

MINUTES

South Carolina Funeral Board

Board Meeting

9:00 a.m., March 30, 2004

Synergy Business Park

110 Centerview Drive, Kingstree Building, Room 108

Columbia, South Carolina

Penn Troy, President, of Mullins, called the regular meeting of the S.C. Funeral Board to order at 10:00 a.m. Other members present for the meeting included: Greg Jones, Secretary/Treasurer, of Greer; Edward Briggs, of Murrells Inlet; Terry Burnham, of Florence, John Hazzard, V, of Columbia; Bob Parks, of Charleston; Carl Pennington, of Hartsville; Larry Strom, of Pelzer; Tony Tipton, of Greer; and A. P. Williams, of Columbia.

Doug Garrett, of Greenville, and Lee Rhoden, Vice President, of Walterboro, were granted excused absences.

Staff members participating during the meeting included: Ronnie Blackmon, Inspector; Sharon Dantzler, Deputy General Counsel, LLR-Office of General Counsel; Sandra Dickert, Administrative Assistant, Dwight Hayes, Administrator, Jeanie Rose, Administrative Specialist; and Bill Whitby, Inspector.

Members of the public attending the meeting included Wayne Brown.

Meeting Called to Order

Mr. Troy announced that public notice of this meeting was properly posted at the S. C. Board of Funeral Service office, Synergy Business Park, Kingstree Building, Room 108 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.

Pledge of Allegiance

All present recited the Pledge of Allegiance.

Introduction of Board Members and Persons Attending the Meeting

The Board members, staff and members of the public attending the meeting introduced themselves for the record.

Approval of Minutes for the February 19, 2004 Meeting

MOTION

Mr. Pennington moved the minutes be approved as presented. Mr. Williams seconded the motion, which carried unanimously.

President's Remarks - Penn Troy

Mr. Troy thanked the Board members and staff for their time and effort in the working relationship of the Board.

Administrator's Remarks, For Information - Dwight Hayes

Mr. Hayes stated three funeral home permits and three dual licenses have been issued since the last meeting. He also noted that five routine changes of manager have occurred since the last meeting.

Mr. Hayes thanked the members for their time spent discussing legislation during yesterday's meeting.

Mr. Hayes briefed the Board on the consolidation of the agency's investigators. A brief discussion regarding the consolidation ensued.

Advisory Opinions, If Needed, Sharon Dantzler, Office of General Counsel

There were no advisory opinions given during the March 30, 2004 meeting.

Legislative Update, If Needed, Legislative Liaison Office

There was no legislative update given during the March 30, 2004 meeting.

Unfinished Business

1. Approval of Quarterly Reports

a. John Wayne Brown

Mr. Hayes presented the members with a copy of a letter from Mr. Jack Stribling of Forest Hills Funeral Home, regarding Mr. Brown's quarterly reports. He indicated staff received the first two quarterly reports but did not receive approximately six quarterly reports. He further stated staff now has all of the reports. He noted the question before the Board is whether or not the members will waive the requirement of receiving the quarterly reports within thirty days following the completed quarter.

John Wayne Brown appeared before the Board at this time.

Mr. Brown stated his apprenticeship ended on November 23, 2003 and when he contacted staff in regard to taking the state exam he was informed that quarterly reports were not received. He then made copies of the quarterly reports, which he faxed to staff the next day.

Mr. Hayes stated the Funeral Board statute states that the quarterly reports are to be mailed to staff within 30 days following the completed quarter.

MOTION

Mr. Williams moved the Board discuss this matter in executive session. The motion was seconded by Mr. Burnham and unanimously carried.

New Business

Mr. Parks made remarks regarding the consolidation of the investigators. He is opposed to the consolidation of the investigators within the agency.

MOTION

Mr. Pennington made a motion, seconded by Mr. Tipton and unanimously carried, that Mr. Hayes write a letter to Mrs. Youmans asking that the consolidation of inspectors be rescinded. The letter would also inform Mrs. Youmans that the Board is not in favor of the July 1 proposal and that the Board wants Mr. Hayes to maintain access to the inspectors and the inspection process as we have noted.

Mr. Parks stated that during the March 29, 2004 meeting the Board discussed the bridge between LLR and the Board of Financial Institutions as it pertains to the pre-need funds. He noted Mr. Hayes has contacted the Board of Financial Institutions regarding the pre-need policies and unlicensed funeral directors.

Mr. Hayes stated he has been in contact with Mr. Jacobs' staff regarding the passage of 3617, which would encompass pre-need.

MOTION

Mr. Pennington made a motion that Mr. Hayes draft a letter to Mr. Jacobs' stating the Board's concerns regarding inspecting and auditing pre-need funds across the state, to ask for a better source of communication with the Board and that he meeting with the Board. Mr. Strom seconded the motion, which carried unanimously.

Mr. Hayes briefed the Board on Port Elsewhere selling caskets to individuals in situations that is not at-need situations. He further stated Port Elsewhere is handling these situations by obtaining a signed acknowledgment of casket delivery, then offering to store the casket in their warehouse. He said the Board's main concern would be pre-need sales. He indicated the spirit the sale falls under pre-need, however, it falls in a gray area in actuality because the Uniform Commercial Code has an acknowledgment of delivery. He has notified Mr. Rick Pirkl, head of Port Elsewhere in South Carolina, in writing, advising him of the passage of Bill H-3617 and sent a copy of the law with the letter. He went on to say the letter indicates because of the new language in the law he should cease selling any caskets except on at need basis or where actual delivery to the parties is made. He also sent a cease and desist order to Port Elsewhere. He continued by saying that Mr. Pirkl made an appointment to meet with him for the day after he received the cease and desist order. During that meeting Mr. Pirkl's position is that Port Elsewhere wants to continue conducting business as it has been. He stated that the only change Mr. Pirkl is willing to make would be to transfer the warehouse located in Boiling Springs to a third party and set it up as a bonded warehouse. The individuals could accept delivery and send the casket to the bonded warehouse. Mr. Pirkl had stated he would hope the Board would accept that as a reasonable way to do business and lift the cease and desist order. If the Board did not lift the cease and desist order, Mr. Pirkl would hire an attorney and move to quash the cease and desist order and continue to do business. He invited Mr. Pirkl to appear before the Board however the invitation was declined due to the differences between funeral directors and cemetery owners. He informed Mr. Pirkl he would present the situation to the Board as information and for action the Board deems appropriate. He has no intention of lifting the cease and desist order. He asked the Board for their advisement of their intentions regarding the cease and desist order.

Mr. Strom stated he has always been against the retail casket stores and voted against the issuance of a license to Port Elsewhere. He is also concerned with the monies going to a golf resort in Branson, Missouri.

Mr. Tipton questioned staff on the intent of the bonded warehouse. Mr. Hayes stated the concept of the bonded warehouse was for the merchandise to leave the control of Port Elsewhere and be with a third party so that Port Elsewhere would not be holding the caskets the company sold. He went on to say the idea was that the Board could be assured that a casket was delivered to a third party at some time and that Port Elsewhere had completed their transaction.

Mr. Jones questioned who is paying the rent on the warehouse and if Port Elsewhere goes out of business, who would be responsible to deliver the casket to the consumers.

Ms. Dantzler stated the answer to Mr. Tipton's question is that a court would probably have to make the decision. She went on to say the agency has a series of specific statutes that deal with pre-need and funeral service, and then there is a general statute, the Uniform Commercial Code, which does not mesh with the specific statutes. She went on to say that as the advice counsel for the Board, she has discussed the cease and desist order with Mr. Hayes and found it to be supportable at law. However, she cannot promise that Port Elsewhere would not win. She continued by saying that a factor coming into play would be the bonded warehouse. She said that Port Elsewhere actually strengthens its hand if it were to set up that practice, but she does not know Port Elsewhere has strengthened it enough for a court to determine it is compliance with the law. She stated staff has chosen to say we are not going to affirmatively approve this practice.

MOTION

Mr. Strom moved the Cease and Desist Order against Port Elsewhere remain in force until they come into compliance. Mr. Jones seconded the motion, which carried unanimously.

1. Approval of Dual Licensure

a. Allen Kirk Wolford

Mr. Wolford did not appear at this meeting.

Discussion Items

There were no discussion items to be discussed during the March 30, 2004 meeting.

Public Comments

There were no public comments made during the March 30, 2004 meeting.

Executive Session

MOTION

Mr. Jones made a motion, seconded by Mr. Strom and unanimously carried, that the Board enter executive session.

Return to Public Session to Report on Executive Session

MOTION

Mr. Strom moved the Board return to public session. The motion was seconded by Mr. Williams and unanimously carried.

Mr. Troy noted for the record that no motions were made and no votes were taken during executive session.

John Wayne Brown

MOTION

Mr. Tipton made a motion, seconded by Mr. Williams and carried with a unanimous vote, that the Board deny Mr. Brown's request to waive the requirement and to accept his quarterly reports due to non-compliance of receiving the quarterly reports within 30 days. Mr. Jones recused himself from voting in this matter due to his close proximity to the funeral home.

IRC Reports

MOTION

Mr. Jones moved the Board accept the Dismissal Report and the Case Disposition Report as presented, with the exception of additional inspections be made on complaint 45-1094 though the probation period. Mr. Williams seconded the motion, which carried unanimously.

The Board was reminded that during the Monday March 29, 2004 work session meeting, it was determined a work session meeting would be held at 10:00 a.m., Monday, May 24, 2004 and that the June 10, 2004 meeting was canceled and rescheduled for 9:00 a.m., Tuesday, May 25, 2004.

A discussion ensued regarding a violation against a facility that does not complete a contract.

Adjournment

There being no further business to be discussed at this time, Mr. Strom made a motion, seconded by Mr. Williams and unanimously carried, the meeting be adjourned. The March 30, 2004 meeting adjourned at 12:06 p.m.