in total. Now there is more interest in the mental health of the people. You must speak to the constituents and what they assume when they talk of death services. He then stated he would speak to consumer protection section. It should be disclosed in the act. People are concerned and entitled to full disclosure. The pre-need section he had strong feelings about. He suggested that there are a great number of people who consider death and want to pre-arrange and pre-finance. The consumer should have total control over pre-financed arrangements.

Representative Wallis questioned Dr. Slater if he was under the impression that one person could not be licensed as a funeral director and an embalmer?

Dr. Slater stated that he was not.

Rep. Wallis felt that his testimony was slanted to give the impression of that belief.

Rep. Kelley questioned Dr. Slater as to his thoughts on the disclosure of costs. Did he feel it went far enough. Did he feel that it should be a lump sum or broken down?

Dr. Slater replied that he felt it should be inclusive to a point of serving the public. He was concerned, however, that itemization tends to increase costs.

Rep. Kelley expressed her concerns over the paragraph which deals with holding a conference with the family before service is performed. She asked if this shouldn't be clarified.

Dr. Slater stated that a conference is generally held before the funeral service is performed; not before any service is performed.

Chairman Bradley questioned Mr. Berrier as to clarifying this paragraph so that emergency services could be performed. Berrier concurred.

Rep. Sullivan asked if Dr. Slater knew how many states have more disclosure .

Dr. Slater replied that six states have itemization; New Jersey, New York, Minnesota, Colorado, California and one other which he could not name. New Jersey, New York and Minnesota law states that they must specify the cost per item. In California, Colorado and one other they are required to list cost per item if requested by the family.

Rep. Sullivan question what it is that makes itemization more costly?

Dr. Slater explained that it was a matter of economics. The cost is including profit. When a lump sum is given the profit margin is spread over all items.

Sen. Willis asked if as Dr. Slater reviewed the bill did he find any sections which could be construed as restraint of trade?

Dr. Slater suggested that the question was more a legal one. However, when a pre-need clause requires 100% in trust you automatically allow only those businesses who do not need to live on pre-need sales. If this had been considered restraint of trade it would have already been tested in court in other states. To his knowledge it had not been.

Rep. Kell questioned the line on page 2 line 26 which states, "as suitable and desirable". Shouldn't the problems be more defined and what did Dr. Slater feel should go in there.

Dr. Slater replied that he believed that regulations should be more specific and not statutes. That statutes were harder to amend than regulations and it would be easier as future changes are needed.

Rep. Rudd referred to page 3, the paragraph which list the subjects which the exam would be based on. You would assume that this would dictate what courses one should take.

Dr. Slater stated that this was sound procedure.

Rep. Sullivan directed a question to counsel as to if the bill contained a grandfather clause for those who currently hold licenses.

Mr. Berrier referred to page 2 sec. 020 which is the section pertaining to this.

Chairman Bradley questioned Mr. Berrier if the effective date in line 28 was also tied to the effective date of line 26 of page 2. Berrier replied that it couldn't be due to the fact that presently a funeral director was not required to be licensed.

Chairman Bradley continued questioning page 3 paragraph 5 and 6. He felt that with the small market for this type of service in the state the on-the-job training could limit the market further.

Dr. Slater replied saying that it could be limiting, however, this was not a common thing in states which require on-the-job training. The number of deaths are limited so the career is also limited. Under due process of law there could be a good case if someone was denied. He had not seen this happen.

Rep. Sullivan stated that in some trades where on-the-job training is required places do require that a person sign an agreement stating that they will not open a business of their own for at least one year. Does this happen in other states?

Dr. Slater could not recall any states which this has happened.

Mr. Ben Marsh was called to testify. Mr. Marsh stated that he was President of the Alaska Planning and Management, Inc. and that he was speaking as a layman not representing anyone. He stated that he had done studies on the subject on behalf of Allied Funeral Services. They as a group felt this was good legislation and should be passed. There should be stiff regulations to follow. They did support dual licensing, as they felt that one was not necessarily qualified to do both jobs. He stated that several members of the organization were here to testify on specific sections. He wanted to comment on a couple of sections. Section 020, line 18 the word funeral director was confusing. It states that they cannot engage in the activity of mortuary science without a license. Chairman asked that he explain further the question. Mr. Marsh stated that he felt it prohibits funeral directors from certain activities.

Mr. Berrier explained that it does give certain limitations.

Mr. Marsh stated that Section 070 paragraph 1 and 2 seem to say the same thing. If paragraph 2 was deleted and the word "and" added it would be clearer.

Mr. Berrier stated that there was a difference. Some states have requirements equal to this chapter, however, some states do not have the educational requirements. Paragraph 2 sets out the requirements and adds the educational and on-the-job training requirements.

Mr. Marsh asked if you must comply with both or just one. Mr. Berrier stated that it could be one or the other.

Mr. Marsh referred to Section 12 on page 6. It seemed to him that when grounds are made for violation and you include the regulations you don't know what the regulations will say. He felt that regulations do not stand up in court. Also the word "contract" was not understandable. Berrier replied that regulations do have the force of law and are very important especially in this section where it applies to health.

Mr. Berrier stated that the contract part was brought in because of the section on pre-need. It was the feeling that there would be ethical violations in pre-need contracts so this was included.

Mr. Marsh questioned whether or not this would preclude the solicitation of government contracts in advance. Berrier replied he did not know.

Mr. Marsh stated that under Section 100 there was nothing which would preclude a person from operating a funeral parlor in their home. Mr. Berrier answered that current regulations cover this aspect. The Department of Health and Social Services have the expertise in this and this was left to be put in regulations.

Mr. Marsh questioned the reason for not putting in the bill what the fee would be for a license. Mr. Berrier stated that this would be the responsibility of the Department of Commerce.

Rep. Sullivan question Mr. Marsh concerning page 5 the last line which pertains to obscene language. She stated that it left her uneasy and felt that it was not appropriate.

Mr. Marsh replied that the language was very broad and vague, however, the Board of Allied Funeral Services was not concerned with it.

Rep. Sullivan stated that she understood certain authorities rotated with businesses for emergency cases. How would a new business get in on this rotating and notify the authorities they were available. Would this be construed as a violation of Section 9 page 6.

Mr. Marsh replied that they did not think so because it goes through the coroner's office and you would not be dealing with relatives.

Rep. Rudd asked about cremation and she assumed that they were included. Was it intended that they be included.

Mr. Berrier stated that it came before the committee about crematories and whether they should be licensed. They had decided not to because they do not necessary involve funerals.

Rep. Rudd continued that the sections seem to include them but them again leave it in limbo. They are establishments which handle dead human bodies.

Mr. Marsh replied that he did not know of any crematoriums which are not associated with a funeral home.

Chairman Bradley asked if Dr. Slater could perhaps give an explanation on the crematory question. Dr. Slater stated that in most incidences they are not included under the licensing and are under the Health department.

Rep. Rudd asked if there are any particular skills involved in the act of cremation and that it might be advisable to regulate it. She believed it should be registered with the health department but to insure it is registered to protect the consumer if there is a specific skill involved.

Mr. Lapin stated that in the states of Washington and Oregon crematoriums were not licensed. Most of the laws deal with the identity of the person before cremation.

Rep. Rudd stated that if we are covering it already somewhere it should be spelled out.

Mr. Harold Plummer was then requested to give his testimony. Mr. Plummer stated that he was from the Northern Lights Mortuary in Fairbanks and wished to speak on the section concerning education. He stated that one point everyone agrees on is that we are to serve and protect the public. Education does not necessarily mean an ultimate prerequisite. Education is necessary but one year of college would be sufficient not two years.

Mr. Arthur S. Richmond was called to introduce Mr. Harvey I. Lapin. He introduced Mr. Lapin by relating Mr. Lapin's qualification and past experience in legislation pertaining to mortuary science.

Mr. Lapin stated his prime reason for testifying was the section of the act which has the effect of eliminating the pre-need market. Section 8 on page 6 line 2 was intended to cover body snatching activities. The way it is worded it stops solicitation in advance of need. In the state of Indiana, the Embalmers Board had tried to evoke a license for this. He recommended a change in the language by adding "immediately before or after death." Also after the word "advertising" add "or sales made on a pre-need basis". This would then not preempt pre-need. Section 9 has the same effect by precluding the hiring of personnel to solicit pre-need. He recommended that the language be limited to the impending death area. Section 10 has the same problem and "immediately before impending death" also be added. Section 11 needs a language change. What is being talked about here is to prohibit a kickback and prohibits them from offering their own property for a site. After the word "body" insert "immediately before an impending death or after death". After the word "cemetery" add "provided, however, nothing shall prevent the recommendation of solicitation of sales or merchandise in a specific crematory, cemetery, or mausoleum if said licensee has ownership interest in said crematorium, cemetery, or mausoleum and ownership is disclosed." The trusting provision at the end of the bill on page 8, is clear on the prohibition of the pre-need market. No one is going to sell on a pre-need basis if 100% must be put in trust when they have to pay commissions, salaries, etc. People have the right to a refund of 100%. Why does the public not have the same obligation to the cost of merchandise which is not 100%; some of that is profit. If the people want pre-need services at a fixed sum, why not put the same responsibility on the public for the cost of the merchandise. Trust accounts should be the actual cost only. If there is any doubt, could check with insurance companies. If they were to put your money in trust there would not be insurance. This could be considered restraint of trade. The state of Illinois is now in the process of changing their statutes. There are other alternatives to 100% trust performance bonds, etc. If they are actually to be 100% trust, then it is not complete. The section does not go as far as it should. Do they have to put each on in a separate account, what happens if they don't (no enforcement clause) and no real administration provisions are included. I have given Mr. Berrier copies of other states statutes. The purpose of pre-need is to give the customer an alternative to at-need.

Mr. Rick Siangco, State Coroner and Magistrate for District One then testified. His main concern was for the bush area where they do not have a mortuary. As far as the Vital Statistics Act goes, the State Coroner has the authority. He then referred to Title 12, Death Declaration and Title 18, Death Certificate which allows the Coroner to perform such duties. It is also included in the Administrative Code 7. Section C of the bill should be amended. This is already covered under other parts of the law.

Mr. Berrier replied that the committee recognized the problems and he felt that if the second sentence was deleted it would suffice.

Mr. Siangco felt that the whole section should be deleted, the present law covers the permit holder. The magistrate does issue permits.

Mr. Richard D. Rome, of the Evergreen Memorial Chapel in Anchorage, then testified. He stated that Section 3 was recommended by Consumer Protection, the Attorney General's Office, and the Council of Better Business Bureau. It was for protection of fraud. The pre-need plans must be closely protected. He then recited an example of the needed protection of a case in Fairbanks. The public needs incentive and advantages to pre-planned arrangements.

Mr. George Mason of the Carter Mortuary in Juneau then testified. He stated that the bill needed more definitions. He then offered a definition of a funeral director. He stated as follows:

"(g) 'funeral director', as used in this chapter, shall be construed to mean a person required to be licensed to practice the profession of funeral directing under the laws of this state, who meets the public, displays and sells or offers to sell funeral supplies for present use and delivery, who plans details of funeral services with members of the family and minister or any other person responsible for such planning, or who directs, is in charge, or apparent charge of and supervises such services in a funeral establishment, church, cemetery or other place; who enters in the making, negotiation, or completion of financial arrangements for funerals for present need, including, but not limited to, the sale and selection of funeral supplies, or who uses in connection with the profession of funeral directing the words or terms, 'funeral director', 'undertaker', 'funeral counselor', 'mortician' or any other word, term or picture or combination thereof when considering in the context in which used, from which can be implied the practicing of the profession of funeral directing or that the person using such words, terms or picture can be implied to be holding himself out to the public as being engaged in the profession of funeral directing:"

Mr. Marvin Krause, of the Prewitt Funeral Home in Sitka testified. He felt that the requirement of two years of college would hamper the smaller communities. He stated that the requirements were above those in the lower '48. He suggested that this be changed to one year of college.

Margaret Witzleben, of the Bruce Funeral Home in Anchorage, then testified. She stated that she was representing her husband and his associate in regards to this bill. She offered many resources as to a good definition of a "funeral director" and stated that she would copy them for the committee if the committee wanted. She stated that dual licensing would not hinder the profession but broaden it. They should be two separate licenses. She then referred to sections of the bill which she felt need explanations. In section .020, did "restore" mean that a beautician cannot apply cosmetics? On page 4, Section .070, it was confusing as to what is being required. She concurred with Mr. Lapin that on Page 6, referring to solicitation restriction, the word "imminent" would satisfy. She stated that she was personally concerned on the disclosure section. She felt it was not inclusive enough. She also stated that she was opposed to the 100% trust because banks had denied her establishment to do this.

The next person to testify was Alfred Kehl, President of Alaska Allied Funeral Service Association, and owner and operator of Forest Lawn Mortuary and Crematory in Anchorage and Kehl's in Palmer. He stated that he was in favor of dual licensing and according to a survey done by the National Funeral Directors Association, they too supported this. The educational requirements of two years makes it hard for the smaller communities. He stated that HB 509 needed more definitions. He recommended the definition used in the California state statutes.

Mr. Arthur Richmond, of the Valley Memory Gardens in Anchorage testified that if 100% was included in the bill it would put him out of business. He puts approximately 65% into trust for his pre-need arrangements. He is audited every year to determine if the trust account has enough in it to cover the outstanding contracts. He stated further that his company does solicit pre-need contracts by the use of post cards.

The question was raised as to the difference between what Mr. Richmond does and burial insurance.

Mr. Richmond explained that burial insurance provides a certain amount of money at the time of death. If a man at the age of forty has a heart attack and decides he wants to increase his insurance so that his family will be taken care of in case of death, they tell him that he can make payments at this time and at the time of death they would take care of it for him without extra cost. He further stated that this is being done in a lot of states and to his knowledge no one had had any problems with it.

A question was asked of Mr. Richmond that when a contract is sold he cannot offer the ultimate service, therefore how could he guarantee to the families that the service would be provided somewhere down the line.

Mr. Richmond reversed the questions and asked if any funeral home would deny any business he offered them.

The question was raised what happens if a family moved away.

Mr. Richmond answered that it is written in the contract that if the family moves away they are to advise his company so that arrangements can be transferred. They transfer the cemetery lots, the vaults and

and the markers through the National Cemetary Association. In regard to the funeral portion, we contact someone in the area to perform the type of services which they have purchased and pay them for that service. We find also there are times when families move away and don't let them know. That is why they ask them to be sure that they carry the card issued to them which states they have purchased the service from them.

The questioner asked what if pre-need is allowed to continue what he felt about adding restrictions.

Mr. Richmond answered that he would welcome that very much. It would help them and the public.

Mr. Sid Hiederdorf, Acting Chief for the Environmental Mental Health Division of the Department of Health and Social Services then testified. He gave each member of the committee a copy of the division's position paper on the bill. He then stated that they strongly supported the Section .010 which placed the licensing in the Department of Commerce. They have felt for a long time that it was improper that they be involved in occupational licensing. He then reviewed the position paper (see attached).

A question was raised from a health standpoint concerning the scattering of ashes after cremation.

He replied that there was no health problem with them. There were no regulations in Alaska concerning this.

Mr. Kehl replied that cremation does not bring the body to complete ashes. It leaves fragments of bone structure which are then cut up with a special tool. There have been cases sighted where the public has run across these scatterings and recognized them as human bones. The countries who generally promote cremation, Switzerland, England all have laws which cover the disposition because of this problem. California also has laws regarding scattering due to the recognizable bone fragments.

Mr. Hiederdorf then asked if he could read a part of the bill which was prepared by the Department of Law last year. The draft bill has great detail on the section such as trust funds and pre-need. Chairman Bradley requested that copies be made of the bill for closer inspection.

Sharon Andrews, Director of Occupational Licensing for the Department of Commerce then testified. She stated that the administration has taken the position at this time that there are certain problems with occupational licensing and that they are substantial and growing. They are generally opposed to additional licensing until the statutes can be reviewed. The department has made a proposal and introduced a bill to create a credentially review board who would be responsible for establishing guidelines. They would prefer that this not be enacted. Their position is that they don't need regulation of the funeral industry. They are not sure this is the right means of doing it; there is a need to not overregulate. She then referred to the bill itself citing Section .130 was related to Section .010. In .010 it makes the Department of Commerce responsible for adopting regulations and under Section .130 it makes the Attorney General's office responsible. These two sections to me means that we have split the enforcement. A technical point on Section 2 and 3 of the bill, article 4, Title 45.

In its present form it is considered to be completely unworkable, because there is no penalty. They are required to provide the cost but there is not a penalty if he does not. The recommendation to correct this was that there be a fourth section added to the bill which would amend Chapter 50 of Title 45, and make it an unfair trade practice, and a violation of this. Also there are no provisions in this bill for ministers who often counsel or make funeral arrangements for the family.

Chairman Bradley thanked all who had testified and declared the meeting adjourned at 4:25 p.m.

POSITION PAPER
ON
CS FOR HOUSE BILL NO. 509

An Act relating to funerals and the practice of mortuary science.

This bill establishes qualifications for, and the licensing of, embalmers and funeral directors, transfers licensing responsibility of embalmers from the Department of Health & Social Services to the Department of Commerce and Economic Development, covers reciprocity in licensing and sets grounds for suspension and revocation of licenses. The bill also requires permits to operate a funeral establishment, requires disclosure of funeral costs and covers the establishment of trust funds for prepaid funeral plans.

This bill will transfer licensing responsibility of embalmers from the Department of Health & Social Services to the Department of Commerce and Economic Development. Responsibility for environmental health sanitation inspections of funeral establishments will still remain with the Department of Health and Social Services. Based on past experience in licensing approximately 65 embalmers and other related administrative responsibilities, this bill will relieve the Department of Health & Social Services of roughly two-man months of clerical time and one-man month of professional staff time.

House Bill 509 will have no fiscal ramifications for the Department of Health & Social Services. Responsibility for sanitation inspections will continue and time presently spent in licensing can be more effectively used in handling administrative aspects of other environmental health and sanitation programs.

The following general comments are provided with respect to this bill:

1. No reference is made to license fees for embalmers, funeral directors or the funeral establishment permit. We recommend that license fees be established by statute. For example; embalmer \$25.00, funeral director \$35.00 and funeral establishment permit \$50.00.
2. Page 2, line 1. Delete the word "shall" and substitute the word "may". The department should have flexibility in deciding whether or not to hold an examination. Our experience has been that the need for an examination to be held in Alaska with its reciprocity provision is seldom, if ever.
3. Page 2, lines 11, 12 and 13. There is presently no requirement for how long the person submitting the affidavit must know the applicant. We have faced the problem in licensing embalmers where an individual may submit an affidavit after having known the applicant for only a few weeks. We suggest that this be increased to at least a minimum of one year.
4. Page 2, line 29, refers to an apprenticeship. The State presently has no regulations governing an apprenticeship program in the practice of mortuary science. We believe this is a desirable program, however, the Department of Commerce should be given authority to develop regulations to cover an apprenticeship program.

5. Page 6, Section 08.42.100. FUNERAL ESTABLISHMENT PERMIT. We recommend that the Department of Commerce be required to obtain the approval of the Department of Health & Social Services for sanitary aspects of an establishment before issuing a permit under this Section. Also, violation of the sanitation provisions of the Department of Health & Social Services should be considered sufficient cause for suspension or revocation of the funeral establishment permit.

6. Page 7, Section 45.45.120. DISCLOSURE OF COSTS. We fully support a requirement for disclosure of costs. As a minimum, we recommend a statement include the following:
 - a. The date
 - b. The signature of a licensed funeral director
 - c. The name of the deceased and the date of death
 - d. The relationship to the deceased of the person making arrangements
 - e. The price of the funeral along with a list of the following items with a price given for each item, if appropriate:
 - (1) professional services including those of the funeral director and staff and assistance for carrying out all details in connection with the services, arrangements and supervision
 - (2) care of the deceased including embalming and other preparation
 - (3) facilities including rooms and/or chapels
 - (4) equipment provided such as automobiles
 - (5) merchandise including caskets, outer receptacle and clothing

7. Page 8. The provision relating to pre-need funeral arrangements is endorsed by the Department of Health & Social Services. There are no laws presently in existence which protect the investment of an individual if he changes his mind or moves to an area which does not have a funeral establishment with a cooperative arrangement with the trustees. We recommend that an additional provision be added to require that the trustee keep records available of all agreements with names and addresses of each payer, the dates and amounts of each payment made, each withdrawal and the name of the bank or trust company. The authority must also be given to the enforcement agency to have full right of inspection of these records at any time deemed advisable.

8. We recommend that this bill include a provision which authorizes the Department of Commerce and Economic Development to promulgate regulations covering the operation of a cemetery, a mausoleum and a crematorium as well as disposal of ashes following cremation.

The Department of Health & Social Services supports CS for HB 509, with the changes recommended above. We strongly support the move to transfer licensing responsibility to the Department of Commerce where it rightfully belongs, the dual licensing concept of an embalmer and a funeral director as well as the provisions for disclosure of costs and protection of trust funds for pre-paid funerals.

Recommended By: _____ (Date) _____
Acting Director
Division of Public Health

Approved By: _____ (Date) _____
Commissioner

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.