

Arkansas Burial Association Board

MINUTES

Wednesday, March 27, 2013, 11:00 am
101 East Capitol, Little Rock, AR
Conference Room C
Board Meeting

Acting Chairman Normal Gilchrest called the meeting to order. Members present were: Pete Sims, Scott Berna, Dr. Jacki McCray, Charles "Chuck" Dearman, and Melanie Heath Posey. Members absent were: Sammie "Turner" James, David Powell, Jr., and Steve Ballard. Staff present: Amy S. Goode, Executive Secretary, James R. Brooke, Auditor and assistant attorney general Mark Ohrenberger, Board Counsel.

1. Introduction of the Board and guests, meeting called to order
2. ***Stuttgart Home Burial Association – Default Judgment***

Normal Gilchrest explained this was a continuance from our last meeting. Mr. Buck responded that he has provided a letter from the bank declining the loan to repay the judgment. He has provided his 2012 financial records. Mr. Brooke explained that Mr. Buck had brought in today several documents that at his first quick glance to potentially justify some of these claims with a more substantial check. Mr. Brooke further explained to the Board with their approval he would like to visit with Mr. Buck at his establishment in Stuttgart on Friday, March 29th with their approval to determine the bottom line. Mr. Brooke explained based on what he saw, that some of the old claims could be proven. Mr. Gilchrest stated that it was his understanding that Mr. Buck was to bring the files to Brooke prior to the meeting in addition to working on securing the loan. Mr. Buck stated that was correct, but he was not able to get the loan.

The Board felt they needed to know the balance owed to set-up a payment plan. Mr. Brooke stated he thought it would be best to determine the balance is before a payment plan is established.

Motion made by Sims to allow Auditor to do the onsite audit to calculate balance due and to have the office staff and attorney establish a payment plan, seconded by McCray, Discussion ensued.

Ohrenberger stated that once we got a figure from Mr. Brooke, we could work out a plan with Mr. Buck that ultimately would have to be ratified by the Board. The staff could put the agreement together on how credits and payments will be considered. Once we got the agreement outlined the Board at their next meeting could approve it. Ohrenberger stated he would like some guidance from the Board to determine the plan.

The Board felt that Mr. Buck has not responded well to the Board's directive and the Board is frustrated by his lack of concern. McCray wants assurance from Mr. Buck that this matter will be resolved. Mr. Buck assured the Board he was ready to get this behind and establish a payment plan.

After inquiry from McCray about the difference in this case and the others, Ohrenberger stated that in the other cases they were ongoing issues with the secretary/treasurer with no judgment in place from the court systems. With the Buck case there is already a judgment in place from the court. The Board's alternative could be to garnish wages or obtaining personal property. Those processes are cumbersome, but doable at the Board's discretion.

Amended Motion by Sims that after Mr. Brooke conducts audit to determine any if claims may be applied to reduce the amount to, then staff will work with Buck to prepare payment plan, with approval via conference call to approve/disapprove. All in Favor and motion carried.

Gilchrest mentioned the expenses that Mr. Brooke will incur to conduct this special audit should be reimbursed to the Board by Mr. Buck.

Motion made by McCray that Mr. Buck reimbursed the Board for the Auditor's trip to Stuttgart to do the audit, seconded by Sims, all in favor. Motion carried.

Mr. Brooke will be at Richardson Memorial Funeral Home in Stuttgart March 29th @ 9:30am.

Board had to rearrange the agenda to accommodate finding a hearing officer to conduct hearing.

3. Approval of minutes of the January 2013 meeting

Motion made by Berna to approve the January 2013 meeting minutes as written, seconded by Sims, all in favor. Motion carried.

4. Approval of January -February 2013 Trial Balance and DF&A Financial documents

Motion made by Dearman to approve the January-February 2013 Trial Balance and DF&A Financial documents, seconded by Berna, all in favor. Motion carried.

5. Board Discussion

- a. Attorney Update** –Drew County Burial Association is the only update Mr. Ohrenberger had for the Board. He explained the case has not really had any progress. It's still set for a hearing in Judge Gray's court in Little Rock on June 4, 2013. Its likely motions will be filed back in forth in the mean time he would prompt Mr. Horne and Mr. Harris. The dispute is between them and ultimately it will be his job to defend the Board. The parties in the case are the Board, four members in the association, and the Drew County Burial Association itself. Ohrenberger brought the newest Board member Mr. Chuck Dearman up to date on the Drew County matter. The Board does not have authority to dissolve a burial association; therefore Mr. Harris had filed a lawsuit against the Board for declaratory judgment stating they do have the right to dissolve themselves.
- b. Woodhouse Burial** – Ohrenberger explained to the Board he would like to research further what power the staff had to investigate the matter further. Motion made by Sims that the Board gave authorization to the staff and attorney to use all powers possible to obtain information, seconded by McCray, all in favor. Motion carried.

6. McGonigal Consulting – New Burial Database Proposal

Lance McGonigal updated the Board concerning with his work with many Boards including the Arkansas State Board of Embalmers and Funeral Directors.

7. Hearing

a. - Church Burial Association

Attorney Greg Kilpatrick served as Hearing Officer and swore in witnesses.

Assistant Attorney General Mark Ohrenberger represented the Board.

Amy S. Goode, Executive Secretary and Bob Brooke, Auditor appeared as Board's witnesses.

Shannon Strickland and Matthew D. Peaches Strickland appeared on their own behalf.

Court Reporter Tricia Pfeifer -Precision Court Reporting entered documents into the record

Hearing officer Kilpatrick explained the reasons for the hearing today on the record and that the meeting would be held pursuant to the Administrative Procedures Act and is subject to the Freedom of Information Act. Kilpatrick allowed Attorney Ohrenberger to enter exhibits 1-11 to the Board since there were no objections from the Strickland's.

Ohrenberger made a brief opening statement explaining to the Board the reason for the hearing today. Bob Brooke, Board Auditor in September 2012 conducted an audit of the Church Burial Association and found a shortfalls in the both the old business and new business funds. There was a shortage in the amount of \$10,387.21 from old business and \$8,633.62 in the new business. Warren Strickland, Jr., who is the secretary-treasurer, has not been at any of the meetings due to his illness. Matthew D. "Peaches" Strickland, president and Mr. Strickland's wife has appeared at several of the meetings. For the record, grandson Shannon Strickland has attended several of the meetings as well. At the Board's December 4, 2012 was given several directives from the Board and essential was followed up in a letter by the Board's Executive Secretary Mrs. Goode on December 7, 2012. All shortages were to be restored after the January 7, 2013 additional audit Mr. Brooke made and all deposits were to be made immediately. As of the January 2013 audit the shortage was reduced by a substantial amount. Deposits were not made in a timely manner and was a violation of Ark. Code Ann. § 23-78-109.

Shannon Strickland made a brief opening statement explaining that all this occurred do the bad health of his grandfather and he would like to do whatever necessary to get the matter resolved today. Mrs. Strickland explained the importance of their agents in the association.

The current cumulative amount of the shortage as of the meeting was a total of \$403.74. Shannon Strickland offered apologies to the Board about what had happened, but reiterated the reason was due to his grandfather falling ill. They would like to correct the problems today with the Board.

FINDINGS OF FACT

F.1. Church Burial Association is an authorized burial association, operating under a Certificate of Authority issued by the Board. Respondent Warren Strickland, Jr. is the Secretary/Treasurer of Church Burial Association. Respondent Matthew D. "Peaches" Strickland is the President of Church Burial Association. Respondents are currently authorized by the Board to serve as officers in Church Burial Association, and they held these positions pursuant to authorization by the Board at all times from January 1, 2012 to the date of this notice of hearing.

F.2. On September 6, 2012, the Board's auditor, Bob Brooke, audited the books of Church Burial Association. As Mr. Brooke discovered by conducting this audit, as of August 31, 2012, Church Burial Association's accounts were short \$10,387.21 from the "old business" fund and \$8,633.62 in the "new business" fund.

F.3. Matthew Strickland attended the Board's December 4, 2012 meeting, at which the Board directed the Respondents to:

- (a) Restore all shortages in Church Burial Association's account by the time of the next scheduled Board audit of Church Burial Association's books, on January 7, 2013;
- (b) Immediately deposit all Church Burial Association collections in their possession and to send proof of this deposit to the Board no later than December 10, 2012;
- (c) Immediately deposit all future Church Burial Association collections that come into their possession;
- (d) Submit to the Board, prior to the Board's January 23, 2013 meeting, proof that any and all shortages in Church Burial Association's accounts existing as of the January 7, 2013 audit had been restored; and
- (e) In the event all shortages could not be restored prior to the Board's January 23, 2013 meeting, submit to the Board, at its January 23 meeting, a letter from a financial institution to demonstrate that Respondents had personally applied for a loan to cover the shortage and that the loan application had either been approved or denied by that institution.

F.4. The Board, through a certified letter from its Executive Secretary Amy S. Goode, dated December 7, 2012, confirmed these directives in writing to Warren Strickland, Jr.

F.5. Through an Emergency Order dated December 4, 2012 meeting, the Board also required Respondents to obtain written approval from the Board's Executive Secretary before withdrawing any funds from Church Burial Association's accounts.

F.6. January 7, 2013, Mr. Brooke again audited the books of Church Burial Association. As Mr. Brooke discovered by conducting this follow-up audit, as of December 31, 2012, Church Burial Association's accounts were short \$241.11 from the "old business" fund and \$3,062.63 from the "new business" fund.

F.7. After the Board's issuance of the directives described in paragraph 3 above, Respondents did not make any deposits into Church Burial Association's accounts until January 4, 2013.

F.8. During the entire period from September 13, 2012 to January 4, 2013, Respondents had un-deposited Church Burial Association collections in excess of \$300 in their possession.

F.9. By the time of the Board's January 23, 2013 meeting, Respondents had not provided proof to the Board that they had restored to Church Burial Association's accounts all shortages that existed as of the January 7, 2013 audit.

CONCLUSIONS OF LAW

C.1. By failing to deposit Church Burial Association collections in excess of \$300 within five business days of receiving them, as evidenced by the findings of fact in paragraphs F.3 and F.7-F.8 above, Respondents Warren Strickland, Jr. and Matthew D. "Peaches" Strickland violated Rule 32(a) of the Rules and Regulations Governing Burial Associations.

C.2. Because of shortfalls existed in Church Burial Association's records during the time when Respondent Warren Strickland, Jr. held the position of Secretary/Treasurer for Church Burial Association, which were discovered by the Board's auditor, as described in paragraphs F.1-F.2 and F.6 above, Respondent Warren Strickland, Jr. violated Rule 32(b) of the Rules and Regulations Governing Burial Associations.

C.3. By failing to follow the Board's directives, as described in paragraphs F.3-F.4 and F.6-F.9 above, Respondents Warren Strickland, Jr. and Matthew D. "Peaches" Strickland failed to adhere to the Board's authority, supervision, and control of Church Burial Association, as an authorized burial association, in violation of Ark. Code Ann. Sec. 23-78-109.

C.4. All charges against Respondent Church Burial Association are dismissed.

ORDER

In light of the violations found in this order, pursuant to Ark. Code Ann. § 23-78-124(e), the authority of Respondents Warren Strickland, Jr. and Matthew D. "Peaches" Strickland to serve as officers for Church Burial Association is revoked.

Shannon Strickland had agreed to serve as Interim Secretary-Treasurer for Church Burial Association, and the Board hereby appoints Shannon Strickland to serve as Interim Secretary-Treasurer for Church Burial Association for a period of six months from the date of this order. Shannon Strickland's authority to serve as Interim Secretary-Treasurer for Church Burial Association, however, shall be subject to the supervision of the Executive Secretary of the Arkansas Burial Association Board.

Pursuant to the Ark. Code Ann. § 23-78-125 and the Arkansas Administrative Procedures Act, Ark. Code Ann. § 25-15-212, Respondents may petition for judicial review of this decision by filing a petition in the circuit court in the county in which they reside or do business or in the Circuit Court of Pulaski County within thirty days after service of this order.

Motion made by McCray to find Warren Strickland, Jr. in violation of C.1, C.2, and C. 3 and dismiss the charges against the other respondents, seconded by Sims. Discussion ensued.

Motion amended by McCray to include Matthew D. "Peaches" Strickland in violation of C.1 and C.3, and dismiss all charges against Church Burial Association, seconded by Posey, all in favor. Motion carried.

Motion made by Berna, to revoke the authority of Warren Strickland, Jr and Matthew D. "Peaches" Strickland, seconded by Posey, all in favor. Motion carried.

The Board determined there should be a probation period and made Shannon Strickland interim secretary-treasurer for a 6 month period, after which time based on the recommendation of the Board staff to approve Mr. Strickland as the permanent secretary-treasurer.

Motion made by Sims, to appoint Shannon Strickland as interim secretary-treasurer to Church Burial Association for a period of 6 months under direct supervision of Executive Secretary and then staff will report to the Board the

progress of the Association. Then the Association could have an election of officers, seconded by Dearman, all in favor. Motion carried.

Mr. Shannon Strickland agreed to accept responsibility.

Church Burial Association has a policy on a Mr. Johnnie Davis. Mr. Davis died out of state and the burial was handled by Willis Funeral Home in Arkansas. Mr. Davis's sister has been paying on the policy all these years, but she did not pay for the funeral bill. The Board explained that the benefit would be paid to the next of kin responsible for the funeral bill of Mr. Davis's service. It was explained to Church Burial they need a copy of the death certificate and copy of the funeral bill showing where it's paid in full in order for the family to receive the benefit. If any amount is owed to the funeral home that benefit would be paid to them.

8. Election of Officers

Board decided to post-pone the election officers until the next meeting when we will likely have a full representation by the Board.

9. Next Meeting

The Board will meet Wednesday, May 22, 2013 @ 11:00am. Motion made by Sims to allow Normal Gilchrest to serve as acting chairman, seconded by Berna, all in favor. Motion carried.

10. Adjournment

Motion made by Sims to adjourn since there was no further business to discuss, seconded by McCray, all in favor. Motion carried.

ATTEST:

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