

MINUTES
South Carolina Board of Funeral Service
Board Meeting
10:00 a.m., October 8, 2009
Synergy Business Park
110 Centerview Drive, Kingtree Building, Room 105
Columbia, South Carolina

Meeting Called to Order

Gloria Vessels, president, of Anderson, called the regular meeting of the SC Board of Funeral Service to order at 10:00 a.m. Other Board members present for the meeting included: Eddie Nelson, secretary of Columbia; Michelle Cooper, of Moncks Corner; Glen Crawford, of Lancaster; Thomas Genoble, of Union; William Horton, of Kingtree; Margery McWhorter, of Columbia; Jeff Temples, of Columbia; and Tony Tipton, of Greer.

Staff members participating in the meeting included: Ernest Adams, Inspector; Randy Bryant, Assistant Deputy Director; Sandra Dickert, Administrative Assistant; Amy Holleman, Administrative Specialist; Tony Kennedy, Investigator; Jeanie Rose, Administrative Specialist; James Saxon, Hearing Advice Attorney; and Sheridan Spoon, Deputy General Counsel.

- A. Ms. Vessels announced that public notice of this meeting was properly posted at the S. C. Board of Funeral Service office, Synergy Business Park, Kingtree 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 present recited the Pledge of Allegiance.

Mr. Temples delivered the invocation.

Introduction of Board Members and Persons Attending the Meeting

The Board members, staff and individuals attending the meeting introduced themselves.

Approval of Excused Absences

Ms. Vessels noted Homer Elwood, of Laurens, and Carl Pennington, of Hartsville, were granted excused absences.

Approval of Minutes for the August 20, 2009 Meeting

MOTION

Mr. Crawford made a motion the Board approve the minutes from the August 20, 2009 meeting. Mr. Temples seconded the motion, which carried unanimously.

President's Remarks – Gloria Vessels

Ms. Vessels stated her time on the Board is about to end and thanked staff for all of their assistance. She also thanked the Board members for their assistance and keeping her on track.

Administrator's Remarks – Randy Bryant

- A. Advisory Opinions, If Needed, Office of General Counsel
B. Legislative Updates, If Needed, Legislative Liaison Office

There were no advisory opinions or legislative updates given during the October 8, 2009 meeting.

Mr. Bryant stated he has spoken with Mrs. Cubitt and that she is doing well; however, she is facing additional surgery and that she is not expected back in the office until after the first of the year.

Mr. Bryant briefed the Board on the Granicus system. Mrs. Dickert stated the meeting is being recorded with the Granicus equipment; however, due to some difficulty with hardware, the meeting was not being broadcast live.

Executive Session

MOTION

Mr. Genoble made a motion the Board enter executive session to seek legal advice. Mr. Crawford seconded the motion, which carried unanimously.

Return to Public Session

MOTION

Mr. Nelson made a motion the Board return to public session. Mr. Horton seconded the motion, which carried unanimously.

Ms. Vessels noted for the record that no official action was taken during executive session.

Hearings

A. In the matter of OIE case #2009-38

This proceeding was recorded by a court reporter in order to produce a verbatim transcript in accordance with the law.

MOTION

Mr. Crawford made a motion the respondent be given thirty days to comply with the requirements of the previous order, that the refunds be supervised by a funeral director of the Board's choosing at no less than \$50 per hour at the respondent's expense and the respondent's license will be suspended immediately should the respondent fail to comply with this order within thirty days. Mr. Genoble seconded the motion, which carried unanimously.

A. In the matter of OIE case #2006-8

Mr. Horton and Mr. Temples recused themselves from participating in this hearing and left the room at this time.

This proceeding was recorded by a court reporter in order to produce a verbatim transcript in accordance with the law.

MOTION

Mr. Genoble stated the Board finds the respondent violated the practice act as admitted. He made a motion the previously imposed fine stand as a sole sanction and the respondent is reinstated to the practice as of the date of the final order. If the previously imposed fine has not been satisfied it must be paid prior to the respondent's reinstatement. Mr. Crawford seconded the motion, which carried unanimously.

Unfinished Business

There was no unfinished business for discussion.

New Business

A. Approval of Apprenticeship Quarterly Reports

i. *Tierra Ulmer – Apprentice Funeral Director/Embalmer*

Ms. Ulmer is asking the Board to approve her late quarterly reports. She states that she did speak with an agency employee each time she sent in a report and is now told there are missing reports. She has submitted the missing reports and is asking for credit for those reports. Mrs. Cubitt reviewed the reports in July 2009. She then sent an email to Samantha Dozier, an employee in the Office of Licensure and Compliance, informing her that Ms. Ulmer would have to complete the missing months of her apprenticeship again. Ms. Ulmer sent a letter stating she wanted to appear before the Board for its approval in this matter.

This proceeding was recorded by a court reporter in order to provide a verbatim transcript in accordance with the law.

During discussion, Ms. Cooper noted the quarterly reports for April 2006 to June 2006 and July 2008 to September 2008 were received in a timely manner.

MOTION

Mr. Genoble made a motion the Board defer this matter to executive session for legal advice. Mr. Crawford seconded the motion, which carried unanimously.

B. Approval of Apprentice Funeral Director/Embalmer Sled Report

i. *Johnathan P. Holley*

Mr. Holley completed his apprenticeship on October 19, 2003 and is now applying for dual licensure. He has a felony conviction reflected on his criminal background report and has an order of expungment signed by John R. Joyce, a judge in Louisiana. However, the felony remains listed Mr. Holley's most recent criminal history report, which requires Board approval.

Ms. Vessels stated she knows Mr. Holley from when she worked at Piedmont Technical College. She feels she could be impartial in this matter but would recuse herself should the members feel she should step down. Neither the Board members nor Mr. Holley had problems with Ms. Vessels participating in this matter.

This proceeding was recorded by a court reporter in order to provide a verbatim transcript in accordance with the law.

Mr. Holley took the national funeral director's exam in 2003, which he failed at that time and took the exam again in early 2009, at which he passed. He was visiting Louisiana both times the incidents occurred.

MOTION

Mr. Crawford made a motion the Board defer this matter to executive session for legal advice and that the Board enter executive session. Mr. Nelson seconded the motion, which carried unanimously.

Return to Public Session

MOTION

Mr. Genoble made a motion the Board return to public session. Mr. Horton seconded the motion, which carried unanimously.

Ms. Vessels noted for the record that no official action was taken during executive session.

Tierra Ulmer – Apprentice Funeral Director/Embalmer

MOTION

Mr. Nelson made a motion Ms. Ulmer be given credit for two years of apprenticeship and paperwork which was submitted. Mr. Crawford seconded the motion, which carried unanimously.

Johnathan P. Holley, Apprentice Funeral Director/Embalmer

MOTION

Ms. Cooper made a motion upon presentation of a clean SLED report to the Department of LLR, Mr. Holley be immediately qualified to take the exam. Mr. Temples seconded the motion, which carried unanimously.

C. **Consideration of the Requirements and Licensure of Retail Sales Outlets**

On September 10, 2009 Ms. Rose received an e-mail from Bill Miller pertaining to casket sales. In the e-mail Mr. Miller asks if he may sell caskets to individuals via the Internet in South Carolina or other states. He also asks if he may sell a casket to an individual who wants the casket in the home prior to dying, perhaps to use as a storage chest. He states in the e-mail that he would not be dealing with pre-need contracts and has no plans to open a retail store at this time.

Mr. Miller stated he began building caskets approximately four months ago. He would like to produce wooden caskets and employ individuals in the Greenville area to produce the caskets. He has submitted applications for a business license to the City of Greenville and Greenville County; however, both jurisdictions have stated that if he is selling wholesale to funeral homes he would not need a business license. He noted he also would not need a sales tax license.

The Board noted that the casket is oversized and would require an oversized vault or no vault at all. The Board informed Mr. Miller retail sales outlets could only sale caskets at need and that selling caskets for use as 'storage cabinets' would constitute a pre-need sale. The Board recommended Mr. Miller research casket dimensions, which would allow funeral homes to look more favorably on the caskets.

Mr. Miller stated he would submit an application for a retail sales store.

D. **Consideration of Cremation of Fetal Remains Policy**

Mr. Adams stated staff received several calls regarding the cremation of fetal remains. He further stated staff has researched the statute and the regulations, which do not say that a death certificate from the SC Department of Health and Environmental Control (DHEC) is required for the cremation of fetal remains because it is not a death. He went on to say there was an episode that required a decision, in which he spoke with various individuals around the state and it was determined a death certificate was not needed for the cremation. He said the matter was brought before the Board for discussion and it was believed the matter was resolved. However, the matter is not resolved. He stated a bill was introduced in late February 2009 or early March 2009 by Representative Sandifer, Representative Parks and others in an attempt to resolve matter; however, the bill was dropped upon the issuance of a statement from DHEC. On March 27, 2009 DHEC issued a statement to coroners, crematories, and funeral homes saying a death certificate or a Fetal Death Report is not required to cremate fetal remains.

Mr. Adams stated Mr. Kip Kiser has contacted him informing him the coroners may have an opinion on DHEC's statement. He is asking that if the Board determines to vote on this matter that they vote to make it a policy that funeral homes and crematories are not required to have a death certificate to cremate fetal remains as long as they have authorization from the family and other required documentation.

Mr. Horton stated DHEC's statement is an opinion and that the statute states a death certificate is required for cremation of fetal remains. He feels the law needs to be changed to correct this matter.

Mr. Kiser stated he is speaking as a coroner and not on behalf of the Coroner's Association. He further stated he recently had an experience regarding this matter. He noted a fetus is considered twenty-three weeks and 350 grams. He was informed a Fetal Death Report would not be issued in a death that occurred in Chesterfield County because it was over one qualification but under the other qualification. He did not have a Fetal Death Certificate or a Death Certificate because neither document could be issued. He ordered an autopsy as a result of not having either document.

Mr. Tim Carlton, President of the SC Coroner's Association, stated the Fetal Death Report is a document generated by the hospital. He further stated he has spoken with several individuals and are in agreement with Mr. Horton that the matter needs to be dealt with legislatively. He does not know of any coroner in the state that will issue a cremation permit based on no knowledge of what occurred. He noted the association generally uses the term of gestation, not the weight.

Mr. Horton asked if this situation arises again if the coroner can have access to the Fetal Death Report for purposes of issuing a cremation permit (coroner's authorization). Mr. Carlton replied affirmatively.

Mr. Kiser feels it would behoove the Board, the SC Funeral Directors Association, the SC Morticians Association and the SC Coroner's Association to work together to resolve this matter legislatively.

This matter was referred to the Legislative Committee.

Disciplinary Reports

A. Investigative Review Committee (IRC) Report/Consent Orders – Tony Kennedy and Ernest Adams

Mr. Kennedy reviewed the nine cases discussed during the August 14, 2009 IRC meeting with the Board.

MOTION

Mr. Crawford made a motion the Board approve the August 14, 2009 IRC report. Mr. Horton seconded the motion, which carried unanimously.

B. Inspections Report – Ernest Adams

Mr. Adams has conducted approximately 50 inspections since the last meeting. He further stated he is spending less time with each facility; however, there is still a problem with the range on the general price list, which is a result of the facilities changing the casket price and not changing the general price list. He noted it is a low number of facilities.

C. Number of Open Complaints

There are currently 17 open complaints.

Committee Reports

A. Legislative Committee – Tom Genoble, Carl Pennington, Sheridan Spoon

This committee had no report.

B. Examination/CEU/Education – Gloria Vessels, Glen Crawford, Ernest Adams

This committee had no report.

C. Regulatory Compliance (Federal and State) / FTC / OSHA / ADA / PreNeed – Billy Horton, Tom Genoble, Doris Cubitt

Mr. Horton stated there is an individual, Scott Fowler from Spartanburg, who would be willing to handle the disbursement of the funds back to the individuals in matter the SC Franks Chapel of Remembrance. However, Mr. Fowler has questions prior to committing to this task.

Mr. Adams stated the agency has a CPA on staff who could assist in handling this matter.

Mr. Fowler asked the Board if the facility has thirty days to dispense the funds from the date of the final order. The Board replied affirmatively. Mr. Fowler asked if it is his discretion how the funds are distributed. The Board responded it doesn't care how the funds are distributed; however, he should report any problems to the Board.

Ms. Vessels suggested Mr. Fowler meet with the agency's staff CPA prior to working with SC Franks Chapel of Remembrance. She personally feels the funds should be distributed from the escrow account in order to prevent mixing the funds with the facilities operational account.

Mr. Fowler asked if the Board knows how many contracts he would be reviewing. The Board does not know the number of contracts; however, the Board does have a money amount (\$161,000 from 1997).

The Board noted that if the facility does not pay Mr. Fowler as required in the final order the Board would find the facility in contempt.

D. Publications / Newsletter / Website – Gloria Vessels, Glen Crawford, Tony Tipton, Jeff Temples, Sandra Dickert

This committee had no report.

Public Comments

No public comments were made during the October 8, 2009 meeting.

Election of Officers

Secretary

Mr. Crawford nominated Ms. Cooper as secretary. Mr. Tipton seconded the nomination, which carried unanimously.

Vice President

Mr. Horton nominated Mr. Nelson as vice president. Mr. Temples seconded the nomination, which carried unanimously.

President

Mr. Crawford nominated Mr. Temples as president. Mr. Horton seconded the nomination, which carried unanimously.

Adjournment

MOTION

There being no further business to be discussed at this time Mr. Horton made a motion the meeting be adjourned. Mr. Crawford seconded the motion, which carried unanimously.

The October 8, 2009 meeting of the SC Board of Funeral Service adjourned at 3:04 p.m.