

MINUTES
South Carolina Perpetual Care Cemetery
Board Meeting

10:00 a.m., March 9, 2017
Synergy Business Park
110 Centerview Drive, Kingstree Building Room 108
Columbia, South Carolina

Thursday, March 9, 2017

1. Called to Order

The regular meeting of the South Carolina Perpetual Care Cemetery was called to order at 10:07 a.m. by J. W. Russ, Chair, of Conway. Other members participating during the meeting were: Russell Floyd, Vice Chair, of Spartanburg; Jacquelyn Petty, of Union; and Rick Riggins of Lancaster.

Staff members participating in the meeting included: Mary League, Advice Counsel, Office of Advice Counsel; Tracey Perlman, Disciplinary Counsel, Office of Disciplinary Counsel; Amy Holleman, Administrator; Norma McAllister, Program Assistant; Monaca Harrelson, Administrative Assistant; Kathy Meadows, Investigator, Office of Investigations and Enforcement; Buddy Poole, Inspector, Office of Investigations and Enforcement; Ernest Adams, Inspector, Office of Investigations and Enforcement; and Rebecca Leach, Director of Business and Governmental Affairs, Office of Communications and Governmental Affairs.

Members of the public attending the meeting included: Tamala Randolph, Stonemor; Senator Steven Goldfinch, Counsel for Hillcrest Cemetery.

A. Public Notice

Mr. Russ announced that public notice of this meeting was properly posted at the South Carolina Perpetual Care Cemetery Board office, Synergy Business Park, Kingstree Building, and provided to all requesting persons, organizations, and news media in compliance with Section 30-4-80 of the South Carolina Freedom of Information Act.

B. Pledge of Allegiance

All in attendance recited the Pledge of Allegiance.

2. Introduction of Board Members and Persons Attending the Meeting

The Board members, staff, and all other persons attending the meeting introduced themselves.

3. Approval of Excused Absences

Ms. Catherine Oates-Robinson was not in attendance.

Mr. Russ called for a motion to approve Mr. Oates-Robinson absent.

MOTION

Mr. Riggins made a motion to approve the absence.

Ms. Floyd seconded the motion, which carried unanimously.

4. Approval of Minutes for the November 3, 2016 board meeting

Mr. Russ called for a motion to approve the minutes for the November 3, 2016 board meeting.

MOTION

Mr. Floyd made a motion to approve the minutes.

Mr. Riggins seconded the motion, which carried unanimously.

5. Chairman's Remarks – J. W. Russ

Mr. Russ welcomed everyone. Mr. Russ expressed the board's deepest sympathy with the passing of board member, Mr. Roger Finch. Mr. Russ acknowledged his commitment, and service to the people of South Carolina, serving on the Board since its reinstatement in 2003 until he passed away. Mr. Russ stated it was an honor to serve with Mr. Finch and called for a moment of silence in his honor.

6. Administrator's Remarks – Amy Holleman

- A. Ms. Holleman presented the financial report, informing the Board that the cash balance at the end of February was -\$62,118.12.

Ms. Holleman informed the Board that the 2017 renewal period officially ended on January 31, 2017. Ms. Holleman informed the Board that at the end of the renewal period seven cemeteries had not renewed, two in the lesser category, and five in the larger category. Ms. Holleman stated beginning February 1, 2017, the cemeteries that failed to renew and are requesting reinstatement will be required to submit a new application with the correct fee; however, these applicants will not be required to appear before the Board. The cease and desist letters will be mailed to the cemeteries.

Ms. Holleman informed the Board that the North American Death Care Regulators Association (DCRA) will be meeting in September 2017 in Portland, Oregon. Ms. Holleman informed the Board specific details of the DCRA conference will be provided at an upcoming Board meeting.

For information only, Ms. Holleman informed the Board that a few states have combined, and some are in the planning stages of combining the Funeral Service Board with the Cemetery Board.

7. Reports

A. Inspection Report

Mr. Adams informed the Board that he and Mr. Poole conducted 52 inspections from October 26, 2016 through February 28, 2017.

B. Investigative Review Committee (IRC) Report – Sharon Wolfe

Ms. Wolfe requested the Board review and approve the IRC report and recommendations to dismiss cases 2016-38 and 2016-45; send forward for a formal complaint case 2016.28,

Mr. Russ called for a motion to approve the IRC recommendations

MOTION

Mr. Floyd made a motion to approve the IRC recommendations.

Mr. Riggins seconded the motion, which carried unanimously.

C. Office of Investigations and Enforcement (OIE) Report – Sharon Wolfe

Ms. Wolf stated the Office of Investigations and Enforcement (OIE) currently has six active investigations, and 28 closed cases as of February 27, 2017.

D. Office of Disciplinary (ODC) Counsel – Tracey Perlman

Ms. Perlman presented the Office of Disciplinary Counsel (ODC) report as follows; ten open cases; ten pending action; two pending CA/MOAs as of March 2, 2017, and one closed case since October 2016.

Mr. Russ thanked, Mr. Adams, Ms. Wolfe, and Ms. Pearlman for the reports.

New Business

8. A. Request to Withdraw Funds from Merchandise Trust

This proceeding was recorded by a court reporter in order to produce a verbatim transcript should one be necessary.

1. Hillcrest Cemetery

Mr. Russ recused himself at 10:22 a.m. Mr. Floyd presided

Mr. Steven Goldfinch was present on behalf of the cemetery.

Ms. Holleman informed the Board that board staff did not have the authorization to approve the request.

Mr. Goldfinch informed the Board that in 2016 Hillcrest Cemetery sustained significant damage from Hurricane Matthew. The initial request was to obtain permission to use interest in the merchandise account to fund the needed repairs; however, Hillcrest Cemetery revised its request and is asking for guidance from the Board regarding merchandise accounts.

Mr. Goldfinch stated Hillcrest Cemetery has an estimated amount of \$100,000.00 in accrued interest in the merchandise account from past purchases in 1993 - 2002 that have already been delivered. Mr. Goldfinch stated the accrued interest had not been expensed on the books, nor was it withdrawn or used for any purchases, and the items were appropriately priced.

Mr. Floyd called for motion to go into Executive Session to receive legal advice in this matter.

Executive Session

MOTION

Mr. Riggins made a motion to go into Executive Session to receive legal advice in this matter.

Ms. Petty seconded the motion, which carried unanimously.

Return to Public Session

MOTION

Mr. Riggins made a motion that the Board return to public session
Ms. Petty seconded the motion, which carried unanimously.

Mr. Floyd stated, for the record, that no votes were taken during executive session

Mr. Floyd called for a motion.

MOTION

Mr. Riggins asked that the motion be read by the Advice Counsel, which stated the guidance provided by the Board in regards to the information is that 40-8-110(F)(3) provides upon certification to the bank of delivery of merchandise the amount of money on deposit to the credit of that particular account including principle and income must be paid to the cemetery company or entity therefore it is appropriate to withdraw from the merchandise account principle and interest associated with the particular contract to provide merchandise once that merchandise is delivered and the contract fully completed and certification is provided to the bank.

Ms. Petty seconded the motion, which carried unanimously.

The Board stated, for information purposes, the statute does not require the merchandise account funds to be in a trust.

Mr. Russ returned to the session at 10:52 a.m.

9. Update: Agreed Upon Procedure Committee Recommendations

This proceeding was recorded by a court reporter in order to produce a verbatim transcript should one be necessary.

The Board was provided with copies of the Agreed Upon Procedure Committee's recommendation for the Merchandise Account Annual report, and the Care and Maintenance trust fund.

The Board reviewed the information, and discussed the Committee's recommendations.

MOTION

Mr. Floyd made a motion to accept the Agreed Upon Procedures with edits that the title will include the Agreed Upon Procedure type (Merchandise Account or Care and Maintenance Account), and in D(2) of the Merchandise Account Annual Report the language "from the paid in full list/report" be deleted.

Mr. Riggins seconded the motion, which carried unanimously.

10. Discussion: Change of Agreed Upon Procedures Reporting Year

This proceeding was recorded by a court reporter in order to produce a verbatim transcript should one be necessary.

The Board discussed changing the Agreed Upon Procedures required reporting time from three years in regulations to annually. The Agreed Upon Procedures task force presented the following to the Board:

In addition to reviewing and recommending changes to the Agreed Upon Procedures reporting procedures, the Task Force discussed changing the Agreed Upon Procedures cycle from every three years to every year. This would accomplish several things that we think would be beneficial to the Cemetery licensees, to the Board and most importantly to the Public which we serve. They are the following:

1. Easier on Cemetery to manage records (36 months of data and reports is a lot to keep up with); records get filed away every 12 months usually.
 - a. Would minimize impact of personnel changes on record keeping that could occur over a 36 month period
 - b. Easier on CPA who would only have to look back through 12 months vs. 36 months of records, etc.
2. Easier on Cash Flow of Cemetery (annual CPA/AUP fees may not be proportionally smaller but should be easier to budget for)
3. Better compliance tool for LLR – mistakes, etc., would be discovered sooner making correction(s) more likely...and affordable.

Mr. Russ called for a motion in regards to the proposed change for the Agreed Upon Procedures reporting year(s).

MOTION

Mr. Floyd made a motion to accept the Agreed Upon Procedures' Task Force recommendations requiring annual submission of Agreed Upon Procedures from each South Carolina Perpetual Care Cemetery.

Mr. Riggins seconded the motion, which passed with a majority vote with Mr. Russ abstaining.

The Board stated the process will begin to promulgate the change in the new regulation.

11. Board Member Training

This proceeding was recorded by a court reporter in order to produce a verbatim transcript should one be necessary

Ms. Mary League, Office of Advice Counsel, provided the introduction, and explained the purpose for the overview. Ms. Wolfe presented the information for the Office of Enforcement and Investigations. Ms. Perlman, Office of Disciplinary Counsel provided information regarding the disciplinary process and actions. Ms. League provided an overview of the Selected Board Issues section.

Investigative Process

- Initial complaint reviewed by Complaint Analyst.
- Case opened for investigation if the allegations implicate the practice act.
- Complainant sent “do not open” letter if allegations fall outside of jurisdiction of Board’s authority under practice act.
- If additional information is needed for a determination, Complainant sent a letter requesting additional information.

Investigation

- If case is opened, it is assigned to investigator by the respective Chief Investigator.
- Cases general investigated in the order in which they come into to the agency unless it is a priority case involving potential imminent danger.
- Letter to Complainant within 5 days and to Respondent within 30 days.
- The length of investigations vary depending on the nature of the issues, whether other agencies are investigating the Respondent, or how quickly information can be obtained from relevant sources.
- Average investigation 60 days to 180 days.

Chief Investigator / Supervisor Review

- Once an investigation is complete, it is submitted to the Chief Investigator to review for completeness and quality of reports.
- If Chief Investigator determines that the case has been fully investigated and all documentation is in order, it is ready for submission to the Investigative Review Committee (IRC).

Investigative Review Committee (IRC)

- IRC Membership – investigators, chief investigator, ODC attorney, Board administrator, and IRC professional members.
- Reviews the evidence gathered during the course of the investigation and makes a recommendation as disposition of the case to Board.
- Neither Respondent nor Complainant is present at the IRC.
- Recommendations include: dismissal, dismissal with a letter of caution, issuance of a Cease & Desist, or a Formal Complaint (FC).
- The IRC can also refer the case back for further investigation if necessary.

IRC Board Report

- Chief Investigator for the Board presents IRC recommendations for Board approval. The report will contain a “logic” section which explains why the IRC came to its recommendation.

- The IRD report will not contain any identifying aspects of the case as to avoid any potential taint.
- If the case is approved for dismissal or dismissal with letter of caution, the Dismissals & Letters of Caution are sent by Board staff.
- If approved for Formal Complaint, the file is transferred to Office of Disciplinary Counsel (ODC).

Integrity of Investigative Process

Throughout all steps, no communication with Board members in order to avoid taint.

It is also important for Investigative Review Committee (IRC) members to avoid taint.

Legal: Office of Disciplinary Counsel (ODC)

Duties of ODC Attorney

- Advice to investigators and administrators
- Interactions with other State and Federal Agencies
- Temporary Suspension Orders/Surrenders/Cease and Desist Orders
- Review files and attend IRC and Board Meetings.
- Interact with opposing counsel, Pro Se Respondents, Prepare FC/Consent Agreement/MOA/Consult Witnesses
- Motions/Emergency Hearings/Preparing for Hearings/Appeals

Consent Agreements

- A Consent Agreement (CA) is an agreement as to the facts, the violations, and the sanctions. These sanctions were determined by the IRC and cannot be negotiated without IRC approval.
- If CA authorized by IRC, ODC drafts and offers to Respondent for signature.
- The Board Chair has been given the power by the Board to approve or reject a CA. A CA must be accepted for rejected in full.
- If no CA authorized, ODC communicates with Respondent and Investigator to determine appropriate allegations for a Formal Complaint (FC) or Memorandum of Agreement (MOA).

MOA/FC Presentation

- If MOA is possible, ODC drafts and offers to Respondent for signature and presentation at next disciplinary meeting.
- A MOA is an agreement to the facts and possibly to the statutory violations, but does not include sanctions.
- The Licensee will appear before the Board to present any mitigation and answer any questions

from the Board. Sanctions, if any, will be determined by the Board.

- If MOA is not possible, ODC drafts and serves FC: then prepares, schedules and presents to Board with evidentiary hearing.
- Disciplinary Hearings are conducted by the full Board. A Final Order is issued after action by the Board.

Notice of Hearing/Final Order

- Whether through MOA or full evidentiary (FC) hearing, ODC provides notice to the Respondent of the hearing; sanctions can be set forth by the Board after presentation of case by parties.
- Upon receipt of the Final Order after the hearing, Respondents may appeal to the Administrative Law Court within 30 days. Appeals from ALC are handled by the SC Court of Appeals.

Respondent's Rights

- Receive notification of the investigation and respond
- Represent her/his self or obtain counsel
- Surrender or deactivate license
- Receive notice of charges and can obtain evidence to be used against them before a hearing is scheduled
- Agree to misconduct thru CA or MOA
- Demand that state present admissible evidence, and Respondent can present evidence
- Appeal to ALC and Court of Appeals

Disposition Process

Throughout all steps, no communication with Board members in order to avoid taint.

Selected Board Issues – Office of Advice Counsel

Sources of Authority

The Engine: Title 40 Chapter 1

The Practice Act: Title 40, Chapter 8

Code of Regulations: Title 21

- Grounds and Sanctions Allowed in Disciplinary Matters

Grounds for Disciplinary Action

Section 40-1-110

Sanctions

Section 40-8-160

Section 40-1-120

Voluntary Surrender

Section 40-8-170

- Preserving Objectivity (What Must Remain Confidential?)
- Freedom of Information Act (What Must Remain Public?)
- Review of Resource Materials

12. Public Comments (No Vote May Be Taken)

15. Adjournment

Mr. Russ called for a motion to adjourn the meeting.

MOTION

Mr. Riggins made a motion to adjourn the meeting

Ms. Petty seconded the motion, which carried unanimously.

Mr. Russ, after ensuring there being no further business to discuss, adjourned the March 9, 2017 meeting for the South Carolina Perpetual Care Cemetery Board at 12:08 p.m.

The next meeting of the South Carolina Perpetual Care Cemetery Board scheduled for May 25, 2017 at 10:00 a. m., at Synergy Business Park, 110 Centerview Drive, Kingstree Building, Room 108, Columbia, South Carolina.