

2639

From: Ernie Heffner [ernieheffner@hotmail.com]
Sent: Thursday, January 21, 2010 5:24 PM
To: IRRC; Jewett, John H.
Cc: st-funeral@state.pa.us; Christopher McNally; Thomas Blackburn; Jim 1apsKutz; Bob Rae
Subject: Attached Comments in Opposition to 4816 (IRRC #2639)
Attachments: 01.21.2010HeffnerComments4816(IRRC 2639).pdf

Dear Attorney Jewett,

Please find my attached my Comments in Opposition to the most recent Final-Form Regulation No. 16A-4816 (IRRC #2639) Preneed Activities of Unlicensed Employee, State Board of Funeral Directors.

Thank you for distributing my comments to the Chairman, Vice Chairman and the Commissioners.

Per the instructions in the email inviting comments, I have copied the listed parties as well as the individuals referenced in my attached comments.

Should you have any questions, I am respectfully available by phone or email.

Thank You,

Ernie

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

RECEIVED
2010 JAN 22 AM 9:31
INDEPENDENT REGULATORY
COMMISSION

2639



HEFFNER

Funeral Chapel & Crematory, Inc.

RECEIVED

2010 JAN 22 AM 8:31

INDEPENDENT REGULATORY
REVIEW COMMISSION

PHONE 717-767-1551
Fax 717-764-9919
Toll Free 888-767-1551
BestLifeTributes.com

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

PENNSYLVANIA AFFILIATES

RED LION
Olewiler & Heffner
Chapel & Crematory

YORK
Everhart-Jackson-Heffner

LEWISBERRY
Beaver Ulrich

POTTSVILLE
Schlitzer-Allen-Pugh

TROY
Vickery

MILL HALL
Heit Chapel

RENOVO
Maxwell

WILLIAMSPORT
Allen & Redmond

WILKES-BARRE
Kniffen O'Malley

AVOCA
Kniffen O'Malley

MILTON
Ranck

January 21, 2010

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

RE: Comments in Opposition to Final-Form Regulation No. 16A-4816 (IRRC #2639)
Preneed Activities of Unlicensed Employee, State Board of Funeral Directors

Dear Chairman, Vice Chairman, Commissioners and Attorney Jewett:

I appreciate the opportunity extended in your email dated January 7th, 2010, to again offer written comments regarding the most recent version of regulation No. 16A-4816 (IRRC #2639) as proposed by the State Board of Funeral Directors.

On November 19th, 2009, the INDEPENDENT REGULATORY REVIEW COMMISSION DISAPPROVAL ORDER concluded, "...we find that promulgation of this regulation is not in the public interest."

Nothing substantial has changed since November 19th. There have been some cosmetic and minor adjustments since the DISAPPROVAL ORDER, but in the end, the regulation is essentially unchanged in its intent, purpose and adverse impact on consumers.

Having read the volume of comments posted on the I.R.R.C. website, I noticed that most of the comments in support of the proposed regulation are duplicative copy paste notes with no depth or articulation of rationale supporting the proposed regulation.

Questions previously raised by I.R.R.C. received curious responses at best.

1. Where is the reasonable need?
2. Where is the list of consumer complaints and statistical data?
3. Where is the financial impact study?

On November 12th, 2009, I submitted detailed comments in opposition to this proposed regulation. I included independent studies, studies that were not commissioned by any of

1551 Kenneth Rd., York, PA 17408

Comments in Opposition to Final-Form Regulation No. 16A-4816 (IRRC #2639)
Preneed Activities of Unlicensed Employee, State Board of Funeral Directors
January 21, 2010
Submitted to the Independent Regulatory Review Commission by Ernie Heffner

the stakeholders but supported my comments. Those previous comments and studies are as relevant today as they were last November, again because basically nothing has changed. Without reciting my November 12th comments, I would ask that they continue to be considered in your evaluation of this most recent proposed regulation as I offer these comments.

I believe the board has acknowledged that there is NO financial impact study.

There continues to be no demonstrated reasonable need for the regulation. In fact in responding to the request by I.R.R.C. to provide a "list of consumer complaints and statistical data," the funeral board, within their own responses in the *Regulatory Analysis Form* downloaded from the IRRC website, inadvertently provided statistical data that concurred that there is no reasonable need for the regulation.

With a consumer complaint rate of less than one ten thousandth of one percent (see full explanation in my November 12th comments), this proposed regulation has nothing to do with protecting consumers and everything to do with restricting competition, chilling the competitive market place and all to the detriment of vast majority of consumers who are apparently very satisfied with how the market place has served them. One ten thousandths of one percent is a profoundly de minimus statistic. By any standard this is the statistical equivalent of zero complaints from consumers in the past ten years regarding preneed contracts fulfilled.

Please incorporate herein any comments and testimony previously or prospectively submitted by James J. Kutz, counsel for Plaintiffs in Walker v. Flitton. The comments of Mr. Kutz address in detail the legal issues and inappropriateness of this proposed regulation. Please also incorporate the previously submitted comments of Robert S. Rae, a licensed funeral director and licensed insurance producer, as posted on the I.R.R.C. website wherein he addressed legislative intent and accurately articulated the misinterpretation of Section 13(c) of the funeral director statute, a misinterpretation perpetuated by the proponents of 4816 for the convenience of promoting this unnecessary regulation.

As a second generation funeral director, licensed since 1975, president of our family owned enterprise which does business with over 1000 consumers every year and as one of the four plaintiffs who received judicial relief from the United States District Court for the Middle District of Pennsylvania in the matter Walker v. Flitton frequently referenced by all parties, I make the following request.

Because there is no reasonable need and consumers would be harmed by unreasonable restrictions that only serve to chill competition, I respectfully request that the Commissioners again reject, in its entirety, Final-Form Regulation No. 16A-4816 (IRRC #2639) Preneed Activities of Unlicensed Employee, State Board of Funeral Directors and again find that the promulgation of this regulation is not in the public interest.

Thank you for your consideration.

Sincerely,



Ernie Heffner

Comments in Opposition to Final-Form Regulation No. 16A-4816 (IRRC #2639)
Preneed Activities of Unlicensed Employee, State Board of Funeral Directors
January 21, 2010
Submitted to the Independent Regulatory Review Commission by Ernie Heffner

C: via email

Christopher McNally, Board Counsel st-funeral@state.pa.us, chrmcnally@state.pa.us

Thomas A. Blackburn, Regulatory Unit Counsel tblackburn@state.pa.us

State Board of Funeral Directors

Department of State

P.O. Box 2649

Harrisburg, PA 17105-2649

James Kutz, Esq.

Robert Rae

Interested Parties