



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Division of Marketing Practices

Craig Tregillus  
ctregillus@ftc.gov

Direct Dial: (202) 326-2970  
Facsimile: (202) 326-3395

August 21, 2007

T. Scott Gilligan, Esq.  
Gilligan Law Offices  
3734 Eastern Ave.  
Cincinnati, OH 45226

Dear Mr. Gilligan:

This letter responds to your inquiry about a prior staff opinion interpreting the FTC Funeral Rule ("Rule") which concluded, *inter alia*, that a funeral provider may not charge a storage fee if a third party casket is delivered "several days before it is needed for a visitation or funeral service."<sup>1</sup> You ask whether the opinion applies only to "at need" arrangements made after a death, as it indicates, or whether the same reasoning would also apply to prohibit a storage fee if a third party casket were delivered shortly after "pre-need" funeral arrangements are made by a consumer who "would not need the casket for some indeterminate time."

The prior opinion was based on the prohibition in section 453.4(b)(1)(ii) of the Rule which bars funeral providers from charging "any fee as a condition to furnishing any funeral goods or funeral services to a person arranging a funeral" other than the basic services fee, payments for the funeral goods and services selected, and payments for items required to meet legal, cemetery or crematory requirements.<sup>2</sup> A related "safe harbor" provision in section 453.4(b)(2)(ii) of the Rule provides, however, that "[a] funeral provider shall not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide."<sup>3</sup>

It is staff's opinion that a request for free storage of a third party casket made in connection with pre-need arrangements would be "excessively burdensome." Consequently, a funeral provider would be protected by the safe harbor provision from liability for violating the Rule by "failing to comply" with such a request and refusing to store a third party casket for free for some indeterminate time.

---

<sup>1</sup> Staff Opinion to Joseph J. DellaVecchia, Jr. (July 12, 2007) at 1, *available at* <http://www.ftc.gov/bcp/online/edcams/funerals/opinions/opinion07-4.pdf>.

<sup>2</sup> 16 C.F.R. § 453.4(b)(1)(ii) (emphasis added).

<sup>3</sup> 16 C.F.R. § 453.4(b)(2)(ii).

T. Scott Gilligan, Esq.  
Gilligan Law Offices  
Page 2 of 2

As you know, the views expressed in this letter are those of FTC staff. They have not been reviewed, approved or adopted by the Commission, and they are not binding on the Commission or any individual Commissioner. However, they do reflect the views of FTC staff charged with enforcement of the Funeral Rule. Staff Funeral Rule opinions are routinely posted on the FTC website at <http://www.ftc.gov/bcp/online/edcams/funerals/staffopinions.shtm>.

Sincerely,

/s/

Craig Tregillus  
Funeral Rule Coordinator