



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2017-80a

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

February 15, 2017

Dear Executive Director Ferguson:

This office has received your request for a written Attorney General Opinion regarding action the Oklahoma Funeral Board intends to take with respect to funeral director licensee 2605 FD.

The request details a well-documented history of statutory and regulatory violations on the part of the licensee, as well as the Board's numerous attempts to address and remedy those violations. Beginning in 2014, and in response to dozens of instances of the licensee allowing the unlicensed practice of funeral directing and embalming, the Board approved a *Consent Order* that placed the licensee on probation. As part of the probation, the licensee was required to make monthly payments toward a fine and to file monthly reports demonstrating compliance with the relevant law. The licensee failed to comply. In response, and with the approval of the Attorney General, *see* A.G. Opin. 2016-25a, the Board entered a *Final Order* that, among other things, suspended the license for approximately one year—meaning the licensee was not legally authorized to act as a funeral director or to process bodies for burial until January of 2017. Again, however, the licensee failed to comply. The licensee has also appealed the *Final Order* to the Oklahoma Supreme Court. Now, in response to the licensee's violations of the *Final Order*, other attendant violations (such as the licensee's unlawful advertising as a licensed funeral director during that time), and the licensee's appeal to the Supreme Court of the *Final Order*, the Board has offered a third solution: the *Settlement Agreement and Consent Order*.

Under the *Settlement Agreement and Consent Order*, the licensee agrees to dismiss his appeal and change his advertising to reflect his new, unlicensed status, while the Board agrees to drop its complaints against the licensee regarding the most recent violations (those that stem from the licensee's failure to comply with the *Final Order*). Under this agreement, the suspension terms imposed in the *Final Order* are reaffirmed, which means the licensee will serve out the remainder of his one-year suspension, putting the new date on which the licensee can resume licensed practice as July 14, 2017. In addition, and to the extent consistent with the *Settlement Agreement and Consent Order*, the other terms of both the *Final Order* and the original *Consent Order* will remain in full effect.

The Funeral Services Licensing Act, 59 O.S.2011 & Supp.2016, §§ 395.1–396.33, authorizes the Funeral Board to discipline licensees who violate the Act’s substantive provisions and licensees who violate federal regulations, 59 O.S.Supp.2016, § 396.12c(5), (14). With respect to this particular licensee, the Board has already exercised its disciplinary authority and, indeed, has done so with the express approval of the Attorney General. This most recent action against the licensee reaffirms the suspension terms already imposed in the *Final Order*—a course of action this Office deemed the Board to have “reasonably believe[d] . . . necessary to adequately protect the public and deter future violations.” A.G. Opin. 2016-25a. The Board’s belief that the same discipline should be imposed under the *Settlement Agreement and Consent Order* is equally reasonable.

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 to protect the public health and welfare.

A handwritten signature in black ink, appearing to read "Scott Pruitt", with a long horizontal line extending to the right.

E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA