

Arkansas Burial Association Board
Special Board Meeting Teleconference

MINUTES

Thursday, December 18, 2014 10:15 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, Normal Gilcrest, and Turner James. Members absent were: Barbara Hovarter, and Ronnie Ocker. Staff that were present: Amy Goode, Executive Secretary, and Mark Ohrenberger, Board Counsel. Other individuals participating on the call: Guy Dillahunty, Courtney Crouch, Dick Horne, Roland Gosey, and Representative Jeff Wardlaw

1. Introduction of the Board and called to order

2. Drew County Burial Association Emergency meeting

Mr. Ohrenberger stated that Chuck Dearman brought this to his attention yesterday, since this is going on in his local community. Mr. Dearman and Mr. Ohrenberger have talked in the past about the extent to consider a potential conflict of interest issues and appreciates the factual information, but just keep in mind when it comes to any vote about the conflict of interest question. Mr. Dearman did not think it would be a problem. Mr. Ohrenberger received a call from Mr. Dearman yesterday and Dick Horne with information concerning Drew County after it was leaked out. In fact, they have dissolved the association on their own.

In letters received by Mr. Ohrenberger dated Monday, December 15, 2014 and sent out to policy holders of the Drew County Burial Association explaining that back in January 2012 they held a meeting to dissolve the burial association. The process of dissolution is now complete. Mr. Brooke, the Board Auditor, called the secretary/treasurer on Wednesday, December 17, 2014 and this information was confirmed. The proceeds of the association had been disbursed and all but one check had been mailed out to the policy holders. Mr. Dearman stated that a lot of the checks have not been cashed or deposited yet. This morning he had calls from Houston, Star City, Chicago, and Wilmer indicating "it's going to mess up mom's SSI what should I do." The checks are anywhere from \$6,000 to \$29,000. The bank called him and they legally cannot do anything without direction from our board. Mr. Dearman stated they went against what they were directed not to do. Ohrenberger stated the bank might respect an order from this Board, but we could not issue a direct order to the bank.

Mr. Ohrenberger reminded the Board that the Drew County Burial Association back in early 2012 had asked permission to voluntarily dissolve. The Board conducted a hearing and issued an order on June 7, 2012 stating that the Burial Association act does not provide authority for the Board to concur with plans to dissolve a burial association. Because of this lack of authority the Board cannot concur with or approve the plan of dissolution submitted by Drew County. Then the order imposes that the Board cannot concur or approve with the plan for the dissolution of the Drew County Burial Association. There was no administrative appeal taken under the A. P. A. from that order. Later the Drew County Burial Association filed declaratory judgment against the Board to have the court declare that they could dissolve. That was voluntarily dismissed a few months ago. It does appear they are acting completely outside of legal authority in contradiction of a Board's order.

Mr. Dearman stated that we need to find out if their attorney fees were paid out of this fund before the distribution. Further stated that someone needs to come to Monticello, because these folks are running scared. There is a million dollars floating around.

Mr. James stated if they are acting against a Board order, then why can't we freeze the association account?

Motion made by Berna to issue an emergency order to freeze the Drew County Burial accounts, seconded by Dearman, Discussion ensued.

Mr. James inquired if since they went against this Board's order, if there is any way they might be criminally charged? Mr. Ohrenberger stated that there are some criminal provisions in our statute directly that say that different things you might do constitute a misdemeanor offense. A situation like this is not addressed in our statute. That is not to say that this couldn't be a violation of a different criminal statute that he is not aware of. We could ask the local prosecuting attorney to look into the situation. We don't have provisions to impose any criminal charges on anybody.

23-78-109 says that all burial associations organized or operating in the State of Arkansas shall be under the authority, supervision, and control of the Burial Association Board. They do fall under our control and supervision on how they conduct their business. Typically we are required to give twenty (20) days' notice of hearing before we can take any disciplinary action. However, under the A. P. A. 25-15-211(c) says no revocation or suspension or withdrawal of a license by an agency is permitted unless or until you give notice by mail to the licensee of the facts that you are charging them with. This is verbatim from the statute "If the agency finds that public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action, which proceedings shall be promptly instituted and determined.

Motion made by Berna that the Board finds that the public welfare imperatively requires emergency action of the Board and that it summarily suspend the authority of all officers of the Drew County Burial Association acting further as officers of the association, that the accounts of the Drew County Burial Association be frozen, and that the Executive Secretary of the Arkansas Burial Association Board be temporarily appointed as secretary-treasurer, seconded by Hill, all in favor. Motion carried.

Mr. Horne stated that the Board should file the emergency order with the Drew County courts, just a suggestion. Mr. Ohrenberger thought it could interfere with our administrative proceedings.

Executive Secretary was directed to send a copy of the order to all local banks.

Ohrenberger reminded the Board of Rule 7 and the requirement of the fidelity bond.

3. **Adjournment**

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

ATTEST:

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