



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD  
ATTORNEY GENERAL**

September 6, 1955

Hon. James M. Falkner  
Commissioner  
Department of Banking  
Austin, Texas

Letter Opinion No. MS-234

Re: Issuance of permits for sale  
of prepaid funeral services,  
and deposit and withdrawal of  
proceeds of such sales, under  
Senate Bill 52 (Chapter 512)  
54th Legislature, 1955.

Dear Mr. Falkner:

You have requested the advice of this office on several questions relating to the construction of Senate Bill 52, Acts 54th Legislature, 1955.

You first inquire whether your department shares responsibility with the Secretary of State in this Act. Although Section 3 of the Act requires that the Secretary of State issue a permit on receipt of the application and filing fee therefor, the language of the entire Act leaves no doubt that this is a clerical error in the final writing of the bill as it was the intent of the Legislature that your department should administer Senate Bill 52. In this connection we invite your attention to pages 3119 and 3120, House Journal of May 18, 1955 where the amendment was adopted striking out the words "Secretary of State" wherever they appear in the bill and inserting in lieu thereof the words "State Banking Department".

You next inquire whether the Act operates on all funds, whether collected before or after the effective date of the Act. All funds collected after the effective date of the Act under any contract for prepaid funeral benefits shall be placed in trust in a state or national bank, or a building and loan association. The language of the Act clearly indicates that the Legislature intended that Senate Bill 52 operate prospectively, or on funds collected thereafter, regardless of whether the contract was executed prior to the effective date or thereafter. Any funds collected prior to September 6th on prior contracts would not be affected by the Act.

Your third question relates to withdrawals from the trust fund. Senate Bill 52 has authorized no other withdrawal from the trust fund except by filing of a certified copy of death certificate and other affidavits as may be required by

the State Banking Department. Section 5 uses the words "any withdrawals . . ." and thus precludes any election to cancel or surrender the contract and withdraw funds short of maturity, which is death of the purchaser. One further qualification on withdrawal, however, is contained in Section 1 of the Act where ". . . the purchaser or his heirs or legal representative shall be entitled to recover all amounts paid to the seller under any contract made in violation hereof." There is no provision for election to cancel the contract or for funds to be released to the purchaser prior to his death except for a void contract under Section 1.

With regard to your fourth question concerning the requirement that funds be deposited within thirty days after collection, Section 5 speaks plainly and without exception. However, Section 6 would seem to permit a lapse of sixty days between tender by purchaser and actual deposit in the trust fund by the designated agent, before a violation arises for punishment under Section 9 of the Act. Therefore, should a collection be made by a person other than a designated agent, that person has thirty days in which to deliver it to such agent and the agent has an additional thirty days after the delivery of the money in which to deposit it.

Your fifth question relates to constitutionality under the pay-as-you-go amendment, raised because no certificate from the Comptroller was had, even though the Act carries an appropriation. We observe that Senate Bill 52 requires that all filing fees and examination costs be credited in a separate prepaid Funeral Contract Fund in the State Treasury and further appropriates all monies in such fund for salaries and necessary expense in the administration of the Act. The certification required under Section 49a of Article III of the Constitution of Texas, by the Comptroller, is not applicable to the appropriation provided for in Section 12 of this Senate Bill for the reason that it does not contemplate an appropriation of only such monies as might be collected in a certain account, where the only action the Comptroller could take would be to certify that the amount appropriated is within the amount estimated to be

Hon. James M. Falkner, page 3 (MS-234)

available in the affected fund. See Attorney General Opinions Nos. O-6626 and S-64.

APPROVED:

Elbert M. Morrow  
Reviewer

Davis Grant  
Reviewer

Will D. Davis  
Special Reviewer

Robert S. Trotti  
First Assistant

John Ben Shepperd  
Attorney General

JFJ:wb

Very truly yours,

JOHN BEN SHEPPERD  
Attorney General

By   
J. Fred Jones  
Assistant