

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
RULING NO. D16-002

In the matter of:
Terri Robinson-McLean,

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

Terri Robinson-McLean (hereinafter “Petitioner”) filed a request for declaratory ruling on April 7, 2016. As required by 21 NCAC 34A .0108(a)(3), the Board agreed at its regularly scheduled public meeting on April 13, 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

Did Robinson-McLean Funeral Service, LLC undergo “a change in ownership,” as referenced in N.C. Gen. Stat. § 90-210.25(d)(5), when it changed its legal entity from an establishment owned by an individual to a limited liability company? If so, was Robinson-McLean Funeral Service, LLC required to file a new establishment application and pay a \$250.00 new establishment application fee?

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. 3113. In 2015, Petitioner submitted an application to the Board on behalf of Robinson-McLean Funeral Service for a funeral establishment license. That application provided that Petitioner owned Robinson-McLean Funeral Service. The Board approved the new establishment application and licensed Robinson-McLean Funeral Service as Funeral Establishment License No. 819.

In January 2016, Robinson-McLean Funeral Service submitted its 2016 Application for Renewal of Funeral Establishment License to the Board and paid its \$200.00 renewal fee. In March 2016, Petitioner filed Articles of Organization for the purpose of making Robinson-McLean Funeral Service a limited liability company. Petitioner represents to the Board that the owners of Robinson-McClean Funeral Service did not change when Robinson-McLean Funeral Service became a limited liability company.

Board staff have informed Petitioner that she must submit a new establishment application and a new establishment fee of \$250 on behalf of Robinson-McLean Funeral Service because of the change to its legal structure. In response, Petitioner requested a

declaratory ruling as to whether Robinson-McLean Funeral Service, LLC has undergone a “change in ownership,” as referenced in N.C. Gen. Stat. § 90-210.25(d)(5).

N.C. Gen. Stat. § 90-210.25(d)(5) provides as follows: “Funeral establishment permits are not transferable. A new application for a permit shall be made to the Board within 30 days of a change of ownership of a funeral establishment.” Furthermore, 21 N.C. Admin. Code 34B .0605 provides that:

Funeral establishment permits shall not be transferable. When the ownership of a funeral establishment changes, or when there has been a transfer of a majority of the common stock of the corporation owning a funeral establishment, a new application for an establishment permit shall be made to the Board within 30 days of said change of ownership or transfer. The applicable fee shall accompany the said application, as in the case of initial applications.

Petitioner’s request for declaratory ruling seeks clarity regarding what circumstances constitute a change of ownership of a funeral establishment. Chapter 90, Article 13A of the North Carolina General Statutes does not provide a definition of the term “change of ownership.” Additionally, the North Carolina courts have not addressed what constitutes a “change of ownership” in the context of the North Carolina Board of Funeral Service.

A funeral establishment may be subject to disciplinary action when its owner, partner, manager, member, operator, or officer violates Chapter 90, Article 13A, of the NC General Statutes or any regulations of the Board. N.C. Gen. Stat. § 90-210.25(d)(4). As such, it is important that the Board know when a funeral establishment undergoes a change in ownership. North Carolina General Statute section 90-210.25(d)(5) and 21 N.C. Admin. Code 34B .0605 provide the mechanism by which the Board obtains such information from funeral establishments. On the other hand, a change to only the legal structure of a funeral

establishment—without a change in owners, partners, managers, members, operators, or officers—does not impact the ability of the Board to regulate funeral establishments, pursuant to North Carolina General Statute section 90-210.25(d)(4).

In light of the foregoing, this Board finds that no “change of ownership,” as referenced by North Carolina General Statute section 90-210.25(d)(5), occurs when an establishment changes from an individually-owned entity to a limited liability company, provided that the owner of the individually-owned entity becomes the sole member of the limited liability company. However, regardless of whether a “change of ownership” occurs, an establishment must inform the Board when its name is legally changed. See N.C. Gen. Stat. § 90-210.27A(j) (“A funeral establishment will not use any name other than the name by which it is properly registered with the Board.”)

For these reasons, Robinson-McLean Funeral Service, LLC did not undergo a “change of ownership” when it changed its legal structure changed from an entity owned by Petitioner to a limited liability company of which Petitioner is the only member. Although Robinson-McLean Funeral Service, LLC was required to inform the Board of its change in legal structure, it was not required to file a new establishment application or pay the new establishment application fee of \$250.00.

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 11th day of May, 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:

Terri Robinson-McClearn
22421 Andrew Jackson Highway
Maxton, NC 28364

This, the 16 day of May, 2016.



Christina D. Cress
General Counsel