



THE ATTORNEY GENERAL
OF TEXAS

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June 24, 1954

Hon. Gilbert A. Koenig, President
State Board of Morticians
4838 Gaston Avenue
Dallas, Texas

Letter Opinion No. MS-140

Re: Authority of the State Board
of Morticians to reduce the
minimum requirements for li-
censing as fixed by Article
4582b, Vernon's Civil Statutes.

Dear Mr. Koenig:

You have requested an opinion on the authority of the State Board of Morticians to reduce the minimum requirements for licensing which are set out in paragraphs (A) and (B) of subsection (1), Section 4 of Article 4582b, Vernon's Civil Statutes.

Section 4 (1) of Article 4582b provides:

"The Board is hereby authorized and empowered and it shall be its duty to determine the qualifications necessary to enable any person to lawfully practice as a funeral director, to embalm dead human bodies, and to conduct a funeral establishment. The Board shall examine all applicants for funeral directors and embalmers licenses and shall issue the proper license to all those persons who successfully pass such examination and qualify under any additional requirements the Board may, from time to time, prescribe.

"The minimum requirements for the issuance of a license to practice funeral directing and/or embalming in Texas, by this Board, unless otherwise determined by the Board, are as follows, to-wit. . . ." (Emphasis added.)

The above underlined phrase, "unless otherwise determined by the Board," refers back to the "additional requirements the Board may, from time to time, prescribe," set out at the end of the first paragraph of Section 4 (f) of Article 4582b.

Following the above introductory paragraphs, paragraphs (A) and (B) set out the minimum requirements for a license to practice funeral directing and a license to practice embalming.

These minimum requirements of paragraphs (A) and (B) are set out by the Legislature and are mandatory. The statute contemplates that an applicant, in the public interest, must meet at least these requirements, and in the Board's discretion, may have to supply even further requirements, information or proof as the Board in its wisdom may require, to assure the citizens of Texas competent and trustworthy funeral directors and embalmers.

Paragraphs (A) and (B) provide, among other things, that the applicant "have graduated from an accredited high school, or have attained the equivalent thereof." The Board has discretionary power in passing upon the minimum requirements of an applicant who has not graduated from an accredited high school to determine whether he has attained the equivalent thereof, but it has no discretion to reduce the requirement to less than the equivalent of graduation from an accredited high school or to reduce the other requirements below the minimums set out in these paragraphs.

You are therefore advised that you have discretion in determining what constitutes the equivalency of a high school education as well as requiring higher minimum requirements, but there is no discretion to allow less than the minimum standards as set out by the Legislature. The Board should not give an examination for a license to a person who does not meet the minimum requirements established by Section 4 (1) (A) and (B), Article 4582b, Vernon's Civil Statutes, as enacted by Acts 53rd Legislature, 1953, ch.251, p.661.

In this opinion we are not passing on the extent to which the Board may validly exercise its discretion to increase the minimum requirements. We are holding merely that

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it has no authority to reduce the requirements set out in the statute.

Yours very truly,

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ROF:wb:bt

By Robert O. Fagg
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