

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
RULING NO. D16-001

In the matter of:
John Fredrickson

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

John Fredrickson (hereinafter “Petitioner”) filed a request for declaratory ruling on March 7, 2016. As required by 21 NCAC 34A .0108(a)(3), the Board agreed at its regularly scheduled public meeting on March 9, 2016 to grant the request and to issue a declaratory ruling within 45 days from the date of the decision to grant the request.

QUESTION

Is Petitioner actively engaged in the operation of all funeral establishments owned and operated by SCI North Carolina Funeral Services, Inc. (“SCI”) across North Carolina?

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, Petitioner holds Funeral Service License No. 160 and serves as a vice president for SCI. Historically, the Board has approved Funeral Establishment Renewal Applications submitted by SCI, in which Petitioner has been listed as the licensee actively engaged in the operation of all SCI funeral establishments in North Carolina. In December 2015, the Board denied the Funeral Establishment Renewal Applications submitted by SCI, on the basis that Petitioner could not be actively engaged in the operation of every funeral establishment owned and operated by SCI in North Carolina. SCI currently owns and operates approximately 59 funeral establishments across North Carolina.

Petitioner has requested a declaratory ruling as to whether he can be "actively engaged in the operation" of every funeral establishment owned and operated by SCI in North Carolina. N.C. Gen. Stat. § 90-210.27A(e) provides that:

If [a funeral establishment] is owned by a corporation, the president, vice-president, or the chairman of the board of directors must be licensed by the Board as a funeral director or a funeral service licensee. . . . The licensee required by this subsection must be actively engaged in the operation of the funeral establishment.

Petitioner's request for declaratory ruling focuses primarily on attempting to define the circumstances under which a licensee is actively engaged in the operation of a funeral establishment. Chapter 90, Article 13A of the North Carolina General Statutes does not provide an explicit definition of the term "actively engaged." Additionally, the North

Carolina courts have not specifically addressed or interpreted this term in the context of the North Carolina Board of Funeral Service. However, some occupational licensing boards in North Carolina other than this Board have addressed the circumstances under which one may be considered “actively engaged” through rulemaking, generally finding that more than a *de minimis* presence or time commitment to be necessary. For example, the North Carolina Licensing Board for General Contractors allows a “responsible managing” officer or employee to take an examination for licensure on behalf of a corporation if that person is “actively engaged in the work of the applicant a minimum of 20 hours per week or a majority of the hours operated by the applicant, whichever is less.” N.C. Gen. Stat. § 87-10(c); 21 NCAC 12 .0408(a).

In light of the foregoing, this Board finds that, to be actively engaged as the licensed officer for purposes of N.C. Gen. Stat. § 90-210.27A(e), a licensee must meet the following requirements: First, the licensee must spend more than a *de minimis* amount of work time during an average workday, dedicated to the operation of each funeral establishment for which he or she wishes to serve as the licensed officer. Second, the licensee must be able to travel to the physical locations of each funeral establishment for which he or she is actively engaged within an average workday. Third, the licensee must participate in at least twenty percent (20%) of the at-need and pre-need funeral services performed in an average workweek by each funeral establishment for which he or she is actively engaged.

Therefore, in approving a licensee as the actively engaged corporate officer pursuant to N.C. Gen. Stat. § 90-210.27A(e), the Board will consider the geographic locations and the number of all funeral establishments for which the licensee wishes to be considered actively engaged. For example, the Board may consider it reasonable for a

licensee to be actively engaged in four (4) or five (5) funeral establishments within a 30-mile radius but only in two (2) or three (3) funeral establishments within a 100-mile radius. The Board also will consider the average call volume of each funeral establishment for which the licensee intends to be actively engaged.

For these reasons, the Board rules that Petitioner cannot be actively engaged in the operation of all 59 funeral establishments owned and operated by SCI in North Carolina; therefore, he cannot serve as the officer licensee so designated for all such establishments, as set forth in North Carolina General Statute § 90-210.27A(e).

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 14th day of March, 2016.

THE NORTH CAROLINA BOARD OF
FUNERAL SERVICE

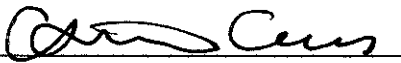
By: Valdus T. Lockhart
Valdus T. Lockhart
Board President

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:

John Fredrickson
406 Lenoir Road
Morganton, NC 28655

This, the 15 day of April, 2016.



Christina D. Cress
General Counsel