

Arkansas State Board of Embalmers and Funeral Directors
Board Meeting

MINUTES

Tuesday, May 21, 2013, 9:00 am
101 East Capitol, Little Rock, AR
Conference Room C

1. President James Terry Woodard called the meeting to order. Members present were: Vice President Bobby Thurman, Eddie Hawkins, Mary Ann Allen, Jerry Adams, Patricia Roberts and Bobby Burns. Staff that were present: Amy Goode, Executive Secretary, Boyd Heath, Inspector, and Mark Ohrenberger, Board Counsel. New Counsel Kat Hodge was introduced to the Board.

2. **Oral Examinations**

a. Morris Gooch and Melissa Mauldin – completed their oral examinations and were free to leave.

3. **License Reinstatement**

a. Nicholas Mahomes – Executive Secretary explained he was licensed in 2009, but did not renew for 2010. It's the Board's policy that after a period of 3 years delinquent licensees must appear before the Board for license reinstatement. Mr. Mahomes explained he had not worked in the industry after receiving his license. He had the opportunity to come back to work in the industry for Mr. Derrick Gunn. Motion made by Roberts that after payment of the \$460 in late fees that funeral director license shall be reinstated by the Board, seconded by Allen, all in favor. Motion carried.

4. **Introduction of new attorney**

a. Mark Ohrenberger introduced to the Board Kat Hodge. She will be replacing Mark as counsel for the Board. An attorney at the Attorney General's office had been promoted to Chief of Staff and with that Mark was assigned new clients. Therefore, it was not feasible for him to continue with our Board. Ms. Hodge has been a litigator with the agency for approximately 8 years and the Board will be in good hands. Ohrenberger explained that he would still be involved in the ongoing cases the Board has on file. Ms. Hodge explained she was excited and looks forward to working with the Board.

5. **Hearings**

a. **In the Matter of: Herman Eaton, a licensed funeral director**

Assistant Attorney General Peggy Johnson served as Hearing Officer and swore in witnesses.

Assistant Attorney General Mark Ohrenberger represented the Board.

Amy S. Goode, Executive Secretary appeared as the Board's witness.

Herman Eaton appeared on his own behalf.

Court Reporter Sharon Hill entered documents into the record

Hearing officer Johnson explained that the hearing would follow the Administrative Procedures Act and allowed Attorney Ohrenberger to enter Board's exhibit 1 a compilation of 34 pages and there was no objections from Mr. Eaton.

Attorney Ohrenberger opened with a brief statement. The 2nd page of Board's exhibit 1 is a table of contents and on page 3 is a copy of the notice of hearing. This sets out the law and the allegations that brought us here today. The matter before us today is on Mr. Herman Eaton a licensed funeral director whom has been licensed since 1999 and he has plead guilty in federal court on two felony charges. This is a violation of our licensure law. Evidence that will be presented this morning is that Mr. Eaton was convicted in 2012 for attempted racketeering which is a Class C felony and a violation of the federal Hobbs Act. Also for money laundering, this is also a Class C felony. Under our licensing law if an individual is convicted of a felony that is grounds for disciplinary action by this Board. Under the "Charges" section that is Ark. Code Ann § 17-29-311(a)(1).

If the Board finds the facts presented today to be true, the potential range for sanctions include revocation of license, suspension of a license, or a monetary penalty of up to \$10,000. Can also include other conditions such as probation, continuing education requirements, and additional examination requirements; the Board has quite a broad range of options. The primary evidence that will be presented comes from both the plea agreement and then the formal judgment that the court entered in that federal case by Judge Leon Holmes on May 16, 2012. The way this matter came before us today, was that Mr. Eaton submitted his renewal in December 2012. However, he disclosed and rightfully so disclosed that he had this conviction. A new license has not been issued, but the Administrative Procedures Act provides that when there is a pending a disciplinary matter that holds up the renewal; the current license will remain in force until such time a hearing is conducted on the disciplinary matters and until the time for any potential appeal has expired. Mr. Eaton's 2012 licenses are still current; this hearing will be to determine if there is any disciplinary action and whether or not the Board will allow a renewal for 2013.

Motion made by Burns to find factual allegations 1-5 to be found true, seconded by Roberts, all in favor. Motion carried.

Motion made by Allen that charge C.1 is found true, second by Thurman, all in favor.

Motion made by Burns that the Issue of Law L.1 and L.2 to be found accurate and true, seconded by Thurman, all in favor. Motion carried.

Motion made by Thurman to suspend current license until supervised probation ends at which time Mr. Eaton can request a formal hearing before the Board, seconded by Roberts, all in favor. Motion carried.

Motion made by Thurman suspension goes into effect 30 days after Mr. Eaton receives the order, seconded by Burns, all in favor. Motion carried.

FINDINGS OF FACT

A.1. Respondent is currently licensed as a funeral director in the State of Arkansas. His license was first issued on October 20, 1999.

A.2. In making application for renewal of his funeral director license for 2013, Respondent disclosed that he has been convicted of a felony.

A.3. In fact, in United States of America v. Herman Eaton, United States District Court, Eastern District of Arkansas, Case No. 4:11-CR-213 JLH, in May of 2012, Respondent pleaded guilty to and was convicted of:
1. Attempted racketeering/Hobbs Act, a Class C felony, in violation of 18 U.S.C. § 1951(a); and
2. Money laundering, a Class C felony, in violation of 18 U.S.C. § 1956(a)(3)(A).

A.4. In May of 2012, Respondent was sentenced to incarceration in the United States Bureau of Prisons for period of sixteen months, followed by an additional two years of supervised release. Respondent was also ordered to pay \$200 in criminal monetary penalties.

A.5. Respondent was released from prison on December 7, 2012, but he remains under supervised release.

CONCLUSIONS OF LAW

C.1. Although Respondent timely submitted his 2013 funeral director license renewal to the Board, a renewal license has been administratively withheld pending the results of this hearing. Pursuant to Ark. Code Ann. § 25-15-211(b), Respondent's 2012 license remains in effect until the last day for seeking review of the final Board order on adjudication in this matter.

C.2. Ark. Code Ann. § 25-15-211(b) provides: "When a licensee has made timely and sufficient application for the renewal of a license . . . with reference to any activity of a continuing nature, the existing license shall not expire until the application has been finally determined by the agency and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order, or a later date fixed by order of the reviewing court.

C.3. Based on the facts set forth in paragraphs A.2 through A.3 above, Respondent is guilty of having been convicted of a felony in violation of Ark. Code Ann. § 17-29-311(a)(1).

ORDER

In light of the violations found in this order, the Board orders that Respondent's funeral director license shall be suspended until he is released from the supervised release imposed in connection with the judgment entered against him in the United States District Court for the Eastern District of Arkansas, Case No. 4:11-CR-213 JLH. At the conclusion of his supervised release, Respondent must appear before the Board to request reinstatement of his funeral director license. This period of suspension shall take effect thirty days from the date that this order is served upon the Respondent.

Pursuant to the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-212, Respondent may petition for judicial review of this decision by filing a petition in the circuit court in the county in which he resides or does business or in the Circuit Court of Pulaski County within thirty days after service of this order.

Hearing Closed.

- b. **In the matter of: Derrick Gunn, Gunn Funeral Home** – hearing on the matter of Fells v. Gunn Funeral Home was postponed until further notice.

6. Administrative

Motion made by Thurman that the Board moves to approve the March 2013 minutes as written, seconded by Allen, all in favor. Motion carried.

Motion made by Burns, to approve the March and April 2013 DF&A Trial Balances as printed, second by Roberts, all in favor. Motion carried.

7. Complaints

- a. **Board V. Dial & Dudley Funeral Home Case#13-06** - The Board staff sent out this complaint for the respondent to answer. The Board has not received their answer within the 15 day window. The Board could issue a reprimand, in lieu of hearing; however the Executive Secretary explained that since the funeral home did not answer the complaint it was a clear violation. The Board discussed issuing a reprimand, but in light of the fact that the complaint was not answered the board set the matter for hearing. Motion made by Adams to set the matter for hearing for failure to answer complaint with 15 days and working without a license for a period of 23 days, seconded by Burns, all in favor. Motion carried.
- b. **Saffle V. AR Funeral Care Case #13-02**– The Staff updated the Board that this had been tabled from the previous meeting and it dealt with Mr. Wood not actually attending some of the CE certifications he had sent in with his renewal. The Board discussed that there was no documentation the Board had that would verify whether that claim was true or not. The other allegations in the complaint could not be verified. Motion made by Burns to dismiss due to lack of evidence, seconded by Hawkins, all in favor. Motion carried.
- c. **A. O. Smith Funeral Home, Stamps, AR V. AR Funeral Care, LeRoy Wood Case#13-07** – The staff explained to the Board that this complaint dealt with solicitation which has been a topic of several board meetings. Ohrenberger stated he was hesitant to describe this as a specific

solicitation on the face of the complaint. The individual stated that her family member was given a flyer for AR Funeral Care and Crematory while their loved one was in Hospice. The complaint is essentially alleging illegal solicitation; however, on the face of the complaint itself the Board cannot verify that this specific hospice nurse that supposedly gave out the flyer received any type of kickback. It might be cause for further investigation by way of sending a letter to AR Funeral Care directing them with a specific question, since the original answer was rather brief. Motion made by Burns to follow advice of our attorney to do a follow-up investigation, seconded by Thurman, all in favor. Motion carried.

- d. **Fells V. Gunn Funeral Home – Derrick Gunn-Manager/Funeral Director Case#13-05–** Ohrenberger stated that the Board voted during their March 12, 2013 meeting to issue a notice of hearing. It was his recollection after visiting with the Executive Secretary, the Board had a question about the GPL, and whether it was the same at one point and time or the pre-need prices were the prices off the GPL. When he went back to prepare the notice of hearing he was unable to reconstruct what the Board had issue with. He pushed the matter off, so that he could understand and clarify with the Board. According to the documents the main complaint dealt with the headstone not being set. There was nothing specific in our laws or rules that deal with the length of time it should take to set a headstone. Ohrenberger stated he wanted clarification of the apparent violation we would be charging in a notice of hearing. It appears that the concerns the Board had at the last meeting has been resolved, the unresolved issue is the monument. The Board has no jurisdiction over cemeteries. Motion made by Burns to dismiss the complaint for no rule violations and that the potential violation has been resolved, seconded by Roberts, all in favor. Motion carried.
- e. **Collins V. Bradford Funeral Home, E. Christine Lemons, Manager –** The complaint was that the family was sold a used casket and it was supposed to be new. It was noted that the complaint needed to be sent to Tyler Hyatt at Powell Funeral Home as a formal complaint from Ms. Lemons. Several members did not receive the complaint. Motion made by Burns to table until the next meeting, seconded by Allen, all in favor. Motion carried.

8. **Board Discussion**

- a. **Rule XIV – Funeral Service Practices – Buie Funeral Home V. AR Funeral Care –** John Harris and Terry Pipkin was present at the meeting. Attorney advised the Board that this is a matter the he could see potentially going to the Board as a hearing and it was his advice that the Board did not listen to what could be testimony. The Board discussed the matter and based on the documentation provided felt this was potentially a rule violation and the matter should be set for a hearing. Motion by Burns to set the matter for a hearing, seconded by Allen, all in favor. Motion carried. Ohrenberger stated that for a better record Buie Funeral Home should send a notarized statement that their original letter shall serve as their formal complaint.
- b. **Alvis Hamilton –** is stationed in Germany and is a Staff Sergeant in the US Army his MOS is mortuary affairs. He is currently working in the Army mortuary under licensees from Utah, Virginia, Illinois, and North Carolina. He is asking the Board to consider the cases he is doing there to count towards his cases for his embalming apprenticeship. Mr. Hamilton is not currently serving an apprenticeship with this Board. Mr. Heath stated he had tried to get in contact with Mortuary Affairs, however since Doug Howard had passed he has not been successful. It was his understanding though that most of the embalming cases were being handled at Dover Air Force Base. Motion made by Burns that a written notification be sent to Mr. Hamilton that he has to be a registered apprentice in the State of Arkansas under an Arkansas Licensed Embalmer and his cases will not count. Also include that the Inspector needs access to the apprentice to monitor and oversee their training, seconded by Thurman, all in favor. Motion carried.

c. **Attorney Updates**

Effie Collins Case - Mark Ohrenberger updated the Board that there was basically no update. Her appeal brief in the Arkansas Court of Appeals case is due on May 25, 2013. We will have 30 days to respond. The Claims Commission is still pending; Colin Jorgenson has filed a motion to dismiss that case and still waiting a reply. Mr. Jorgenson has also filed a motion to dismiss in the federal court case, which is still pending. We are at the mercy of the judge.

d. **Rule Changes**

Executive Secretary explained that the office is currently short staffed and the operating budget that is currently left is not sufficient enough to plan a strategic planning meeting anywhere. The Executive Secretary explained she needed the Boards help in preparing proposed rule changes. The Board decided to take the copy of the current proposed changes and meet again on July 8, 2013 to work specifically on rule changes.

9. **Meeting Dates**

- a. Next meeting set for Monday, July 8, 2013 @ 12pm for strategic planning on rule changes and regular meeting will be Tuesday, July 9, 2013 at 9:00am.

10. **Adjournment**

- a. Motion by Burns to adjourn, seconded by Hawkins, all in favor. Motion carried.