

Arkansas Burial Association Board
Board Meeting

MINUTES

Wednesday, July 23, 2014 11 a.m.
101 East Capitol, Conference Room C
Little Rock, AR

Chairman Steve Ballard called the meeting to order. Members present were: Vice Chair Haylee Harris-Hill, Scott Berna, Chuck Dearman, and Barbara Hovarter. Members absent were: Melanie Heath Posey and Sammie Turner James. Staff that were present: Amy Goode, Executive Secretary, Bob Brooke, Auditor, and Katina Hodge and Mark Ohrenberger, Board Counsel.

1. **Introduction of the Board**

2. **Board Discussion**

a. **Approval of proposed rule changes from committee**

Chairman Ballard explained we would discuss the proposed rule changes first from the agenda, since there were several in attendance to hear that discussion. Hopefully everyone has received a copy and read the proposed changes. It has been highly involved and there have been rather lengthy meetings of the committee and particular the last meeting on July 16, 2014. Gilchrest stated as a member of the committee he would like to open up the discussion of the proposed changes and is recommending these changes to the Board.

Motion made by Gilchrest to approve the proposed rule changes as submitted by the rules committee, seconded by Berna.

Discussion: Berna started the discussion with that he was fine the general housekeeping of the proposed changes, but had some concerns with the dissolution. Not with the way the rule is written, as it is written it is pretty clear, he is just concerned we are creating a precedence. In his business life, he has always been told to do everything you can not to create a precedence. This might be the right thing to do for Drew County Burial Association, but not sure this is the right thing for the state as a whole. Our responsibility as members of this Board is to look at the big picture and not just one piece of the pie. He just didn't know if it's the right thing to approve that section of it.

Ms. Hodge gave a brief recap why we are here per Chair's request. Ms. Hodge stated that we currently have a case that was filed by Drew County and there are some interveners involved in that case against the Burial Board petitioning the court to give them declaratory relief. They came to the Board seeking a dissolution, because the association is super funded and they want to receive those proceeds. The Board at that time did not have a rule in place and so it's her understanding that historically the Board had said they didn't have the means to grant Drew County the relief they were seeking at that time. Drew County then filed a petition for declaratory judgment in Pulaski County Circuit Court, saying they believe that the Board does have the authority to offer the relief that they are seeking so they have asked the court to give them that relief. In the meantime, there was a stay in that case. It was held in abeyance because the Board thought they could craft a rule since they were asked to consider that possibility by both parties. The Board established a committee and has been diligently working on a rule that would be of general applicability, not just for Drew County. That litigation is still pending in circuit court and has been set for trial on November 17, 2014. Either the Board can pass a rule that allows for dissolution and theoretically that means you don't need the trial in front of the circuit court if Drew County can get the relief they are seeking through the Board's rule. Even if the Board does not pass a rule, we

still have this pending litigation that will require us to go into court and either defend or explain why or why not Drew County by itself is or is not entitled to dissolution.

Ballard stated that even if we pass the rule we could still end up in litigation. Ms. Hodge stated she didn't want to speak for Drew County since Mr. Harris is here, but that if for some reason the plaintiffs did not feel the Board's rule would give them the relief they were seeking in circuit court then they would of course still proceed. When the parties sought the stay, it was a joint stay meaning Hodge on behalf the Board, Mr. Harris on behalf of Drew County, and Mr. Horne on behalf of the interveners stayed the case with the expectation that the Board worked toward crafting a dissolution rule that might negate the need for litigation in circuit court.

Motion failed due to lack of support.

Motion made by Berna to approve the rule committees proposed changes with the exception of rule 35.8.1 - 35.8.8 Dissolution of a Burial Association, seconded by Harris.

Discussion: Ms. Hodge wanted to bring something to the Board's attention for consistency purposes. In your packet, you have rules that are almost identical to the dissolution rule. You are getting ready to pass rules that are nearly identical to the dissolution rule and potentially not pass the dissolution rule. So going forward when you are talking about the position the Board takes in the Pulaski County Circuit Court you might not have that consistency there. Mergers and Assumptions are almost identical which are similar in nature to the dissolution.

Berna brought up that he didn't know that he would draw that same conclusion that an assumption and dissolution would be similar because with an assumption the policy still exists and another entity is managing those policies; with a dissolution the policies are just going away. Hodge stated they are similar based on the association will no longer exist. Berna clarified that with a dissolution the policies no longer exist, but with the assumption they continue under the insurance company. The policy holder still has a benefit at death with assumption and with dissolution they are receiving their benefit now.

Dearman inquired of Mr. Ohrenberger's thoughts on the matter. He stated he would defer to Ms. Hodge, but to follow along with the discussion it was important that the Board at least understand that you have three rules that are created with similar mechanisms and procedures. That way the Board could understand if they are voting one away and keeping the others. It is the Board's distinction to make. It is the Board that gets to interrupt the statute and the court gets to tell them if they interrupted correctly or incorrectly. That is probably going to happen one way or another. If it's in the Drew County case or another case, no matter what you decide here today. That is the nature of this type of statutory interpretation. I think both have touched on the selling points and that is if in one situation you see that they continue to exist and another there is not, then that's a distinction the Board can make. Additionally, the Board could also decide that the statute means that you can have burial associations that go away and that is for the Board to interrupt.

There was a lot of confusion about the motion and Mr. Gilcrest questioned if we voted on the motion on the table and it passed then could there be any more discussion about the dissolution. Ohrenberger stated the answer would be yes, there could be another motion brought that would require discussion of the dissolution.

Motion carried.

Motion made by Gilcrest for the Board to continue discussion on rule 35.8.1 Dissolution of a Burial Association, motion failed for lack of second.

- b. **Mileage Reimbursement** - Executive Secretary explained she had failed to put this on the agenda, but wanted to have the Board address this issue. The Board needs to have in place a policy on how we will determine mileage reimbursement for audit purposes. We have been using Google maps to determine the mileage from your physical location to the physical location of the meetings.

Motion made by Dearman to accept the policy to use Google maps to determine the mileage reimbursement method, seconded by Ocker, all in favor. Motion carried.

3. **Administrative**

- a. Motion made by Berna to approve the April 23, 2014 minutes as written and distributed, seconded by Dearman, all in favor. Motion carried.
- b. Motion made by Berna to approve the April-June 2014 DF&A financial documents and trial balances as distributed, seconded by Hovarter, all in favor. Motion carried.

4. **Complaints**

- a. **Sherrod, Verda V. Smith Burial Association, Corrine Wheelington, Secretary-Treasurer**

Executive Secretary stated we had received a complaint from Ms. Sherrod on a policy her father has had with Smith Burial Association for approximately seventy-four (74) years. The association denied the claim because the policy had lapsed at the time of death. They did not pay their April assessment until May 9, 2014 and the policy holder passed on May 7, 2014. The association stated the policy was lapsed for seven (7) days. The Board did not feel the policy holder should be penalized for this after seventy-four years, but we would be setting a precedence if allowed to bend our own rule. The association was following our rules and it was stated why have a rule if we're not going to enforce it. Ms. Harris brought up some good discussion, she stated it appears the policy had been paid late several times, why didn't the association address the problem before now. It says the payments are due on the 15th and you can look at the payment history. The February payment was due February 15th and wasn't paid until March 7, 2014. The December payment was not paid until January 5th. Harris stated they have fifteen (15) days to pay it from the date of the assessment. The auditor stated that it's due by the 15th of the month so he thought they would have thirty (30) days to pay from the due date. If we were saying they have thirty (30) days from the due date then it would not be past due. Ocker stated the association is stating the payment is due on the 30th of the month, it's due on the 15th and delinquent after the 30th which is fifteen (15) days. Auditor then stated that they assess on the 1st day, its due on the 15th really the 15th does not have anything to do with it. They have thirty (30) days to pay from the date of assessment or from the due date rule 22 does not specify. There was a lot of discussion if the benefit was payable or not, but majority of members felt the member she have received credit regardless if the funeral home had to absorb it. Auditor stated they sent out the assessment the 1st of April that is not the due date. You always send out the assessment ahead of time, the due date was the 15th of April, thirty days from the due date is May 15th. Ohrenberger stated that the secretary-treasurer indicated in their response they would be happy to do whatever the Board decided, if that is the case write a letter back to the respondent that we have reviewed it and thought the payment was timely, so go ahead and pay it. That should resolve the complaint.

Motion made by Ocker that the payment was in fact timely and the claim should be paid, seconded by Berna, all in favor. Motion carried.

5. **Attorney Updates**

Ohrenberger mentioned that the Executive Secretary sent him a document inquiring if this was a complaint. He reviewed it and thought it was not a complaint at this time, but it may end up being one. A lawyer from out of state had written a request for production of documents and sent it to a law firm, a burial association, and an

insurance company. They styled it as if it were a pending matter in front of this Board and copied us on it, but the request for documents are entirely on those two other parties not to the Board. The advice he gave was that at this time we will not treat it as a complaint, but just thought the Board should be aware. It was against Collison Burial Association.

Mr. Ohrenberger further stated he wanted to clarify the process and the timeline moving forward. Following the vote the Board made today regarding some proposed rule changes. The Executive Secretary has some forms to fill out to start the process. There will be a thirty (30) day comment period and at the end of that a public hearing. Depending on the comment period we may have to answer to some written statements. At the public hearing the Board will vote again to finalize those rules. Until the rules are approved we continue to operate on the current regulations.

6. **Meeting dates:**

- a. October 22, 2014
- b. December 2, 2014.

7. **Adjournment**

Motion made by Berna to adjourn the meeting, seconded by Dearman, all in favor. Motion carried.

ATTEST:

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