

MINUTES

South Carolina Funeral Board

Board Meeting

9:00 a.m., August 19, 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 9:10 a.m. Other members present for the meeting included: Lee Rhoden, Vice President, of Walterboro; Edward Briggs, of Murrells Inlet; Doug Garrett, of Greenville; 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.

Greg Jones, Secretary/Treasurer, of Greer and Terry Burnham, of Florence and were granted excused absences.

Staff members participating during the meeting included: Rion Alvey, Administrator; Randall Bryant, Assistant Deputy Director; Sharon Dantzler, Deputy General Counsel, LLR-Office of General Counsel; Sandra Dickert, Administrative Assistant, Ed Farnell, OIE, Don Hayden, OIE, Charlie Jones, Inspector; Kent Lesesne, Attorney, LLR Office of General Counsel, Lynne Rogers, General Counsel, LLR-Office of General Counsel; Jeanie Rose, Administrative Specialist; and Adrienne Youmans, Director.

Members of the public attending the meeting included: Kenneth Beasley, Allen Cunningham, Paul Cusaac, Shirley Gilmore, Stan Hamilton, Jeremy Johnson, Sam Johnson, Kip Kiser, Greg Long, Glenn Miller, Philip Murphy, Jim Neal, Lou Ann Pyatt, Robert Settles, Mike Squires, Eric Worth, Bryan Tate, and Daniel Wamer.

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.

Invocation

Mr. Tipton delivered the invocation.

Pledge of Allegiance

All present recited the Pledge of Allegiance.

Introduction of Board Members and Persons Attending the Meeting

The Board members, staff and all present introduced themselves for the record.

Approval of Minutes of the May 25, 2004 Meeting

MOTION

Mr. Rhoden moved the Board approve the minutes of the May 25, 2004 meeting. Mr. Strom seconded the motion, which carried unanimously.

President's Remarks - Penn Troy

Mr. Troy thanked those individuals who attend the meetings on a regular basis and to let the Board know they are interested in the meetings. He went on to say this would be his last meeting serving as President, however, it would not be his last meeting as he would continue to serve on the Board for another year. He thanked the Board members and staff for their assistance in the meetings during the past year.

Assistant Deputy Director's Remarks - Randall Bryant

Mr. Bryant stated Mr. Dwight Hayes has been transferred to the agency's Office of Investigations and Enforcement. He went on to say the consolidation would serve all of the Boards well and would improve the services for all of the Boards. He introduced Mr. Ed Farnell and Mr. Don Hayden, of the Office of Investigations and Enforcement. He introduced Mr. Rion Alvey as the new administrator of the Board of Funeral Service and the Perpetual Care Cemetery Board. He indicated that Jeanie Rose and Wendi Elrod would be transferred to Mr. Alvey's supervision.

Mr. Bryant stated the Board had been presented with draft legislation during its work session meeting on August 18, 2004. He further stated it is his understanding that the Board would revisit the legislation during a meeting on October 6, 2004, following input from the SC Funeral Directors Association and the SC Morticians' Association. The Board would then be asked to vote in approval or disapproval of the agency moving forward with the legislation.

Mr. Bryant presented the members with a list of New Funeral Establishment Permits Issued, a Report of Managers of New Facilities and Routine Changes of Managers, and New Funeral Director/Embalmer Licenses Issued. He noted these lists contain changes made since the last Board meeting. (These lists are herewith attached and become a permanent part of the record retained at the Board's office.)

Mr. Bryant stated Mr. Parks and Mr. Mike Thornwell participated in the Board's IRC meeting on August 18, 2004. He indicated there were five cases discussed during yesterday's meeting, three of which the Board would be asked to dismiss and two of which the Board would be asked to dismiss with a letter of caution. He indicated there are currently seven cases currently under investigation. He continued by saying there were 162 inspections conducted since the last Board meeting.

Mr. Bryant stated staff has received a letter and request from industry leaders as well as concern from the Board regarding the pre-need insurance documentation in place within South Carolina. He mentioned the pre-need incident in Saluda County regarding criminal activity by a funeral director who was convicted of fraud.

Mr. Alvey briefed the Board members regarding the pre-need insurance on the agency's inspection forms, which staff would begin using on Monday, August 23, 2004.

Mr. Bryant stated pre-need sales falls under the jurisdiction of Mr. Louis Jacobs. He said that the agency and the Board must provide Mr. Jacobs with as much information as possible regarding pre-need sales. He indicated once staff receives the pre-need license number and the effective dates, staff would send that information with a strong letter asking Mr. Jacobs to review his list with the names supplied by the agency and notify the agency of any individual purporting himself to sell pre-need unlicensed. He believes this avenue may help with pre-need contracts; however, this procedure would be reviewed in six months for any changes that may need to be made.

Mr. Bryant stated the Board has asked to meet with Ms. Youmans during executive session. He indicated she would be available at 11:00 a.m. He went on to say staff would also like to discuss a proposal for a case in litigation during executive session.

Administrator's Remarks, For Information - Rion Alvey

Mr. Alvey stated he looks forward to working with the Funeral Board. He indicated his main focus is the administration of running the Board smoothly and he hoped that small administrative changes would allow staff to assist the Board in doing their job.

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

There were no advisory opinions given during the August 19, 2004 meeting.

Legislative Update, If Needed, Legislative Liaison Office

There was no legislative update given during this meeting.

Unfinished Business

There was no unfinished business to be discussed during this meeting.

New Business

Ms. Dantzler stated the Administrative Law Judges (ALJ) are interested in the due process provided to applicants as well as the due process provided to the individuals who are charged with disciplinary actions. She further stated the ALJs have ruled that the application hearings are Administrative Procedures Act hearings and that the decisions are reviewable by their division. She indicated that since the hearings are reviewable the ALJs have insisted that the agency provide a transcript of the proceedings if a review is sought. She noted it was probably a result of the development of the administrative procedures and administrative practice since the creation of the ALJ Division.

1. Approval of New Facility

a. Johnson Funeral Home of Aynor, Inc., Jeremy Johnson, Manager

Ms. Rose stated Mr. Jeremy Johnson is requesting approval of a new facility. She indicated his application is complete. (The application is herewith attached and becomes a permanent part of this record retained at the Board's office.)

Jeremy Johnson appeared before the Board at this time.

Mr. Johnson stated his intent is to build a 6,500 square foot facility in Aynor. The company would be a corporation. He had the blueprints for the Board's review.

MOTION

A motion was made by Mr. Strom, and seconded by Mr. Briggs, that the facility be approved pending a favorable inspection. The motion carried unanimously.

2. Approval of Apprentice Applications

a. Bryan Eugene Tate - The Gilmore Mortuary

Ms. Rose stated Mr. Tate's application includes a criminal history report, which indicates an arrest and conviction charge involving shoplifting. (Mr. Tate's application is herewith attached and becomes a permanent part of the record retained at the Board's office.)

Bryan Eugene Tate appeared before the Board at this time.

Mr. Tate stated he was involved in the wrong crowd and was charged and convicted with stealing an item from Wal-Mart for which he served time. He also was charged in 2003 for a violent action, a fight with a deadly weapon, at a school basketball game. He served three days in jail at that time. He was attending South Carolina State University at the time and was carrying a knife in his pocket. He was not convicted of the charge involving school disturbance, however, he was ordered to complete five weekends of public service. The criminal history record does not reflect a disposition on the deadly weapon charge.

Ms. Shirley Gilmore, of The Gilmore Moruary, stated he did not serve time for the incident as the other individual involved was the instigator and did not press charges. She indicated Mr. Tate is her adopted son. She is the licensed owner and manager of The Gilmore Mortuary.

MOTION

Mr. Tipton made a motion, seconded by Mr. Strom and unanimously carried, that the Board discuss this matter in executive session. Mr. Strom reserved the right to call Mr. Tate into executive session if needed.

b. Anthony Lamar Fishbourne - Webb-Settles Funeral Home

Ms. Rose stated Mr. Fishbourne's application is complete. His application includes a criminal history report that indicates two arrests and convictions, in 1998 and 2001, for possession, distribution and selling of crack cocaine near a school and failure to stop for a blue light. His arrest record also indicates a fraudulent check charge.

Anthony Lamar Fishbourne and Robert Settles appeared before the Board at this time.

Mr. Fishbourne stated he graduated from Walterboro High School in 1995 and began working for the Work Force and he moved away from the Greenville area during that

time. He was in the wrong place at the wrong time and different people got him into trouble. He indicated the fraudulent check charge was a result of his checkbook being stolen. He has been in different courts on numerous occasions dealing with this matter to have it cleared. He was pulled over one night while returning from work during which he was arrested and charged with possession of cocaine. He spent 17 months in jail and was released December 31, 2001. He pays a fine every six months and is due back in court on February 2, 2005. He is currently attending Piedmont Technical College and working at Webb-Settles Funeral Home.

Mr. Settles stated Mr. Fishbourne has turned himself around. He went on to say he was working at the funeral home prior to his conviction and has been working at the facility since his release. He feels Mr. Fishbourne has turned his license around.

MOTION

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

3. Approval of Apprenticeship Form After Required Date

a. Daniel Keith Driggers

Ms. Rose stated Mr. Driggers was not present for the meeting. She indicated he extended his apprenticeship for one year as a result of moving and changing facilities. She indicated he is lacking one month to complete the apprenticeship. She further stated staff is asking for the Board's approval to allow Mr. Driggers to obtain his last month so he may take the exam. She went on to say he has obtained the required number of bodies and noted that all quarterly reports were received in a timely manner.

MOTION

Mr. Rhoden moved the Board accept the application. Mr. Briggs seconded the motion, which carried unanimously.

4. Approval of License Reinstatement

a. Paul N. Cusaac, Funeral Director (No Record of License)

Ms. Rose briefed the Board on Mr. Cusaac's application. She noted Mr. Cusaac was licensed prior to the time the Board was restructured to LLR and staff has no record of his licensure. She went on to say he has provided a copy of a funeral director's license and obtained proof of the embalming test, which he took following embalming school. She indicated his criminal history report indicates an arrest and conviction of driving under the influence and simple possession of marijuana. She went on to state Mr. Cusaac is requesting the Board allow him to take the funeral director/embalming exam since it has been five years since he was last licensed. She stated there is no record of licensure as an embalmer, however, there is a record of his completion of an embalmer apprenticeship. She said the International Funeral Directors Conference has verified that he has taken the exam.

Paul Cusaac appeared before the Board at this time.

Mr. Cusaac graduated from the Cincinnati School of Mortuary Science in June 1975. He became licensed as a funeral director in South Carolina in approximately November 1978. He went on to say he was employed by Waters Funeral Home in Florence. He began his apprenticeship under Powell Anderson and he attended a Board meeting where he took the oral funeral director's exam. After completing the exam, he began his second year of embalming apprenticeship, although he never pursued licensure as an embalmer due to going to work outside of the funeral industry. He has requested that the documentation from the Conference be mailed to staff. He indicated his original license was destroyed in a house fire; however, his wife was able to locate a renewal notice.

Mr. Parks stated that to the best of his recollection the only way Mr. Cusaac could have left the November 1978 Board meeting with a funeral director's license only was to inform the Board at that time that he did not wish to be licensed as an embalmer. Mr. Cusaac stated that an embalmer's license was not discussed. He went on to say at that time it was only on completion of the one-year apprenticeship and he wanted to obtain his funeral director's license at that time and then pursue completing with his employment and finish the required number of cases regarding embalming. He is now employed with Palmetto Professional Services, located in Darlington, where he has been engaged in transporting bodies and removals for funeral homes. He has been observing to refresh his memory and to ensure he wanted to return to the funeral industry. He is on call for transport from Thursday nights to Sunday nights. He indicated he has been out of the funeral industry for 20 years. He completed his embalmer apprenticeship with Stoudenmire Funeral Home.

MOTION

Mr. Garret made a motion to discuss the matter in executive session. The motion was seconded by Mr. Williams seconded and unanimously carried.

b. Eric K. Worth, Dual License

Ms. Rose briefed the Board on Mr. Worth's application. She indicated his application is complete and that the criminal history report indicates he does not have an arrest record. (Mr. Worth's application is herewith attached and becomes a permanent part of this record retained at the Board's office.)

Eric Worth appeared before the Board at this time.

Mr. Worth stated he received his license several years ago and then began working in the insurance business. He further stated he learned at that time it was against the law to hold two licenses and he allowed his funeral director/embalmer license to lapse. He noted he is currently with Worth Monuments, Mausoleums and Burial Vault Company in Moncks Corner, South Carolina, which manufactures all three items. He indicated he allowed his license to lapse in 1999; however, indicated he may retire at the end of this year, as he has chronic kidney failure and will be on dialysis and he is reviewing his options. He worked for five years at Dial Funeral Home, in Moncks Corner and then moved to Beaufort where he worked Francis Funeral Home. He said that when he left the Woodman's World Life Insurance Society and went to work with Independent Foresters

Society, there was contract conflict. He continued by saying he was not to take clients. He said the license was reinstated two years later. He also said he did not leave the insurance industry as he became a consultant.

MOTION

Mr. Garrett made a motion, seconded by Mr. Pennington and unanimously carried, that the Board approve Mr. Worth's application pending verification of continuing education.

c. Allen R. Cunningham

Ms. Rose stated Mr. Cunningham's license expired three years ago. She further stated his application is complete and he has provided proof of 10 hours of continuing education. (Mr. Cunningham's application is herewith attached and becomes a permanent part of this record retained at the Board's office.)

Allen Cunningham appeared before the Board at this time. He stated he allowed his license to lapse as he became involved as a realtor.

MOTION

Mr. Rhoden moved the application be approved. The motion was seconded by Mr. Garrett and unanimously carried.

5. Approval of Reciprocity Licensure

a. Devin Jonathan Richert (Georgia)

Mr. Richert was not present for the meeting.

MOTION

Mr. Strom made a motion, seconded by Mr. Williams and unanimously carried, that the Board dismiss the application until he appears before the Board for further investigation.

6. Approval of License Reinstatement

a. Daniel W. Wamer

Mr. Wamer has submitted an application for license reinstatement. (Mr. Wamer's application is herewith attached and becomes a permanent part of this record retained at the Board's office.)

Daniel W. Wamer appeared before the Board at this time.

Mr. Wamer stated he would like to reinstate his license and that he intended to renew his license in 2003; however, he was incarcerated for eight months in 2003 for charges that were later dismissed. He further stated that the charge was assault with a deadly weapon. He was first licensed by the Board in November 1989 and was last licensed in 2002.

Ms. Dantzler stated if an individual is arrested on a serious charge that individual might spend significant time in jail if bond cannot be made or the charges are dismissed. She went on to say the magistrate judge takes prior arrest records into account when setting

bond.

MOTION

A motion was made by Mr. Pennington to discuss this matter in executive session. Mr. Garrett seconded the motion. The motion carried unanimously.

7. Approval of Additional Facility

a. Rhue's Ocean View Funeral Home, Jimmy C. Neal, Jr.

The Board did not consider this application, as Mr. Neal was not present for the meeting.

Discussion Items

There were no discussion items for the August 19, 2004 meeting.

Recess

The Board recessed for five minutes at 10:55 a.m.

Return to Public Session

Public Comments

The Board and Ms. Youmans, Director of the Department of LLR, discussed personnel and the realignment of the Board administrator.

MOTION

Mr. Strom made a motion that the Board recommend Mr. Hayes be reinstated as the administrator. Mr. Garrett seconded the motion. The motion carried unanimously, following discussion. Mr. Strom stated he knew the Board the Board did not have the power to hire and fire employees, however, his motion was to recommend Mr. Hayes' reinstatement.

MOTION

Mr. Pennington moved the Board enter executive session to discuss personnel issues. Mr. Rhoden seconded the motion, which carried unanimously,

Return to Public Session

Mr. Troy noted for the record that no action was taken during executive session.

Public Comments (Continued)

Mr. Kip Kiser appeared on behalf of the SC Funeral Directors Association. He thanked the Board members for their diligence and service and thanked Ms. Dantzler, Mr. Bryant and Mr. Alvey for allowing them to appear at this meeting. He applauded the efforts of the Board and for recently being invited to the workshop held on August 18, 2004. He went on to say the Funeral Director's Association appreciates the Board and LLR for including both associations to work sessions. He believes that all entities working together is a good thing for the funeral homes and citizens of South Carolina. He said the association was apprised of the changes being made within the agency and that from time to time things within the state agency may be realigned. He encouraged the Board to keep up its diligence as in the past. He said the association is offering its full support and future

endeavors would make the profession better and more accountable. He noted that the association is offering itself for resources for future endeavors. He apologized for the association not being visible at past meetings and noted that the association has appointed Mr. Mark Sauls and Mr. Bill Lawless as liaisons to the Board for the coming year. He indicated the association would work with whatever decisions are made and with whatever LLR has put in place. He continued by saying that the association, at its last convention, was impressed with the administrator, giving the Board its success and conveyed to LLR to keep up the good work.

Mr. Ken Beasley, President of the SC Morticians Association, stated the Mortician's Association is offering its resources as well and that the association's concerns are not with the personnel of LLR but with the business of the funeral profession.

Executive Session

MOTION

Mr. Williams moved the Board enter executive session. Mr. Strom seconded the motion, which carried unanimously.

Mr. Hazzard left the meeting at this time.

Return to Public Session to Report on Executive Session

MOTION

A motion was made by Mr. Tipton, seconded by Mr. Williams and unanimously carried, that the Board return to public session.

Mr. Troy noted for the record that no action was taken during executive session.

Bryan Eugene Tate

MOTION

Mr. Tipton moved the Board approve Mr. Tate's apprentice license with the condition he be placed on probation until such time that the apprenticeship is completed and that he provide a SLED report to LLR every six months during the apprenticeship. Mr. Strom seconded the motion, which carried unanimously.

Anthony Lamar Fishbourne

MOTION

Mr. Pennington made a motion, seconded by Mr. Williams and unanimously carried, that the Board approve the apprentice application, however, he must remain under the supervision of Mr. Settles at the Webb-Settles Funeral Home, that a quarterly report from Mr. Settles be submitted to LLR on his progress and that a SLED report be submitted to LLR every six months.

Paul N. Cusaac

MOTION

Mr. Strom made a motion that the Board grant Mr. Cusaac a license at such time that he satisfactorily completes a two-year apprenticeship program for funeral director and

embalmer and successfully completes the state law exam. The motion was seconded by Mr. Williams and unanimously carried.

Daniel W. Wamer

MOTION

Mr. Briggs moved the Board this application be denied. Mr. Tipton seconded the motion, which carried unanimously.

Mr. Garrett recused himself from participating and voting in this matter.

IRC Reports

MOTION

Mr. Rhoden moved the Board accept the IRC's recommendation regarding the dismissal of cases #45-1373, #45-1404, and #45-1376. Mr. Williams seconded the motion, which carried unanimously.

Consent Orders

MOTION

A motion was made by Mr. Rhoden the Board uphold the consent order in the matter of Lewis Funeral Home. Mr. Strom seconded the motion, which carried unanimously.

MOTION

Mr. Rhoden made a motion, seconded by Mr. Tipton and unanimously carried, that in the matter of Harold L. Carson be upheld.

MOTION

Mr. Rhoden moved, in the matter of Olivia Glover, be upheld. Mr. Tipton seconded the motion, which carried unanimously.

Election of Officers

Mr. Parks stated the Governor has not yet made appointments to the Board. He urged all Board members to attend the October 7, 2004 meeting. He invited the new members to attend the work session meeting on October 6, 2004.

Adjournment

There being no further business to be brought before the Board, Mr. Strom moved the meeting be adjourned. Mr. Tipton seconded the motion, which carried unanimously.

The August 19, 2004 meeting adjourned at 2:10 p.m.