

MINUTES
South Carolina Board of Funeral Service
Board Meeting

9:00 a.m., December 9, 2015
Synergy Business Park
110 Centerview Drive, Kingtree Building Room 108
Columbia, South Carolina

Wednesday, December 9, 2015

1. Meeting Called to Order

William B. Horton, Jr., President, of Kingtree, called the regular meeting of the SC Board of Funeral Service to order at 9:06 a.m. Other Board members present for the meeting included: Eddie Nelson, Vice President, of Blythewood; Jeffrey K. Temples, Secretary, of Columbia; Michelle Cooper, of Moncks Corner; Wallace McKnight, Jr., of Andrews, D'Michelle P. DuPre, of Chapin; Stephen R. Gantt, of Greenwood; Charvis K. Gray, of Piedmont; S. Lee McMillan, Jr., of Myrtle Beach; and Mark R. O'Steen, of Spartanburg.

Staff members participating in the meeting included: Donnell Jennings, Advice Counsel, Office of Advice Counsel; Tracey Perlman, Office of Disciplinary Counsel; Wendi Elrod, Program Assistant; Amy Holleman, Administrator; Monaca Harrelson, Administrative Assistant; Lamont Gleaton, Administrative Specialist II, Office of Disciplinary Counsel; Sharon Cook, Investigator, Office of Investigations and Enforcement; Ernest Adams, Inspector, Office of Investigations and Enforcement; Buddy Poole, Inspector, Office of Investigations and Enforcement; and Sharon Wolfe, Chief Investigator, Office of Investigations and Enforcement.

Members of the public attending the meeting included: Elizabeth Simmons, of the South Carolina Morticians Association (SCMA); Matalie Mickens, of South Carolina Department of Consumer Affairs (SCDCA); Willie Aiken and Michael Jenkins of the Legacy Funeral Home; Kim Wyatt of Fletcher Funeral Service; Peter L. Gaskins and Robert Cook of Green Funeral Home; Gary Finkler of the Finkler Law Firm; and Loretta Reddish and Ralph Harrell of the Garden of Devotion Cemetery.

A. Public Notice

Mr. Horton announced that public notice of this meeting was properly posted at the SC 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.

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

There were no absences

4. Approval of Minutes for the October 22, 2015 board meeting

MOTION

Mr. McKnight made a motion that the Board approve the minutes from the October 22, 2015, board meeting. Mr. Gant seconded the motion, which carried unanimously.

5. President's Remarks – Billy Horton

Mr. Horton welcomed everyone and stated it was an honor to be serving as President.

6. Administrator's Remarks – Amy Holleman

A. Financial report

Ms. Holleman presented financials which show a -\$645,561.40 cash balance at the end of October 2015. Ms. Holleman stated that the Board of Funeral Service licenses will renew at the end of Fiscal Year 2016. She expects a positive cash balance after the next two renewal cycles.

B. Authority for Administrator to issue Cease and Desist Orders

Ms. Holleman stated it was possible for the Board to delegate authority to the administrator to sign Cease and Dismiss orders after first consulting with legal resources.

MOTION

Mr. McMillan made a motion to approve the Administrator to issue Cease and Desist Orders, Mr. McKnight seconded, and the motion passed unanimously.

C. The International Conference Annual Meeting

Ms. Holleman reported that the International Conference of Funeral Service's Annual Meeting will be February 23-25, 2016 in Newport Beach, California.

MOTION

Mr. Horton called for a motion that would allow, subject to monetary considerations, for Ms. Holleman, Mr. Temples, and Mr. Nelson to attend the Annual Meeting. Mr. Petty made that motion, Ms. Cooper seconded, and the motion passed unanimously.

7. Processes and Procedure Orientation

The Office of Investigations and Enforcement and the Office of Disciplinary Counsel provided an orientation of their processes and procedure.

8. Reports

A. Inspection Report – Ernest Adams

Mr. Adams informed the Board that he and Mr. Poole conducted 81 inspections from October 14, 2015 to December 1, 2015.

B. Investigative Review Committee (IRC) Report

1. November 10, 2015 IRC Report.
2. December 3, 2015 IRC Report.

Discussion included, but was not limited to, advertising and violations thereof.

MOTION

Mr. Petty made a motion to approve the November 10, 2015 IRC report, Mr. McMillan seconded, and the motion was passed unanimously.

MOTION

Mr. McKnight made a motion to approve the December 10, 2015 IRC report, Mr. Gray seconded, and the motion was passed unanimously.

C. Office of Investigations and Enforcement (OIE) Report

Ms. Wolfe stated that the Office of Investigations and Enforcement (OIE) currently has 23 active investigations, 23 do not open cases, two opened cases, 26 cases pending Investigative Review Committee (IRC), and one closed case from January 1, 2015 through December 3, 2015. The oldest active case is 360 days.

D. Office of Disciplinary (ODC) Counsel

Ms. Perlman presented the Board with the report from the Office of Disciplinary Counsel (ODC). She included in the report that ODC opened eight cases, seven cases are pending action, one case pending hearing, and six cases were closed.

New Business

9. Application Hearings – Consideration for Licensure

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

1. Kimberly Crowder Wyatt – Funeral Director

Ms. Wyatt completed her funeral director/embalmer apprenticeship in 2008 and passed the National Funeral Director exam last month. She would like the Board to approve her to take the state law exam to become a funeral director only. Ms. Wyatt explained that she has been working at the funeral home part-time since 2008 and full time since January.

MOTION

Mr. Horton called for a motion to go into Executive Session to receive legal advice. Mr. Temples made the motion, Mr. O'Steen seconded, and the motion was passed unanimously.

Return to Public Session

MOTION

Mr. O'Steen made a motion that the Board return to public session. Dr. DuPre seconded the motion, which carried unanimously.

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

MOTION

Ms. Cooper made a motion that the Board grant Ms. Wyatt's request for licensure because she has actively been involved in funeral home activities. Ms. Wyatt is allowed six months to take the state law exam. Mr. O'Steen seconded the motion and it was passed unanimously.

10. Plaque Presentation

Plaques were presented to Charlie Bradford Evans and Wendi A. Elrod for their hard work and selfless commitment to the Board and the State of South Carolina. Their service is deeply appreciated by all.

11. New Funeral Home or Ownership change

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

1. Green's Funeral Home – Peter L. Gaskins

Mr. Gaskins is a licensed funeral director who is requesting a change of ownership/new facility for Green's Funeral Home in Lake City. Mr. Gaskins will serve as Manager. Mr. Gaskin's SLED report and proof of purchase documents are still needed. Mr. Gaskins lives 1.3 miles away from the funeral home, which is licensed to sell pre-need contracts.

MOTION

Mr. McMillian made a motion that the Board approve the application with Mr. Gaskins as manager, pending a favorable SLED report, favorable Consumer Affairs report, proof of purchase, and final inspection. Mr. Temples seconded the motion, which carried unanimously.

2. Legacy Funeral Home – Willie Patrick Aiken

Mr. Aiken is a licensed funeral director/embalmer who is requesting a change of ownership of Legacy Funeral Home in Estill. Mr. Aiken will serve as Manager and lives 23.7 miles away. Mr. Aiken has a full-time job with the Jasper County school system; the proposed hours of operation for the funeral home will be from 5 pm to 10 pm.

MOTION

Mr. Temples made a motion to go into Executive Session to receive legal advice. Mr. O'Steen seconded, and the motion was passed unanimously.

Return to Public Session

MOTION

Mr. O'Steen made a motion that the Board return to public session. Mr. Temples seconded the motion, which carried unanimously.

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

Mr. Aiken clarified the time he would have available for the funeral home, noting that it will operate on the weekends from 8am to 10pm and that he could take time off from his job with Jasper County schools if needed. The funeral home will not sell pre-need contracts.

MOTION

Mr. Nelson made a motion to go into Executive Session to receive legal advice. Ms. Cooper seconded, and the motion was passed unanimously.

Return to Public Session

MOTION

Mr. O'Steen made a motion that the Board return to public session. Mr. Gray seconded the motion, which carried unanimously.

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

MOTION

Mr. Nelson made a motion to accept the application and approve Mr. Aiken as Manager. Mr. McMillan seconded and the motion was passed unanimously. Mr. Nelson then made a motion to amend the previous motion by pending approval based on production of purchase agreement and passing final inspection. Mr. Grey seconded the amended motion and it was passed unanimously.

Break

Mr. Horton called for 10 minute break at 10:48 am.

Return from Break

Mr. Horton called the meeting back to order at 10:58 am.

12. Disciplinary Hearing – Tracey Perlman

Case No. OIE – 2012-9

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

Mr. Horton, Ms. Cooper, and Mr. McKnight recused themselves. Mr. Nelson assumed chairmanship.

Ms. Perlman introduced a Formal Complaint against Respondent, a licensed funeral director for three funeral homes in Andrews, Hemingway, and Georgetown and marketing and maintenance manager of Cemetery in Johnsonville.

The State alleges that in 2011, Respondent sold to the mother of decedent 20 grave plots for a family grave site. At the time of purchase the family had a preliminary discussion about moving the decedent's body to the family grave plots. Respondent signed off as the General Manager of Cemetery for these grave plots.

On March 20 of 2012 Respondent, as Funeral Director for Respondent Funeral Home of Hemingway, conducted a funeral service for another family member. At this time, mother of decedent approached the complainant, the decedent's wife, about moving decedent to the new family grave site. Decedent's wife was unsure and hesitant about the movement without first talking with her children.

It is alleged that on March 21, 2012, without the permission of the complainant, and without acquiring the required Department of Health and Environmental Control permit, the decedent's body was disinterred and placed in the family grave site by the Respondent.

Respondent may have violated S.C. Code Ann Sections 40-19-110(10), 40-19-110(14), 32-8-320(a), 61-19 Sections 27(a)-(b), and 40-1-110(1)(f).

After discussion Ms. Perlman asked that the Board make a declaratory statement regarding the applicability of Section 32-8-320(a).

MOTION

Dr. DuPre made a motion that the Board enter into executive session for legal advice. Mr. Petty seconded the motion, which carried unanimously.

Return to Public Session

Mr. Jennings announced that at this point in time the Board will not make a ruling on Section 32-8-320(a) until hearing further information.

MOTION

Mr. O'Steen made a motion for a brief recess, Mr. Temples seconded, and the motion carried unanimously.

Return to Public Session

Mr. O’Steen made a motion to resume the meeting in Public Session, Mr. Temples seconded, and the motion passed unanimously.

Lunch

Mr. Nelson called for a 30 minute lunch break.

MOTION

After the lunch break Mr. O’Steen made a motion to resume the meeting, Mr. Temples seconded, and it carried unanimously.

MOTION

Mr. McMillan made a motion to go into Executive Session to discuss Section 32-8-320(a). Dr. DuPre seconded, and the motion was passed unanimously.

Return to Public Session

MOTION

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

The board noted that it will dismiss any alleged violations of Section 32-8-320(a).

MOTION

Mr. Temples made a motion for a brief recess, Mr. Gray seconded, and the motion carried unanimously.

Mr. O’Steen made a motion to resume the meeting, Mr. Temples seconded, and the motion passed unanimously.

MOTION

Mr. Temples made a motion that the Board go into Executive Session to receive legal advice. Mr. O’Steen seconded the motion, which carried unanimously.

Return to Public Session

MOTION

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

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

MOTION

Mr. Nelson then called for a motion that the Board finds that Respondent violated S.C. Code Ann. Section 40-1-110(1)(f). Mr. McMillan made the motion and Mr. Gray seconded. Upon a call for votes there was a positive majority while Dr. DuPre and Mr. Petty voted negatively. Respondent is subject to a private reprimand.

Recused members rejoined the meeting and Mr. Horton resumed chairmanship.

13. Funeral Pricing, Practices, and Related Issues

The Board discussed pricing issues and practices, including wording, changes to the FTC rule book, General Price Lists, and making funeral directors and morticians aware of these changes.

14. Frequently Asked Questions

Ms. Holleman noted the need to update the FAQ section of the website and provided a possible list of questions to be added, which are attached to these minutes

MOTION

Mr. O'Steen made a motion that staff send a letter to funeral homes and mortuaries advising of FTC changes and an email eblast regarding the FAQ changes section of the website. Mr. Nelson seconded the motion, which carried unanimously.

15. Approval of 2016 Board meeting dates.

Ms. Holleman presented upcoming Board meeting dates of Tuesday February 16, Wednesday February 17, Monday March 7, Thursday April 7, Monday, May 6, Thursday June 16, Thursday August 18, Wednesday September 21, Thursday October 27, and Wednesday December 7.

MOTION

Mr. DuPre made a motion to approve the upcoming 2016 meeting dates, Mr. McKnight seconded, and it carried unanimously.

16. Public Comments (no votes taken)

Dr. Fulton suggested that "no longer required" in relation to "cremation if relevant" be stricken from the FAQs as it is strictly optional wording.

17. Adjournment

MOTION

Mr. Temples made a motion the Board adjourn. Mr. McMillan seconded the motion, which carried unanimously.

The December 9, 2015, meeting of the SC Board of Funeral Service adjourned at 4:40 p.m.

The next meeting of the SC Board of Funeral Service is scheduled for February 16, 2016.

Q. Where can I find the most recent version of “Complying with the Funeral Rule?”

A. The Federal Trade Commission updated “Complying with the Funeral Rule” in April 2015. You can directly access that publication on their website or directly here: <https://www.ftc.gov/system/files/documents/plain-language/pdf-0131-complying-with-funeral-rule.pdf>. You can also order a printed copy from the FTC at no charge here: <https://bulkorder.ftc.gov/publications/complying-funeral-rule>.

Q. Is it true that the Federal Trade Commission no longer requires the phrase, “cremation if relevant,” on the General Price List under direct cremation?

A. Yes, the Federal Trade Commission, in its latest “Complying with the Funeral Rule,” which was published in April 2015, no longer includes the language, “cremation if relevant,” under direct cremation on the General Price List.

Q. I own a company that sells caskets to the public (retail) over the internet. We are physically located in Maine and do not have a storefront in South Carolina. Do we need a Retail Sales Outlet permit in order to sell our caskets to customers in South Carolina?

A. No, you do not need a Retail Sales Outlet permit in South Carolina since you do not have a physical presence here. If you decided to open a store in South Carolina, then that location must have a Retail Sales Outlet permit.

Q. I have a Retail Sales Outlet permit in South Carolina. When the Funeral Board’s inspectors come by, what are they looking for?

A. Funeral Board inspectors make sure that permit holders have a valid permit on display and a merchandise price list.