

2627

From: Jewett, John H.
Sent: Monday, November 30, 2009 8:46 AM
To: Gelnett, Wanda B.; Wilmarth, Fiona E.; Johnson, Leslie A. Lewis
Subject: FW: Final Rulemaking 16A-4815 and 4816
Attachments: 11.28.09 ltr to C.McNally & IRRC 4815 & 4816.pdf; 11.20.09 ltr from C.McNally final rulemaking.pdf

Comments on both #2627 and #²⁶³⁹~~2739~~

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REVIEW COMMISSION

From: Ernie Heffner [mailto:ernieheffner@hotmail.com]
Sent: Saturday, November 28, 2009 1:43 PM
To: Christopher McNally
Cc: IRRC; Jewett, John H.; Thomas Blackburn; Jim IapsKutz; Heidy Weirich
Subject: Final Rulemaking 16A-4815 and 4816

Dear Attorney McNally,

Per your letter dated November 20th, I have attached my comments along with a copy of your letter regarding the Final Rulemaking for 16A-4815 and 4816.

Sincerely,

Ernie

Ernie Heffner
Heffner Funeral Chapels & Crematory
1551 Kenneth Road,
York, PA 17408
717-767-1551
www.BestLifeTributes.com



HEFFNER

Funeral Chapel & Crematory, Inc

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C. Frederick Koller, Supervisor
Ernie Heffner, President
John Katora, Vice-President
Scott Mahkovec, CPA, Controller

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November 28, 2009

Via Email to chrncnally@state.pa.us
Christopher K. McNally, Counsel
State Board of Funeral Directors
P.O. Box 2649,
Harrisburg, PA 17105-2649

RE: Wal-Mart Pre-Need Sales Clarification and
Final Rule Making Meetings December 1st and 2nd
To review status of Proposed Funeral Board Regulations
16A-4815 and 16A-4816

Dear Attorney McNally,

During my brief oral comments before the Independent Regulatory Review Commission on November 18th, I remarked about Wal-Mart offering pre-need sales. It was my impression from your subsequent comments that you might not have been aware of Wal-Mart's interest in pre-need sales.

For the record, my reference was the result of reading an *Associated Press* article posted on 10.20.09 at www.usatoday.com/money/industries/retail/2009-10-28-walmart-sells-caskets-online_N.htm and printed on the front page of *USA Today* which read, "*Part of the business model is to get people to plan ahead: Walmart.com is allowing people to pay for the caskets over a period of 12 months for no interest.*"

It is my further understanding that Florida has taken a wait and see attitude based in part on the premise that the controlling interstate commerce laws, especially as they pertain to internet sales, would be applicable per the state statutes where the contract originates (by the seller), which in this case is not Florida.

Additionally, while Wal-Mart sales are currently limited to merchandise, not mentioned in the article but from reliable sources since then, I understand there is an effort being explored to establish a service provider net work, not unlike an H.M.O. Inasmuch as some Wal-Mart stores have pharmacies and optometrists, having a network of "Wal-Mart" funeral service preferred providers, whether in store or off site, does not seem like such a stretch to imagine. Time will tell.

Regarding the Final Rulemaking meetings on December 1st and 2nd concerning proposed regulation 16A-4815 and 16A-4816, I will look forward to being

1551 Kenneth Rd., York, PA 17408

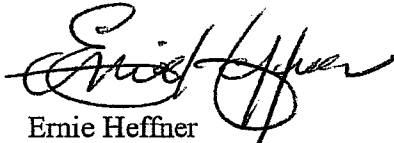
present. On behalf of the Pennsylvania Cemetery, Funeral & Cremation Association and counsel of record in Walker v. Flitton, Jim Kutz has already submitted "specific, written, proposed changes to the language of the rulemaking that provides greater clarity to the current policies and rules expressed in the rulemakings" and has addressed the objectionable aspects of the current proposed regulation. Therefore I will refer to his input rather than re-submit comments that would be redundant.

The parties who oppose the proposed regulations as drafted should not be misunderstood to be opposed to accountability. Nothing could be further from the truth.

As one of the plaintiffs in Walker v. Flitton, I perceive the current language in the proposed regulations to be the anti-competitive protectionist desires of certain practitioners whose efforts are to the detriment of consumers and ironically under the false pretense of protecting consumers.

On November 18th at the IRRC hearing, Vice Chairman Bedwick did indeed comment about attempting to narrow the differences between the stakeholders and as such I will commit my time and optimistically attend the meeting on December 1st as the process proceeds. However, if the board continues to be unwavering in its refusal to accept the direction of the Federal Court, there seems little choice for those with views that differ from the proponents of the current draft regulations.

Sincerely,



Ernie Heffner

C: Via Email: irrc@irrc.state.pa.us and jjewett@irrc.state.pa.us
The Honorable Arthur Coccodrilli, Chairman
The Honorable George D. Bedwick, Vice Chairman
The Honorable Silvan B. Lutkewitte, III, Commissioner
The Honorable John Mizner, Commissioner
The Honorable S. David Fineman, Commissioner
Attorney John H. Jewett, Regulatory Analyst
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

C: Via Email: tblackburn@state.pa.us
Thomas A. Blackburn, Regulatory Unit Counsel,
State Board of Funeral Directors

C: Via Email
James Kutz, Esq.
Interested Parties

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COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

Christopher K. McNally
Assistant Counsel

chr McNally@state.pa.us

November 20, 2009

Mr. Ernest Heffner
1551 Kenneth Road
York, PA 17404

RE: Final Rulemaking 16A-4815; Final Rulemaking 16A-4816

Dear Mr. Heffner:

I am writing to advise you that the State Board of Funeral Directors will consider the above-referenced final rulemakings at its meetings on December 1, 2009 and December 2, 2009.

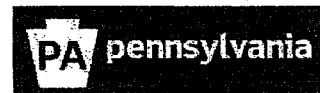
In light of the disapproval order of the Independent Regulatory Review Commission dated November 4, 2009 and the discussion of the Commission at its meeting of November 19, 2009, the Board will undertake consideration of suggestions from all stakeholders to clarify the final rulemaking and, to paraphrase Vice-Chair George Bedwick, work to close or narrow the differences between the stakeholders on the issues in these rulemakings.

To facilitate that effort, the Board invites all stakeholders, and solicits from you and all other stakeholders, specific, written, proposed changes to the language of the rulemaking that (1) provide greater clarity to the current policies and rules expressed in the rulemakings, and (2) narrow the differences between the various viewpoints that have been expressed.

The Board welcomes all input, and if you would like to submit a proposal that does not narrow the differences but expresses your position, the Board invites you to submit that proposal too, and it will give all suggested changes due consideration. Also, if you do not wish to submit specific regulatory language, but prefer to offer written input in the form of broad, general statements, the Board would also consider that input. However, given the time constraints that the Board must meet, specific regulatory language that can be discussed would be particularly helpful.

In light of the scheduled meeting date, the Board must receive your written input no later than noon on November 30, 2009 in order for it to be copied and bound for circulation to the Board members on the following morning. Staff will do its best to supply Board members with written submissions received after that deadline. The Board apologizes for the brief time constraints placed on the stakeholders in order to meet this solicitation for input, but respectfully request your cooperation in this effort.

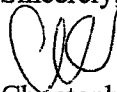
DEPARTMENT OF STATE/OFFICE OF CHIEF COUNSEL
2601 NORTH 3RD STREET/P.O. Box 2649//HARRISBURG, PA 17105-2649
PHONE: 717-783-7200/FAX: 717-787-0251/ WWW.DOS.STATE.PA.US



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11/20/2009

Thank you for your attention to this matter. Please contact me if you have any questions.

Sincerely,



Christopher K. McNally, Counsel
State Board of Funeral Directors

CKMcN:
Enclosure

cc: Heidi Weirich, Board Administrator
Independent Regulatory Review Commission