

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE NORTH CAROLINA  
BOARD OF FUNERAL SERVICE  
RULING NO. D16-003

In the matter of:  
Tori S. Dixon  
  
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

Tori S. Dixon (hereinafter “Petitioner”) filed a request for declaratory ruling on May 2, 2016. As required by 21 NCAC 34A .0108(a)(3), the Board agreed at its regularly scheduled public meeting on May 11, 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, who is the manager of a licensed funeral establishment that shares office space with a cemetery, in violation of the Board’s governing statute and rules if the cemetery employees show and sell urns/vaults to the consuming public in certain rooms within the establishment?

RULING

Pursuant to North Carolina General Statute Chapter 150B-4(a), an agency, upon request from a person aggrieved, 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. 3168 and serves as the Manager of Montlawn Funeral Home and Cremations (the "Funeral Establishment"). A cemetery called Montlawn Memorial Park (the "Cemetery") has office space within the Funeral Establishment. Beginning in 2015, management for the Cemetery designated room within the Funeral Establishment as "cemetery rooms," in which Cemetery employees could sit with families and conduct "cemetery business." Management for the Cemetery has expressed to Petitioner that it intends to display urns and vaults in the "cemetery rooms" so that Cemetery sales counselors, who are not licensed by the Board, may sell these products to customers. Petitioner is seeking the Board's opinion as to whether this proposed arrangement may violate Chapter 90, Article 13A, of the North Carolina General Statutes and subject her licensure to disciplinary action.

As an initial matter, the Board finds that Petitioner is a "person aggrieved" for purposes of making this declaratory ruling. Petitioner is a licensee of the Board and the manager of the Funeral Establishment. As such, she would be subject to disciplinary action if she were to violate the Board's governing statutes, rules, or the standards set forth in

Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time. N.C. Gen. Stat. § 90-210.25(e)(1)h. prohibits licensees from aiding or abetting an unlicensed person to perform funeral services. As such, Petitioner's licensure could be subject to sanctions if she were aiding and abetting Cemetery sales counselors to engage in the unlicensed practice of funeral service within the Funeral Establishment. Furthermore, the Funeral Establishment could be subject to discipline if Petitioner or its owners, partners, managers, members, operators, officers, agents, or employees violate any provision of [Article 13A] or any regulations of the Board. N.C. Gen. Stat. § 90-210.25(d)(4).

Turning to the substance of Petitioner's request, the Board relies upon the following statutes in issuing this ruling. First, N.C. Gen. Stat. § 90-210.25(f) makes illegal the unauthorized practice of funeral service:

(f) Unlawful Practices. – If any person shall practice or hold himself or herself out as practicing the profession or art of embalming, funeral directing or practice of funeral service or operating a funeral establishment without having complied with the provisions of this Article, the person shall be guilty of a Class 2 misdemeanor.

Second, the "practice of funeral service" is defined as follows:

(k) "Practice of funeral service" means engaging in the care or disposition of dead human bodies or in the practice of disinfecting and preparing by embalming or otherwise dead human bodies for the funeral service, transportation, burial or cremation, or in the practice of funeral directing or embalming as presently known, whether under these titles or designations or otherwise. "Practice of funeral service" also means engaging in making arrangements for funeral service, selling funeral supplies to the public or making financial arrangements for the rendering of such services or the sale of such supplies.

N.C. Gen. Stat. § 90-210.20(k). The Board's governing statutes and rules do not define the term "funeral supplies." Furthermore, no North Carolina court opinions have addressed what constitutes "funeral supplies" within the context of the Board's governing statutes

and rules. N.C. Bd. of Mortuary Sci. v. Crown Mem'l Park, L.L.C., 162 N.C. App. 316, 317, 590 S.E.2d 467, 468-69, 2004 N.C. App. LEXIS 113 (N.C. Ct. App. 2004) (noting that neither “funeral supplies” nor “cemetery merchandise” is defined by the Board’s practice act or the NC Cemetery Act). Third, N.C. Gen. Stat. § 90-210.20(h) defines a “Funeral establishment” as follows:

(h) “Funeral establishment” means every place or premises devoted to or used in the care, arrangement and preparation for the funeral and final disposition of dead human bodies and maintained for the convenience of the public in connection with the dead human bodies or as the place for carrying on the practice of funeral service.

Based on the facts as presented to the Board, it is not clear whether the Funeral Establishment and the Cemetery are separate legal entities. If the Funeral Establishment and the Cemetery are separate legal entities and if the Cemetery sales employees are not making arrangements for the care or disposition of the decedents, or making arrangements to prepare the decedents for a funeral service, transportation, burial, or cremation while they sell vaults and/or urns to consumers, their activities will not constitute the “practice of funeral service” as defined in N.C. Gen. Stat. § 90-210.25(k). Under such circumstances, neither Petitioner nor the Funeral Establishment would be aiding or abetting the unlicensed practice of funeral service in North Carolina, in violation of N.C. Gen. Stat. § 90-210.25(e)(1)(h).

However, if Cemetery sales employees are conducting their sales activities on the Funeral Establishment’s premises—regardless of whether the Cemetery and the Funeral Establishment are separate legal entities—the Board will consider the Cemetery sales employees to be “agents” of the Funeral Establishment for purposes of N.C. Gen. Stat. § 90-210.25(d)(4). As such, any violation of the Board’s governing statutes and rules by the

Cemetery sales employees may subject the Funeral Establishment and/or Petitioner to disciplinary action, particularly if the licensees are aiding or abetting unlicensed persons to perform funeral services. Likewise, as allowed under N.C. Gen. Stat. § 90-210.25(g), the Board may pursue injunctive relief against any unlicensed person performing funeral services. It is the expectation of the Board that the sales activities of the Cemetery employees will be subject to the same constraints as those restricting the sales activities of any unlicensed employee of the Funeral Establishment.

It is important to note that the FTC may find that the Cemetery employees of Montlawn Memorial Park are required to follow the Federal Trade Commission's Funeral Rule. Specifically, the FTC staff take the position that a commercial cemetery providing funeral services and selling funeral goods must comply with the Funeral Rule. FTC Staff Opinion 09-5 (April 16, 2009). Funeral providers who are covered by the FTC's Funeral Rule must put prices for outer burial containers, such as burial vaults, on either a General Price List or on a separate "Outer Burial Container Price List," with the appropriate FTC-mandated disclosures. Petitioner may wish to contact the FTC's Division of Marketing Practices directly with further questions regarding the need for compliance with the FTC's Funeral Rule.

In light of the foregoing, the Board holds that the Cemetery sales employees will not practice funeral service if the Funeral Establishment and the Cemetery are separate legal entities and if the Cemetery sales employees are not making arrangements for the care or disposition of the decedents, or making arrangements to prepare the decedents for a funeral service, transportation, burial, or cremation while they sell vaults and/or urns to consumers. However, the Cemetery sales employees will be considered "agents" of the

Funeral Establishment for purposes of N.C. Gen. Stat. § 90-210.25(d)(4). As such, any violation of the Board's governing statutes and rules by the Cemetery sales employees may subject the Funeral Establishment and/or Petitioner to disciplinary action, and the Board may pursue injunctive relief against any unlicensed person performing funeral services.

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 10<sup>th</sup> day of June, 2016.

THE NORTH CAROLINA BOARD OF  
FUNERAL SERVICE

By: 

Valde 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:

Tori S. Dixon  
Montlawn Funeral Home  
2911 S. Wilmington Street  
Raleigh NC 27603

This, the 10<sup>th</sup> day of June, 2016.



Christina D. Cress  
General Counsel