

STEPHEN H. STETLER
STATE REPRESENTATIVE
95TH LEGISLATIVE DISTRICT

CHAIRMAN
DEMOCRATIC POLICY COMMITTEE



MAIN CAPITOL BUILDING
HOUSE BOX 202020
HARRISBURG, PENNSYLVANIA 17120-2020
PHONE: (717) 787-8995
FAX: (717) 772-9991

DISTRICT OFFICE:
266 E. MARKET STREET
YORK, PENNSYLVANIA 17403
PHONE: (717) 848-9595
FAX: (717) 848-1871

Original: 2459

House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

April 11, 2005

The Honorable Basil L. Merenda,
Commissioner
Bureau of Professional & Occupational Affairs
Pennsylvania Department of State
Penn Center
2601 North Third Street
Harrisburg, PA 17110

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COMMISSIONER

Dear Commissioner Merenda:

Thank you for meeting with Ernie Heffner (Heffner Funeral Homes), Jim Kutz (Post & Schell Attorneys-At-Law) and me regarding the State Board of Funeral Director's newly proposed regulations. I appreciate your willingness to listen to the realities of the funeral director industry and how these policies will affect it.

It seems the more information that is available on these regulations, the less acceptable they become. In fact, as I continue to analyze the proposed language and surrounding court decisions on the issue of pre-need contracts, I begin to question the motives of the State Board of Funeral Directors in establishing these regulations in the first place. These rules are distinctly anti-competitive, and drive Pennsylvania's funeral industry backwards, at a time when most states are progressing to address their consumer's needs.

As was evidenced from our meeting, there is a strong opposition to almost each of the Board's proposed regulations. However, the most contentious amendment is newly proposed subsection (13), which declares the following actions would be "unprofessional":

(13) Retaining funds intended to pay for funeral goods and services when the funeral director and establishment have not provided any funeral goods and services or when the amount of funds retained in excess of the value of funeral goods and services actually provided by the funeral director or establishment. A funeral director may preserve the funds for a reasonable amount of time for a person to demonstrate a legal entitlement to receive the funds or to receive payment of funds owed to the decedent.

This subsection contradicts the Commonwealth Court's decision in the case of Kevin M. Bean, Petitioner v. Department of State, State Board of Funeral Directors, where the Court stated that:

“There is nothing in the Funeral Director Law or the implementing regulations that allows the Board to change irrevocable contracts to revocable ones when it has approved the contracts...

Finally, the motivations of the State Board are further brought into question when the anti-consumer nature of this regulation is considered. If the Board succeeds in its quest to drastically curtail the practicality of pre-need funeral contracts, consumers can make their decisions regarding the disposition of a loved one's remains only at the time of death. It is my feeling that the benefits of pre-need arrangements are much more compassionate and certainly alleviate some of the complex decisions placed on the survivors.

Once again, thank you for your willingness to discuss these issues. If I can provide any further information on this matter, please do not hesitate to contact me.

Sincerely,



Stephen H. Stetler

cc: The Honorable John R. McGinley, Chairman, Independent Regulatory Review Commission
The Honorable Donna Cooper, Secretary of Planning & Policy
Mr. Peter G. Glenn, Acting-General Counsel
The Honorable Thomas P. Gannon, Chairman of the House Professional Licensure Committee
The Honorable William Reiger, Minority Chairman of the House Professional Licensure Committee
The Honorable Mike Sturla, Minority Vice-Chairman of the House Professional Licensure Committee
The Honorable Robert Tomlinson, Chairman of Senate Consumer Protection & Professional Licensure Committee
The Honorable Lisa Boscola, Minority Chairwoman of Senate Consumer Protection & Professional Licensure Committee
Ms. Mary S. Wyatte, General Counsel & Acting Executive Director, Independent Regulatory Review Commission
Ms. Karen Dalton, Esq., Executive Director, House Professional Licensure Committee
Ms. Barbara Harr, Executive Director, Minority House Professional Licensure Committee
Ms. Fran Cleaver, General Counsel, Senate Consumer Protection & Professional Licensure Committee