

Sally Scott Atilli , President
David Deal, Secretary



Sally Scott Atilli
David Deal
Ronald A. McVey
A. Craig Rotruck

Regina Anderson, Executive Director

(304) 558 0302 Tele
(304) 558 0660 Fax

STATE OF WEST VIRGINIA
Board of Funeral Service Examiners
179 Summers Street, Suite 319
Charleston, WV 25301

wvfuneralboard@hotmail.com
www.wvfuneralboard.com

September 11, 2017



John Sylvia, Director
WV Legislature PERD
Building 1, Room W-314
State Capitol Building
Charleston, WV 25305

RE: Draft of Audit report dated September 17, 2017

Dear Mr. Sylvia:

Thank you for meeting with us on Friday, September 8, 2017, to discuss the concerns of the current Board relating to your audit report.

Our first concern was the Audit finding that the Board should have acted under WV Code §30-1-8(e) which states, in part, that the Board "is authorized to suspend or revoke a certificate, license, registration or authority prior to a hearing if the person's continuation in practice constitutes an immediate danger to the public. (Emphasis added.)

As we advised you, and as pointed out in your report on page 2, our Board attorney stated that we could not take disciplinary action without a complaint setting forth a violation of the funeral service laws. It has been the advice of previous attorneys assigned to the Board that in matters involving criminal actions that we should wait for a conviction and then proceed to suspend a license. We now find ourselves being chastised for failing to act according to the interpretation of your attorneys when our attorneys have advised to the contrary.

Further, our attorney advised us that we had one year from the date we began legal proceedings to resolve the matter in order to be in compliance with the ruling of the WV Supreme Court of Appeals.

At the July 5, 2017 Board meeting, the Board's attorney made a general presentation about the case and what had transpired over the past year with regard to the litigation and the costs incurred by the Board. He stated that he had received from the respondent's attorney a settlement offer and the Board should go into Executive Session to discuss the same. The Board

authorized the attorney to make a counter offer and outlined their starting point as well as their bottom line for negotiation. A counter offer was made by the respondent and the Board's attorney stated we should enter into settlement negotiations and a date was set for the same.

The notice of the meeting for the negotiations was sent to the Secretary of State as a SPECIAL MEETING, however, we received a call from that office stating there were no more Special Meeting notices and the notice appeared as an EMERGENCY NOTICE. However, the language of the notice very clearly said it was a Special Meeting.

Prior to the negotiations meeting, the lobby group for the WV funeral directors sent a letter to the Board President (Ira Handley), the Governor and the Attorney General, contesting the appointment of 3 of the new members. One member was categorized a "non practicing funeral director," one purportedly had a business relationship with the respondent and another was a member of a church with over 2000 members where the respondent was known to attend. It should be noted that one member of the board, other than the new member, was also non practicing, and there have been several past members who would fall into that category, however, they all hold active licenses and could practice if they wished to do so. Further, three members of the Board were members of the group opposing the new appointments and one also had a business relationship with the respondent which he never disclosed while taking part in decisions relating to the respondent. The issue of the possible conflict with the new member who had a business relationship was addressed in open meeting and found to be baseless; the church issue had been previously addressed to the Ethics Commission informally and it appeared that there were no grounds to disqualify that member.

The Board Attorney took considerable time prior to the commencement of the negotiations to outline the fees incurred to date which totaled approximately \$25,000. He outlined the fees that would be incurred if the hearing were to take place. Those fees would have been in the neighborhood of \$50,000 and the final outcome of the hearing was not guaranteed and if adverse to the respondent would in all likelihood be appealed to the Circuit Court and on up resulting in an exorbitant expense to the Board.

The negotiations took approximately four hours and resulted in the settlement as outlined in your report.

The Board members who resigned were members of or had close ties with the lobby group who contested the appointment of the new membership.

As to the three cases cited in your report, please be advised:

In case #1, the complainant was a patient at Weston State Hospital, having been committed there by court order. His complaint dealt with preneed issues and possible criminal conduct. A copy of his complaint was sent to the Attorney General's preneed division and later to the Wood County Sheriff, the State Police in Wood County, the Parkersburg City Police and the Wood County Prosecutor. All declined to prosecute or investigate the matter as they deemed the complainant not a "credible witness".

The Attorney General did investigate and enter into a consent agreement but only insofar as registering preneed contracts and filing death benefit reports. They made no findings or record relating to the complainant. Informally, they had the funeral director allow the transfer of the preneed contract to another funeral home and told the funeral director to refund moneys he spent for his personal use. (The funeral director had a POA and stated he had been requested to cash in the travelers checks that were the subject of the complaint.)

Because of the complainant's questionable mental status, the Board also felt that they didn't have a credible witness in order to proceed but did reprimand the funeral director for his actions.

Case #2. The Attorney General's office obtained an injunction and later a judgment against a local funeral home. After the Board found out about the matter, it attempted to do an investigation and bring charges. (Again, please note that we were acting in compliance with the advice of our Board attorney that we could not act on the statute cited above.)

We collected what evidence we could and contacted the Charleston PD to do a criminal investigation. After a few weeks we called CPD and was advised that they had contacted the Attorney General's Office and were advised by Chris Hedges, the attorney for preneed, that they wanted our investigation "put on the back burner" as they were worried that if we acted on the funeral director's license the State would not get its money. This office contacted the prosecutor who initially said he could not prosecute because there wasn't evidence to substantiate fraud. We called his attention to the statute dealing with misappropriation/embezzlement of preneed funds and he then asked us to have CPD send him the grand jury report. When we contacted the officer involved, we were advised that he had shredded the file.

We were advised informally by the Attorney General's office that because IRS and state agencies had tied up the assets of the funeral home/funeral director that they had entered into a repayment agreement with the funeral director. A check with that office last week indicates that he is still making payments of \$500 a month.

Case #3. We first became aware of this case when we read in the newspaper that the funeral director was being sued by the Attorney General. We obtained a copy of the complaint and subsequently contacted the funeral director regarding surrender of his license. He stated that he would sign and we sent him the Consent Agreement. However, he did not sign the Agreement and fled the State. A year later he attempted to renew his license and requested a letter of good standing so he could reciprocate to South Carolina. He was contacted and told he could not renew nor would we send a letter of good standing. We also sent him, again, a Consent Agreement to sign which he did not. We contacted the SC Board, furnished them with the information relating to this embezzlement and his license was flagged in that state.

After getting a new address for him we contacted the Attorney General's office so that they could move forward with their default judgment.

We attempted to have the funeral director criminally prosecuted in Monroe County, as did the Insurance Company involved, however, the entire State Police detachment recused themselves from investigating the matter as they were all friends with him: the Prosecuting

Attorney and Circuit Judge likewise recused themselves and even the Special Prosecutor recused himself. Later an investigator from the Insurance Commission came to this office to review our file and said that he was on his way to South Carolina to interview the funeral director. He took a copy of the Agreement to give to the funeral director. We received no response.

The funeral director has now been indicted in Federal Court on 2 counts of wire fraud totaling a little over \$6000. We have talked with the Probation Office who states that it is possible that the Federal Prosecutor will require the funeral director to sign the Agreement. Please note, the funeral director does not have a current license and cannot be licensed anywhere else.

We would like to point out that we only find out by chance of embezzlement by funeral directors. Unless the embezzlement becomes known to the public through the media, we are never informed of the matter. Until such time as the Attorney General completes his investigation and enters into a Consent Agreement or institutes litigations, those matters are considered confidential.

The Legislature should note that current Board members were just appointed July 1, 2017, and had limited input in the Harding decision. Further, from the start of their terms they were contacted inappropriately by members of the lobby group and one brazenly advised a new member that "they wanted him [Harding] to lose his license". Another Board member was threatened with expulsion from the Masonic Lodge because of his vote.

The Board is currently comprised of three funeral directors and one consumer/citizen member with three more members to be appointed. The Board agrees that additional citizen members, as defined in your letter, would be beneficial and, in fact, suggests 3 citizen members. The Board would also urge that no more than 2 funeral director members of the Board be a member of the Funeral Directors Association in order to ensure that those funeral directors who come before the Board and who are not members of that group are given a fair and impartial review and that favoritism is not shown to those who are Association members. Under the past Board makeup that was not possible.

The Board is still perplexed about the Legislative Auditor's interpretation of WV Code §30-1-8(e) which is in direct conflict with the advice and direction of our Board Attorney. As the past Board acted in accordance with its Attorney's advice and guidance, the Board feels that it has been unfairly criticized regarding how this case was handled.

Sincerely,


Regina J. Anderson
Executive Director