

Arkansas State Board of Embalmers and Funeral Directors
Board Meeting

MINUTES

Thursday, August 14, 2014, 9:30am
101 East Capitol, Conference Room C
Little Rock, AR

Chairman James Terry Woodard called the meeting to order. Members present were: Vice Chairman Bobby Thurman, Bobby Burns, Jerry Adams, and Ben Brazzel. Board Members absent were: Patricia Roberts. Staff that were present: Amy Goode, Executive Secretary, Leslie Stokes, Inspector, and Mark Ohrenberger, Board Counsel.

1. Introduction of the Board

2. Oral Examinations

- a. **Jeremy Ingram** - was administered his oral exam.

3. Administrative

- a. Motion made by Burns to accept as written the minutes of the public hearing in Mountain Home held July 15, 2014, seconded by Brazzel, all in favor. Motion carried.
- b. Motion made by Brazzel to approve minutes of the July 10, 2014 and July 29, 2014 Board meetings, seconded by Adams, all in favor. Motion carried.
- c. Motion made by Brazzel to approve the transcript of the Center Valley Crematory Permit Public Hearing July 29, 2014 as the minutes of that hearing, seconded by Adams, all in favor. Motion carried.
- d. Motion made by Burns to accept and approve the July 2014 trial balance and DF&A financial reports as delivered, seconded by Brazzel, all in favor. Motion carried.

4. Board Discussion

a. Humphrey Family Properties, LLC -Center Valley Crematory Permit

Mr. Thurman thanked everyone for being here and for the hospitality in Russellville. The Board has lots to discuss; there are several people with mixed emotions. Mr. Thurman stated he hoped to clear up some of those today. He inquired of Board Counsel if the Board could ask questions. Mr. Ohrenberger stated that the hearing has been concluded, so it's best if you just discuss and make your decision. Ohrenberger stated there were a couple of matters that came in after the hearing was concluded. There were some items forwarded to you. Mr. Laws had some additional information he wanted to submit for the record and then Mr. Veach submitted a response while also objecting to that information being included. Mr. Laws had an additional response to that information. Mr. Veach indicated this morning he intends to withdraw his objection to that additional material being included. Mr. Veach stated that was correct, but also noted that he would like his letter of response objecting be included in the record as well.

Mr. Burns stated he had some concerns with some information that was brought out at the hearing about the removal of dental fillings. It's his understanding that there is an ongoing matter with the Arkansas Dental Board. Executive Secretary stated that she had spoken with Ms. Donna Cobb, Director of the Arkansas Dental Board; Ms. Cobb indicated that she believed and felt her Board would also agree that it would be considered practicing dentistry without a license. She mentioned, that pending this Board's decision she would put the

matter on their agenda September 19, 2014. Mr. Burns inquired of Mr. Ohrenberger, if they made a decision today would it affect the outcome from the Dental Board. Mr. Ohrenberger stated that before you today is just the application for the permit to construct the crematorium, it's not the application for licensure which is a separate license that must be obtained later. He does not believe that no matter how you rule today will put that question to rest. When it comes time for the licensing application, assuming the crematory is built that question will present itself again. Ohrenberger further stated in terms of ruling on the application that's on the table the Board is not obligated to wait, but if you feel that is information the Board needs, you are also not obligated to make a decision today.

Mr. Thurman mentioned he has spoken with NFDA, Mike Watkins he believed had contacted him and stated that NFDA would not take a stand either way. They have too much going and several people out of pocket for them to discuss the matter more in depth. He further mentioned he spoke with Ernie Zurich from Matthews International and asked him if he were going to buy the same unit, to tell him about the unit. He also asked him about the filtration system and that it would typically cost about an additional \$100,000.00. He also asked if it would eliminate anything, Mr. Zurich stated here is the reality of the whole thing; in Arkansas, you have particulate matter of about .08 these units run particulate matter at .02-.04, so basically it's not even traceable if anything comes out. A lot of this is contained inside the unit and then you have an afterburner as well that takes care of a lot of the other stuff before it even comes out of the stack. Mr. Thurman further stated that he's read most if not all the complaints. That he believes most people do not realize what a crematory looks like, there is not smoke coming out. There might be heat vapors, but that is different from smoke. Also if there is smoke that means there is an issue somewhere and they have to shut the unit down, because they don't want smoke coming out. In addition, Thurman stated that there were concern of odors, but there is not really any odors released. There is just been a lot of misinformation that the people of Russellville had and that a lot was exaggerated. He stated that he thought it was a good point from Mr. Scott Stueber that if an elementary school would not be built next to a crematory, then why would a crematory be built next to a school. However, we currently have a crematory already next to an elementary school. In Harrison, the crematory is across the street from the college campus, apartments, several restaurants, and ball fields. There was never any issue raised there. Thurman stated that, Mr. Freeman raised concerns that the property and home values would diminish. Mr. Thurman himself has held a real estate licenses for twenty (20) years and has never heard of anything quite that drastic. A lot of people were supportive of the crematory just not where it is located. Thurman stated, he wondered himself about the property and if there were not somewhere else that the crematory could be placed that would be more common ground. If it was moved further away on the same piece of property, would that help matters? He also mentioned he made a lot of notes from the hearing and he felt both sides had made compelling points. In the end, there are crematories built everywhere in Arkansas. This crematory unit is going to be way above the standards of what it has to be. There are a lot of other questions with the dental issue that needs to be answered. He was not making a decision, but just expressing his thoughts of what concluded from the hearing.

Mr. Burns stated that when he was appointed to this Board he knew there would be tough decisions to make. He still believes in divine intervention and has done a lot of that since that hearing. He listened to all the comments and that Mr. Humphrey plans to spend lots of money to put in a nice place. Also the proximity to the school, in business we here all the time "location, location, location." He further stated he did not remember anyone objecting to the crematory, except where it was to be located.

Motion made by Brazzel to table a decision on the crematory permit, until our November 13, 2014 meeting after Dental Board meets September 19, 2014, seconded by Thurman, all in favor. Motion carried.

b. Heritage Cremation Provider, LLC – Executive Secretary explained that they were an online cremation provider from Colorado and we have received calls concerning this entities' attempts to do business

in Arkansas. I have spoken with Barbara from CANA since their logo was published on Heritage's website. She stated several states are having issues with this cremation provider. They currently reside in Colorado and it was my understanding from her as well that he lost his license to operate in Florida. Our inspector contacted them under a false name and the funeral director stated they would meet with her at a local funeral home to finalize the arrangements, but most everything would be handled electronically. When we contacted them they stated they serviced nationwide and have locations in all fifty (50) states. Our recommendation to the Board is to send some form of correspondence to the funeral home establishments during renewal time. Board Counsel suggested that we be cautious how we word that letter, explain this is the information we have collected that the Board hasn't held a hearing or made a finding. When you notify the establishments in the letter, that this company is not licensed in Arkansas please beware of that. It would be okay to remind the funeral homes and mortuary services of their obligation to only conduct business with licensed funeral establishments also to notify them that at least one mortuary service has been contacted in the attempt to do business with them. If the problem persists then the Board can proceed with their normal complaint process. The Board suggested that the Executive Secretary draft a letter with approval from Board Counsel to send to funeral establishments. Motion made by Burns for the Executive Secretary to draft a letter with the aid of Board Counsel to send to the establishments at renewal time, seconded by Thurman, all in favor. Motion carried.

c. **Arms of Peace Funeral Home, Venetta Peaster** – Ms. Peaster had received permission for a temporary location for a period of ninety (90) days on May 15, 2014, as of today's date a new location has not been reported to the Board office. Ms. Peaster explained she had not been able to locate a new location and asked for additional extension of time. She requested an additional sixty (60) days to find a location. The places she has found are wanting several thousand dollars a month up to five thousand a month in rent. She stated she has not conducted any services in the last ninety (90) days, but she has some families that have assigned a portion of their life insurance to Arms of Peace at their death. Motion made by Brazzel that Arms of Peace shall have a new location by November 13, 2014 or the establishment license will be relinquished, seconded by Adams, all in favor. Motion carried.

5. **Complaints**

a. **Case #14-4 McCree, Gloria V. Davis-Strickland Funeral Home, Warren & Matthew "Peaches" Strickland – attorney clarification** – Mr. Ohrenberger stated that at the Board's May meeting the Board reviewed this complaint and decided to set for a hearing. This was shortly before he was reappointed to our Board. There were several issues in this complaint and he wanted the Board's clarification for the factual allegations. He has a list of factual allegations to go over with the Board to determine. The McCree family filed a complaint with the Board and their relative had died in Greenville, MS. Ms. McCree contacted Mrs. Strickland about picking up the body and bringing it back to Pine Bluff for cremation. According to the complaint, Mrs. Strickland told Ms. McCree the costs and that the body would have to be embalmed before cremation that was the law in Arkansas. There was discussion back and forth about the price. The authorization to release from the facility provided that Ms. McCree had given verbal permission to release. According to the complaint, Ms. McCree stated she called some other funeral homes and could get her service for a much lower price, so she called Mrs. Strickland back to tell her she did not want to use her services. Mrs. Strickland told her it was already too late, they had picked up and embalmed. At some point after that, the family had made arrangements with Gunn Funeral Home. Davis-Strickland Funeral Home according to the complaint would not release the body unless she was paid nine hundred dollars (\$900) from the other funeral home. The complaint goes on to say that Gunn Funeral Home offered five hundred dollars (\$500), but they would not accept that because they had already embalmed the body. The complainant was upset about that, because she did not want embalming. Davis-Strickland Funeral Home held the body for thirty (30) days then they buried the body. Ms. Strickland does deny all allegations in the complaint. Here is a list of potential charges: 1. Potential charge under 17-29-311 a (18) – failure to answer complaint in fifteen (15) days. 2. In connection with the alleged statement that you have to embalm a body if it's going to be cremated in Arkansas – 2 potential charges there

under Rule XIV (5) misstatement of the law in connection with making funeral arrangements and then 17-29-311 a (2) misrepresentation or fraud of a holder of a license. 3. Refusing to release a body under 17-29-311 a (12) when all other applicable rules have been followed. 4. Disclosure under Rule XII (2) failure to provide a written invoice statement prior to providing services. This did raise some questions, since there was no actual face to face meeting. 5. Rule XIV (2) failing to receive permission to embalm. Under FTC law, you are required to disclose prices over the phone. The Board agreed with all these charges. The charges should be against Warren Strickland as manager, Mrs. Strickland as licensed funeral director, and the funeral home.

6. **Inspector Updates – Leslie Stokes**

Ms. Stokes stated that since our last meeting she had been to public hearings in Mountain Home and Russellville. She has also visited several counties doing her routine inspections. She has documented all of them and made lists of items that might need to be readdressed in the future. She is currently visiting each county and getting to know everyone. She is seeing some of the funeral homes strengths and weaknesses using that to up the standards for funeral homes in Arkansas. She further clarified that she has found funeral homes with some major problems that have been brought to their attention and plans to give them time to correct them. It is some thing's that will take time, that will be followed up to see where they are making improvements or maybe have not made improvements.

7. **Attorney Updates – Mark Ohrenberger**

- a. **In the Matter of: Javier Buck and Richardson Memorial Funeral Home** – The administrative record had been filed along with our response and he reminded the Board he had to file an amended response for the stay of the suspension. We are waiting on a scheduling order.
- b. **In the Matter of: Effie Collins and Collins Chapel** – Mr. Ohrenberger stated the Board shall recall that she was before the Board several months ago seeking approval of her funeral director license reinstatement and funeral home license. Those requests were denied, that has been appealed in the Mississippi County Circuit Court. First thing that has to happen, is that we have to file the administrative record and response. That response was due on August 13, 2014, however the statute allows that you can be granted an extension up to ninety (90) days for additional time to prepare the record. The court reporter was unable to get the transcript to us until August 11, 2014. So we requested a two week extension and the administrative record and response is now due August 27, 2014.
- c. **Findings of Facts, Conclusions of Law on the Public Hearings** – This was a point that Amy had raised with me and it was a very good point, is that when we have a hearing on a disciplinary hearing we prepare and issue a findings of fact, conclusions of law and order because that is what the Administrative Procedures Act requires. Although these public hearings we are conducting under § 17-29-313 are not the same types of hearings, they still require notice to the public and opportunity for a hearing; so we need to be doing these. Mr. Ohrenberger prepared findings for the previous hearings they have conducted for approval. When you look at the requirements under 313, when a permit application comes in all that the statute says is that we are required to hold a public hearing. It does not give any grounds in which the Board should make a decision one way or another. The Board has only one regulation that describes the crematory construction permit process and that is Rule IV 4.A.3 concerning the zoning requirements. In setting out these findings of fact and conclusions of law, the things that we have to find and support our decision is that we complied with the statute about noticing the hearing and holding the hearing. The conclusions of law are that we conducted the hearing, that the proposed crematory site is consistent with applicable zoning regulations.

Motion made by Brazzel to approve the Findings of Fact, Conclusions of Law and Order for Blytheville and Manila, seconded by Adams, Thurman recused, all in favor. Motion carried.

Motion made by Burns to approve the Findings of Fact, Conclusions of Law and Order for Mountain Home, seconded by Brazzel, all in favor. Motion carried.

8. ***Meeting dates:***

- a. September 4, 2014 – 9AM
- b. November 13, 2014 – 9AM

9. ***Adjournment***

Motion made by Brazzel to adjourn to meeting, seconded by Adams, all in favor. Motion carried.