

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE NORTH CAROLINA  
BOARD OF FUNERAL SERVICE  
RULING NO. D15-001

In the matter of:  
SimpleCremationOnline.com,  
  
Petitioner

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**DECLARATORY  
RULING**

THIS CAUSE comes before the North Carolina Board of Funeral Service (hereinafter “Board”) pursuant to North Carolina General Statute § 150B-4 and 21 NCAC 34A .0108, at its offices at 1033 Wade Avenue, Suite 108, in Raleigh, North Carolina, with a quorum present.

PROCEDURAL HISTORY

SimpleCremationOnline.com (hereinafter “Petitioner”) is a for-profit online sales platform through which consumers can arrange cremations with local funeral establishments. Petitioner filed a request for declaratory ruling on November 2, 2015. As required by 21 NCAC 34A .0108(a)(3), the Board agreed to issue a declaratory ruling at its regularly scheduled public meeting on November 4, 2015.

QUESTION

Does the proposed business arrangement between Petitioner and a North Carolina licensed funeral establishment (hereinafter “local funeral establishment”), specifically the payment by the local funeral establishment to Petitioner of 10% of all revenues generated through Petitioner’s online sales platform, violate North Carolina General Statute § 90-210.25(e)(1)(f)?

## RULING

Pursuant to North Carolina General Statute Chapter 150B-4(a), an agency shall issue a declaratory ruling concerning the validity of a rule or the application of a statute or rule to a particular set of facts. This ruling is based solely on the facts provided to the Board and to the extent the Board can glean pertinent facts necessary to apply the statutes and regulations under its jurisdiction. Pursuant to In re Ford, this Declaratory Ruling and Petitioner's request for declaratory ruling only shall constitute the record for judicial review. See 52 N.C. App. 569, 572 (1981). The Board is charged by the North Carolina General Assembly with enforcing Chapter 90, Article 13A of the North Carolina General Statutes. See N.C. Gen. Stat. §§ 90-210.18A(a) & 90-210.23(a), (i).

Based on information provided to the Board, the business arrangement at issue consists of a local funeral establishment paying Petitioner a flat fee for the exclusive rights to use Petitioner's online cremation sales platform (hereinafter "Platform") within a particular territory in North Carolina. In addition, the local funeral establishment would pay Petitioner 10% of all revenues generated through the Platform. Consumers seeking to arrange a cremation in North Carolina through the Platform may visit Uniform Resource Locator [www.simplecremationonline.com](http://www.simplecremationonline.com). In order to find a list of participating local funeral establishments, consumers must click the link for "Arrange a Cremation" and then click the link for North Carolina on a map of the United States. A list of participating North Carolina providers would then populate. It is important to note that information provided to the Board indicates that a consumer using the Platform to arrange a cremation would arrive at his or her selection of a local funeral establishment only *after* visiting the Platform, not before. Furthermore, a direct link to the Platform would not be

provided on the local funeral establishment's own website. The effect of such an arrangement is that the Platform effectively secures business that a specific local funeral establishment may not otherwise have secured.

Petitioner has requested a declaratory ruling seeking the application of North Carolina General Statute § 90-210.25(e)(1)(f) to the proposed business arrangement between Petitioner and a local funeral establishment. N.C. Gen. Stat. § 90-210.25(e)(1)(f) prohibits “[t]he payment or offer of payment of a commission by the licensee, his agents, assistants or employees for the purpose of securing business except as authorized by Article 13D of this Chapter.” Petitioner’s request for declaratory ruling focuses primarily on attempting to define the term “commission” and the circumstances under which a fee paid to a third party constitutes the same. Chapter 90, Article 13A of the North Carolina General Statutes does not provide an explicit definition of the word “commission.” Additionally, the North Carolina courts have not specifically addressed or interpreted this term in the context of the North Carolina Board of Funeral Service. On December 15, 2000, the North Carolina Attorney General provided an advisory opinion regarding the Board’s application of N.C. Gen. Stat. § 90-210.25(e)(1)(f) in the context of bans on advertising certain discounts and promotions. See Op. Atty. Gen., Reed, Dec. 15, 2000. Although this scenario is clearly distinguishable from the facts at issue in Petitioner’s request for declaratory ruling, the opinion provides some background on the validity and overall interpretation of the statute at issue, as follows:

“First, to the extent N.C.G.S. § 90-210.25(e)(1)(f) is applied to prohibit fees or discounts paid to third parties for referring clients to licensees, the first amendment cases such as *Liquormart* do not apply. Prohibitions on licensees paying such referral fees are addressed to conduct, not to speech. These types of provisions are commonly found in various types of

licensing laws and professional ethical codes, and we are not aware of any constitutional barrier to their application when authorized by statute and applied in a reasonable manner.”

*Id.* In the absence of specific statutory definition, case law precedent, or other regulatory or administrative interpretation, secondary sources are permissible in determining the plain meaning of a statute. To that end, Merriam Webster provides the following as a definition of “commission:” “6: a fee paid to an agent or employee for transacting a piece of business or performing a service; *especially* : a percentage of the money received from a total paid to the agent responsible for the business”. See Merriam-Webster Dictionary – Definition of Commission, *available at* <http://www.merriam-webster.com/dictionary/commission>.

Applying the plain meaning of the statutory provision to the facts at hand, it is unmistakable that the payment by a local funeral establishment of 10% of total revenues generated to Petitioner for providing the Platform by which a cremation is arranged and paid for, constitutes a “commission” as contemplated by N.C. Gen. Stat. § 90-210.25(e)(1)(f). Furthermore, the chronological order of how the transaction would be executed, specifically that the consumer interacts with Platform and is then subsequently led to the local funeral establishment that is ultimately selected, constitutes “securing business” that may not otherwise have been secured. See N.C. Gen. Stat. § 90-210.25(e)(1)(f). For these reasons, the Board rules that the proposed business arrangement between Petitioner and a local funeral establishment, specifically the payment by the local funeral establishment to Petitioner of 10% of all revenues generated through the Platform, constitutes a commission in violation North Carolina General Statute § 90-210.25(e)(1)(f). To address the litany of examples of other “commissions”

listed in Petitioner's request for declaratory ruling, the Board recognizes that there must exist a certain causal relationship between the payment of a commission and the business said commission purportedly secures. In the case at hand, the causal relationship between the Platform and the business a local funeral establishment secures through the Platform is stronger than most, if not all, of the examples listed by Petitioner in its request for declaratory ruling.

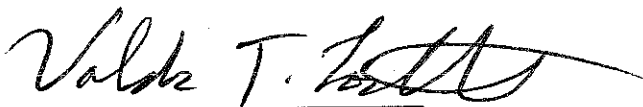
Although the Board has not specifically been asked in Petitioner's request for declaratory ruling to address the issue of online cremation sales generally, the Board has a legitimate interest in ensuring the safety of the general public when a consumer chooses to arrange a cremation online. For an abundance of reasons, it is imperative that a consumer know the identity of the local funeral establishment with whom the consumer is making funeral arrangements and transacting business. If an out-of-state unlicensed cremation sales website engages in making funeral arrangements directly with a consumer, it is the Board's position that the individual and/or entity so doing would be unlawfully engaging in the unlicensed practice of funeral service. It follows then that a local funeral establishment performing cremations at the behest of such unlicensed and unauthorized individuals and/or entities would be aiding and abetting the unlicensed practice of funeral service. The Board commends Petitioner for creating a Platform that makes it especially clear to the consumer exactly which local funeral establishment the consumer is transacting, providing conspicuously the contact information for the licensed funeral establishment, and refraining from making arrangements with consumers directly.

EFFECT OF RULING

This ruling is binding on Petitioner and the Board consistent with North Carolina General Statute section 150B-4(a).

Issued by the North Carolina Board of Funeral Service, this, the 9<sup>th</sup> day of December, 2015.

THE NORTH CAROLINA BOARD OF  
FUNERAL SERVICE

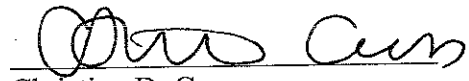
By:   
Valdus T. Lockhart  
Board President

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Declaratory Ruling was sent by certified U.S. Mail, Return Receipt Requested, postage prepaid to:

T. Scott Gilligan  
Gilligan Law Offices  
3734 Eastern Avenue  
Cincinnati, Ohio 45226  
*Counsel for Petitioner*

This, the 10 day of December, 2015.

  
Christina D. Cress  
General Counsel