



OFFICE OF ATTORNEY GENERAL  
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION  
2016-317A

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

May 24, 2016

Dear Executive 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 with respect to Board complaint 16-18. Board staff have presented allegations that a licensed funeral home, licensed funeral director, and an unlicensed person violated Oklahoma law when the unlicensed person allegedly failed to provide a casket price list before showing caskets and engaged in allegedly licensable activities—in particular, allegedly negotiating at-need funeral arrangements. Through the informal response process, the respondents admitted failing to provide a casket price list but denied that the unlicensed person acted as a funeral director. The proposed action is to file a formal Complaint and set the matter for a hearing.

The Funeral Services Licensing Act, 59 O.S.2011 & Supp.2015, §§ 395.1–396.33, prohibits unlicensed persons from “act[ing] or represent[ing] themselves as a funeral director” or “provid[ing] funeral services or merchandise,” 59 O.S.2011 § 396.12a(B). The Board’s rules clarify that several activities come within acting as a funeral director or providing funeral services. Those activities include “[s]elling or offering to sell funeral services on an at-need basis,” “[p]lanning or arranging, on an at-need basis, the details of a funeral service,” including “setting the time of the service,” and “[m]aking, negotiating, or completing the financial arrangements for a funeral service on an at-need basis.” OAC 235:10-11-1(b)(1), (2), 5).

Further, the Board’s rules state that a licensee must provide a “printed or typewritten price list to persons who inquire in person about the offerings or prices of caskets or alternative containers, or outer burial containers before showing the caskets.” OAC 235:10-7-2(3)(B). That rule mirrors a Federal Trade Commission rule, 16 C.F.R. § 453.2(b)(2), and the Act authorizes discipline for violating federal funeral rules, 59 O.S.Supp.2015, § 396.12c(14). Here, the core issue in contention appears to be whether the unlicensed person actually performed licensable activities. In light of the circumstances of this case, the Board may reasonably believe it has a basis for filing a formal complaint so that additional factual information may be gathered.

It is, therefore, the official opinion of the Attorney General that the Oklahoma Funeral Board has adequate support for the conclusion that this action advances the State of Oklahoma's policy prohibiting unlicensed persons from acting as funeral directors.

A handwritten signature in black ink, appearing to read "E. Scott Pruitt". The signature is stylized with a large, sweeping initial "E" and a long horizontal line extending to the right.

E. SCOTT PRUITT  
ATTORNEY GENERAL OF OKLAHOMA