



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2017-697A

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

September 21, 2017

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 regard to complaint 17-55. The Board seeks to file a formal complaint against an unlicensed funeral establishment and a licensed funeral director for operating and advertising the funeral establishment without an establishment license, operating the funeral establishment at an unlicensed location, and operating the funeral establishment without a funeral director in charge. In this case, the licensed funeral director does have a license as a funeral director, but does not have an Oklahoma embalmer license.

The Funeral Services Licensing Act, 59 O.S.2011 & Supp.2016, §§ 395.1 – 396.33, authorizes the Funeral Board to regulate the licensing of “funeral directors, embalmers, funeral establishments, commercial embalming establishments and crematories[.]” 59 O.S.2011, § 396.2a(5); *see also id.* § 396.2a(2-4), (6-8), (18-19). The Act empowers the Board to “[i]nvestigate alleged violations of the Act or the [Board’s] rules,” “[i]nitiate disciplinary, prosecution and injunctive proceedings against any person or entity who violates any of the provisions of the [Act] or any rule promulgated pursuant thereto[.]” and to “[e]stablish and levy administrative penalties against any person or entity who violates any of the provisions of the [Act] or any rule promulgated pursuant thereto[.]” *Id.* § 396.2a(9), (11), (12); *see also* 59 O.S.Supp.2016, § 396.12c(5), (8), (14). The Act provides that any person that “maintain[s] the business of a funeral establishment” is required to be licensed by the Board and that “any funeral establishment” itself must also be licensed by the Board. 59 O.S.2011, § 396.3a(1)(b), (2). Elsewhere, the Act specifically provides that “[n]o person shall operate a funeral establishment . . . unless the person has obtained the license specified by [the] rules promulgated pursuant to the [Act] and has otherwise complied with the provisions of the [Act].” *Id.* § 396.6(A). The Act also states that “[a] funeral establishment shall not do business in a location that is not licensed as a funeral establishment, shall not advertise a service that is available from an unlicensed location, and shall advertise itself by the name that the establishment is licensed pursuant to the [Act].” *Id.* § 396.12(B). Furthermore, the Act makes it unlawful for any person to “act or represent themselves as a funeral director . . . or operate a funeral establishment . . . without a current license or registration issued pursuant to the [Act].” *Id.* § 396.12a(B). Finally, “[e]very funeral establishment . . . [is required to] be operated by a funeral director in charge.” *Id.* § 396.12(C). The Act defines a funeral director in charge as “an individual [that is] licensed as

both a funeral director and embalmer designated by a funeral service establishment[.]” 59 O.S.Supp.2016, § 396.2(12). The proposed action of the Board seeks to enforce the above-referenced requirements. The Board may reasonably believe that the filing of a formal complaint will deter future violations.

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, welfare and safety.



MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA



RYAN CHAFFIN
DEPUTY CHIEF – ASSISTANT ATTORNEY GENERAL