



STATE of TEXAS
HOUSE of REPRESENTATIVES

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Harold V. Dutton, Jr.
District 142

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OPINION COMMITTEE

June 7, 2004

Honorable Greg Abbott
Attorney General, State of Texas
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-43756-04
I.D. # 43756

Dear General Abbott:

I am respectfully requesting your opinion in interpreting the provisions of the Texas Occupations Code and the Rules of the Texas Funeral Commission ("Commission") concerning disclosures that licensed funeral establishments must make to customers in the sale of funeral goods and services.

Under Commission rules, a funeral establishment is required to give a purchaser an itemized written statement, which must include the funeral goods and funeral services selected by the customer and "the prices to be paid for each of them." 22 *Tex. Admin. Code* §§ 203.7(b)(5)(A)(1). Additionally, the statement given to the consumer must include "[s]pecifically itemized cash advance items." *Id.* §203.7(b)(5)(A)9ii

A funeral establishment may not represent to a customer that the price charged for a cash advance item is the cost to the funeral home, when the funeral home in fact paid less for the item. *Id.* §§ 203.8(f)(1)(A) and 203.20(b). To ensure compliance with the Commission's rule, if a funeral establishment charges more than its cost for a cash advance item, it must disclose this fact to the consumer. *Id.* § 203.8(f)(2). The Commission's rules and the Occupation Code also require the purchase agreement to "state the amount paid or owed to another person by the funeral establishment on behalf of the customer for the cost of advancing funds or becoming indebted to another person on behalf of the customer. *Id.* § 203.20(a) and *Tex. Occ. Code* § 651.406(a)(2).

The Commission's rules track the Federal Trade Commission's Trade Regulation Rule on Funeral Industry Practices and defines a "cash advance item" as:

any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include but are not limited to: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.

22 *Tex. Admin. Code* § 203.1(3); see also 16 C.F.R. § 453.1(b).

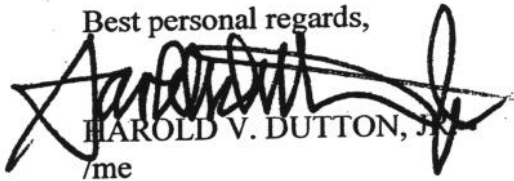
Funeral establishments that are regulated by the Commission routinely sell various items of merchandise to consumers at retail prices, without any disclosure of the amount of their markup. Almost all of this merchandise is manufactured or supplied by a "third party." Caskets are one such example. Other goods and services, however, are usually provided as cash advance items because the funeral establishment may not have the ability to provide them directly. Obituary notices and death certificates are almost always provided as cash advance items. In other instances, however, a funeral establishment may obtain a good or service from a third party and sell it to consumer at retail prices instead of listing it as a cash advance item on its purchase agreement. Flowers are a common example of such a good.

With the above background in mind, I respectfully request your response to the following questions:

1. Are funeral goods and services always "cash advance items" whenever a funeral establishment purchases the good or service from a third party for resale to consumers, even if the funeral establishment does not represent that the good or service is provided as a "cash advance" or "on the purchaser's behalf"?
2. If the answer to the first question is "No", can a funeral establishment lawfully choose between: (a) selling a particular good or service to the consumer at the retail price listed on its price lists and (b) providing the same merchandise or service as a "cash advance item"?

In advance, thank you for your assistance and attention to this most important issue.

Best personal regards,


HAROLD V. DUTTON, JR.
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