



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2015-12A

Chris Ferguson, Director
Oklahoma Funeral Board
3700 N. Classen Blvd., Ste. 175
Oklahoma City, Oklahoma 73118

September 23, 2015

Dear Director Ferguson:

This office has received your request for a written Attorney General Opinion regarding agency action that the Oklahoma Funeral Board intends to take. The proposed action is to—pursuant to consent order in complaint 15-08—require payment by a licensee of costs and penalties totaling \$900. Licensee failed to timely renew a permit for marketing prepaid funeral services contracts in calendar year 2014 and then belatedly obtained a valid surety bond or letter of credit to accompany an application for a permit for calendar year 2015.

The Funeral Services Licensing Act, 59 O.S.2011 & Supp.2014, §§ 395.1–396.33, authorizes the Funeral Board to take enforcement action against licensees for failure to comply with laws governing prepaid funeral services contracts, *see* 59 O.S.Supp.2014, §§ 396.12c(12), (13). The Funeral Board’s administrative rules also prohibit failure to comply with such laws. OAC 235:10-7-2. The laws governing prepaid funeral services contracts require those marketing such contracts to obtain (and then annually renew) a permit from the Insurance Commissioner of Oklahoma, 36 O.S.2011, §§ 6121(A), 6124(A), and furnish a bond to the Commissioner in a statutorily determined amount, 36 O.S.Supp.2014, § 6125(I). However, unless the permittee intends to actually market the contracts, nothing in the prepaid funeral services statutes *require* a permittee to renew its permit—even having outstanding contracts only triggers ongoing reporting requirements, not a permitting requirement. *See, e.g.*, 36 O.S.2011, § 6128. Instead, it can only be said that one has violated the law if one *markets* a prepaid funeral services contract without renewing a permit. *See id.* § 6121(A).

Nothing in the official orders of the Oklahoma Insurance Department or the Board’s consent order make a finding that the licensee actively marketed prepaid funeral services contracts during relevant periods. Further, the Insurance Department has already imposed fines on the licensee. The action is intended to ensure that funeral services providers comply with the rules governing marketing of prepaid funeral services contracts, but the rules do not require a permit to be renewed—they only require that the sale of contracts be done while the seller has a permit. This office cannot conclude that the statutes articulate a state policy to impose fines and penalties on a

licensee at *two* state agencies for failing to perform actions that are *not* mandatory in the first place, which appears to be the result of this action based on the record.

It is, therefore, the official opinion of the Attorney General that the Oklahoma Funeral Board lacks adequate support for the conclusion that this action advances statutory policies of the State of Oklahoma. The action is thus **disapproved**.

A handwritten signature in black ink, appearing to read "E. Scott Pruitt", with a large, sweeping flourish above the name.

E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA