

Graham, Putnam & Mahoney Funeral Parlors

041

WM GRAHAM CORP.

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Tel. (508) 755-3183
1-800 852-0115

FUNERAL DIRECTORS
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PETER A. STEFAN
PRESIDENT-TREASURER

838 Main Street, Worcester, MA 01610-1444

July 26, 1999

P984407
B25833400041

Secretary, Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: 16 CFR Part 453
Comments & Opinions

Dear Sir/Madam:

I, as a Funeral Director believe there is a need for the Funeral Rule in its basic concept, and my comments are not made as a protest of the Funeral Rule, they are to address some of the il-logical rules and statements which appear in the FTC 1994 Business Guide. Some of these are arbitrary, capricious, discretionary, in-flexible, and in some instances disparaging.

It is apparent they were written by well in-tentioned people who had little knowledge of Funeral Service or its workings on a day to day basis. I have attached copies of the Funeral Business Guide for 1994, and have highlighted the statements relative to my comments.

WHEN SHOULD THE GPL BE OFFERED? (pages 6 & 7)

Although the Guide states that you do not have to give a GPL when some one comes to your business, a following statement states that the triggering event for giving the GPL is a face-to-face-meeting. This is an ambiguous statement. Prior to giving the GPL we are advised that we may offer our condolences (the word "may" denotes permission), and I reserve the right as to whether or not I choose to do so. Regarding the discussion of Veterans Benefits and Death Certificates as preliminary matters: Veterans Benefits could involve prices of Funerals, and the only information to discuss on death certificates, of interest to the Family, would be the cause and time of death and method of filing to procure a certified copy of death.

The first thing that is done with a Family, prior to discussing prices should be the completion of a vital statistics form or data slip, and asking a Family if they desire a regular Funeral with burial,

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a Direct Cremation, Cremation with viewing, or if the Remains of the deceased are an Anatomical Gift. The Family has to tell the Funeral Director the type of funeral/disposition they want, then the Funeral Director can tell the Family what he/she can arrange for them, the GPL can then be presented. To present the GPL prior to asking for personal information of the deceased can detract from getting the correct information for the death certificate, Obituary, Clergy,

The statement by the FTC that the GPL must be given at a face-to-face-meeting and that it can occur anywhere not just at the Funeral Home (anywhere is defined as in or to any place), does this mean while you are out to dinner, on your day off, at the beach, leaving to direct a Funeral, etc.????

On a few occasions I have had people or individuals come to the Funeral Home inquiring about prices for Funerals just as I was leaving to direct a Funeral. Due to the fact that I was the only Licensed Funeral Director (in Massachusetts as in many States, only a Licensed Funeral Director can direct a Funeral) in attendance I had to tell the Family that the Funeral had to be held up, and also notify the Clergy that we would be arriving late for the Catholic Funeral MASS, and on one occasion the MASS had to start at 9:00 AM promptly as there was another Funeral MASS at 10:00 AM, we were late and the Funeral MASS had to start without the Remains or Family present as we were 10 minutes late. Needless to say the Family was upset with me and may result in us not being called by the Family again.

The statement that you must give a GPL even if the discussion takes place in the family's home: obviously you would as the Casket Price List and Outer Burial Container Price List would have to be presented as the Funeral Arrangements would be concluded at the residence. Giving out a GPL while removing Remains from a Hospital or Nursing Home is something that would rarely happen as families are rarely ever present at that time, and if they were it would be an inappropriate time. Requiring Funeral Director's and their employees to carry GPL'S everywhere they go is un-realistic.

Also, it would be more honest if the Shoppers from the FTC, Consumer Groups, AARP, et al, would just ask for a GPL without the often used comment that they have a relative dying in a Nursing Home or Hospital. Honesty is always a winner.

(2)

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(3)

EXCEPTION

When we are removing Remains from a residence to bring to the Funeral Home we may request authorization from the family to embalm. This question is rarely asked to a family as when a death occurs at home emotions most of the time can be out of control especially if the death is sudden, even when it is expected. Usually the question of embalming is brought up at the time of the Funeral arrangements and most Funeral Director's wait until that time, to ask for authorization to embalm and make the necessary disclosure. At the time the deceased is being removed from the residence, should a family inquire about prices, we would have to put the Remains in the Hearse and tell the family: I have a GPL in the Hearse which I will bring in to you. Would it not be more appropriate and respectful to tell the family that prices can be discussed when they come to the Funeral Home to make arrangements?

The FTC is remiss here in not requiring that if the family authorizes embalming, they are not told the cost, embalming is a DECLINABLE FEE. The scenario here is the family comes to the Funeral Home to make arrangements and reads the cost of embalming on the GPL as 395.00. The comment could be: Why didnt you tell me embalming was expensive I would have had my Uncle Harry cremated. There should be no exceptions on presenting the GPL where costs are involved.

In my opinion, for the protection of the Funeral Director, there should be an FTC approved receipt for the GPL stating it is given with no obligation to the recipient. Many people will not sign a receipt for the Funeral Director.

Imagine asking a ninety year old lady six months later if she received a GPL. If she forgets, you are in trouble.

In my opinion appointments should be an option available to the Funeral Director to give Funeral information or a GPL to the public, appointments are required in almost all businesses or professions. I have called the FTC Office and told them I wanted to come in at a certain time, I was told I needed an appointment. I think Funeral Director's should be given the same consideration.

(3)

The General Price List

The General Price List (GPL) is the keystone of the Funeral Rule. It must contain identifying information (see page 9), itemized prices for the various goods and services that you sell (see pages 13-17), and other important disclosures (see pages 9-12). The GPL enables consumers to comparison shop and to purchase, on an itemized basis, only the goods and services they want.

Who Gets a GPL?

You must give the General Price List to anyone who asks, in person, about funeral goods, funeral services, or the prices of such goods or services. You must give the GPL to such individuals to keep. The request for information does not have to come from a consumer or someone who wants to make funeral arrangements now or in the future. You must give a GPL to all persons who inquire about funeral arrangements. This may include competitors, journalists, and representatives of businesses, religious societies, government agencies, or consumer groups.

Note: If someone asks you about the goods and services that you sell, you must give that person a General Price List. If you are uncertain whether the Rule applies in a particular situation, it would be sensible to provide the list.



When Should the GPL Be Offered?

You do not have to hand out the General Price List as soon as someone walks into your business. But, you must offer the price list when you begin to discuss any of the following:

- the type of funeral or disposition that you can arrange;
- the specific goods and services that you offer; or
- the prices of your goods and services.

Before giving a GPL to a bereaved individual, you may offer your condolences and discuss preliminary matters like veteran's benefits or death certificates.

The triggering event for giving out the GPL is a face-to-face meeting. The face-to-face meeting can occur anywhere, not just at the funeral home. For example, you must give out a General Price List even if the discussion of prices or arrangements takes place in the family's home or while removing the deceased from a hospital or a nursing home. You should tell your employees to carry extra price lists with them.

Exception: You are not required to offer a General Price List if you remove the deceased for transportation to the funeral home and, at that time, only request the authorization to embalm. When you request authorization to embalm, however, you also must:

Disclose that embalming is not required by law (except in special cases, if relevant); and

Refrain from further discussion about prices or the selection of funeral goods or services while you remove the deceased. Any further discussion of prices or the selection of goods or services at this time would trigger the requirement to provide a GPL.



What About Phone or Mail Inquiries?

You must give certain information to people who telephone (see page 26), but the Rule does not require you to send callers a General Price List. Similarly, you do not have to send a GPL in response to mail inquiries about funeral goods and services. Of course, you certainly are free to send a GPL to someone who calls or writes for information if you wish to do so. However, if a telephone or mail inquiry is followed up by a meeting at the funeral home or elsewhere, you must provide a GPL at that time.

Note: Some states require funeral providers to mail a price list upon request. You should check to see what the requirements are in your state.



Does the Rule Require the GPL Be Given to Keep?

A verbal offer of a GPL is not enough to comply with the Rule. You cannot merely tell consumers that a GPL is available for inspection. You also cannot show them a GPL in a booklet or binder where it appears that there is only one copy available or that the booklet is solely for the funeral director's use. You must physically offer consumers a General Price List that they can keep and take home with them. If the consumer does not want to accept or look at the General Price List, you do not have to do anything else. However, you should do nothing to discourage customers from looking at the GPL, such as telling them that it is unnecessary or difficult to understand.

Note: You cannot charge a fee for the price list or place any conditions upon giving consumers information that the Rule requires you to give to them. You must give all required information to anyone who asks, free of charge.

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TELEPHONE PRICE DISCLOSURES Page 26 FTC Guide

Most Funeral Director's have been giving price information over the telephone long before the inception of the Funeral Rule. The telephone is a source of business for the Funeral Director.

The following statements clearly show the lack of knowledge and understanding the FTC possesses regarding Funeral Service:

You do not have to give price and other information after business hours if it is not your normal practice to do so;

Funeral Service does not have after business hours, we are available 24 hours a day

You can tell consumers who call during non-business hours that you will provide the information during regular business hours;

In Funeral Service there is no such thing as non-business hours, this would be telling a consumer to go elsewhere.

However, if a consumer calls after hours to inquire about an at-need situation, and it is your practice to make funeral arrangements during non-business hours, you should provide price or other information the consumer requests.

Funeral Directors make at-need arrangements 24 hours a day,

PROTECTION FOR THE FUNERAL DIRECTOR ON TELEPHONE DISCLOSURES

I believe that most Funeral Director's comply with the telephone disclosure rule. Should someone complain to the FTC that they did not receive price information over the telephone (such as a disgruntled customer of the Funeral Home, relative or friend of a competitor, etc.), the Funeral Director has no way of proving that he gave the information.

(4)

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The FTC states that their policy is to keep complaints confidential, saying that without it, fewer people would report complaints, adding that if it is a specious complaint, they don't follow up on it. It is my belief in the above hypothetical example that the FTC would advise the Funeral Director of the complaint and side with the consumer. The Funeral Director has no defense as he/she cannot face the accuser.

In my opinion, to avoid the above situation: I believe the consumer should have to give their name and address only for the following reasons:

1. The Funeral Director can keep a log as to name, address, date and time.
2. The consumer can be sent a GPL corroborating the telephone information, this gives the consumer something tangible to look at and peruse in more detail, rather than try to remember what was told over the telephone.
3. The consumer, after receiving price information has the option to give an in-correct name and address. If the GPL is returned, the Funeral Director can keep it on file, noting the log information, unopened, proving that it was sent.

I receive approximately 5-6 price inquiry calls weekly and most consumers will give their name and address, and a GPL is mailed to them. This has increased my pre-need and at-need business. The above would at least protect the Funeral Director against frivolous complaints, and get the GPL into the hands of more consumers, especially some of the elderly who cannot come to the Funeral Home.

The FTC states that if you are in the middle of one arrangements conference when another family calls about your offerings, you can take a message and return the call at a later time. This does not apply if a person comes to your door, you must interrupt your arrangements conference to deal with the person who comes to your door without an appointment. This is un-fair to the first family.

(5)

Telephone Price Disclosures

You must give consumers who telephone your place of business and ask about your prices or offerings accurate information from your General Price List, Casket Price List, and Outer Burial Container Price List. You also must answer any other questions about your offerings and prices with any readily available information that reasonably answers the question.⁽¹⁷⁾

Note: You cannot require callers to give their names, addresses, or phone numbers before you give them the requested information. You can ask callers to identify themselves, but you still must answer their questions even if they refuse to do so. You cannot require consumers to come to the funeral home in person to get price information.



You can use an answering machine or answering service to record incoming calls. However, you must respond to questions from callers on an individual basis.

Example: Your answering machine can have a message telling consumers to call a specified number during business hours for information about prices and offerings. You need to provide the requested information when consumers call during those hours, or, you can have an answering machine or

answering service take consumers' names and phone numbers so that you can return the calls at your earliest convenience.

You may have an employee answering your phones who can respond to easier questions regarding your offerings and prices by referring to the printed price lists, but who refers more difficult questions to you. If you are unavailable when the call comes in, the employee can take a message so that you can return the call later.

You do not have to give price and other information after business hours if it is not your normal practice to do so. You can tell consumers who call during non-business hours that you will provide the information during regular business hours. However, if a consumer calls after hours to inquire about an at-need situation, and it is your practice to make funeral arrangements during non-business hours, you should provide price or other information the consumer requests.

If you are in the middle of one arrangements conference when another family calls about your offerings, you can take a message and return the call at a later time.



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(6)

MISREPRESENTATIONS PROHIBITED BY THE RULE Page 27 FTC GUIDE

EXAMPLE:

A family wants to arrange an immediate burial but does not want to pay for embalming, embalming is not a State requirement, before burial takes place, one family member wants to look briefly at the deceased by lifting the lid of the Casket. (how long is briefly) This does not constitute formal viewing.

First of all we do not allow the public to lift the lid of the Casket as they could cut their finger on the lock or the lid could fall on their hands or head, which could result in a lawsuit. Where does the FTC come up with one family member wants to look at the deceased? If one family member wants to look who do we allow to look? -the Mother, Father, Children, etc... I handle many minority Funerals where 10 or 20 family members would want to come in and look. If you tell other family members they cannot look, it could result in a complaint or lawsuit, it certainly would be poor public relations. This opens the door for public viewing without embalming.

ANOTHER PROBLEM: if the deceased is emaciated, purging, causing an odor, and upon viewing by one family member or members, a member or members suffers a medical setback, this could no doubt result in a lawsuit. The answer here is to get a release of liability signed prior to allowing the viewing. This would have to be a FTC mandated release as it is their rule and conditions that allow the above. This would protect the Funeral Director.

The FTC tells us that in these situations we cannot charge for other preparation of the body if the family declines embalming (posing the features, sanitation, disinfecting if the person died of a communicable disease, these chemicals are expensive). Should the family want to kiss or touch the deceased that has not been embalmed, and has died of a communicable disease, before we allow it, we can have release of liability forms signed by one or more family members. The above situations should be at the discretion of the trained Funeral Director, not by people who have little or no experience in Funeral Service, or have never been in the above situation.

(6)

Misrepresentations Prohibited by the Rule

The Funeral Rule prohibits specific misrepresentations in six areas.⁽¹⁸⁾

1. Embalming

You cannot tell consumers that state or local law requires embalming if that is not true. If state law does require embalming, you may tell the family that embalming is required due to the specific circumstances.

Example: Your state law requires either refrigeration or embalming after a certain period of time. If you have refrigeration facilities available, you must give the consumer the option of either refrigeration or embalming.

You also must tell the consumer in writing that embalming is not required by law except in special circumstances, if relevant. You do this by including on your GPL the mandatory embalming disclosure discussed earlier on page 10.

Note: You must make this disclosure to all consumers, even if embalming is necessary.

Unless state or local law requires embalming, you may not tell consumers that embalming is required for practical purposes in the following situations:

- When the consumer wants a direct cremation;
- When the consumer wants an immediate burial; or

- When refrigeration is available and the consumer wants a closed-casket funeral with no formal viewing or visitation.

Example: A family wants to arrange a funeral with a formal viewing. The funeral will take place three days after death has occurred on a hot summer day. Your state does not require embalming. You do not have refrigeration facilities. In this situation, you can tell the family that the funeral home requires embalming as a practical necessity to delay decomposition of the remains and to preserve them for viewing. You may not tell the family that the law requires embalming because this is not the case.

Example: A family wants to arrange an immediate burial, but does not want to pay for embalming. Embalming is not required by your state law. Before burial takes place, one family member wants to look briefly at the deceased by lifting the lid of the casket. Here, you may not tell the family that embalming is required. The request to see the deceased does not constitute a formal viewing.

In situations like the above example, you also cannot require the family to pay for "other preparation of the body," if they decline embalming.

2. Casket for Direct Cremation

You cannot tell consumers that state or local law requires them to buy a casket if

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(7)

PRIOR APPROVAL FOR EMBALMING (exception-paragraph 3 Page 33)

This is by far the most blatant of the FTC Funeral Rules. Copy of Rule 453.5 which states SERVICES PROVIDED WITHOUT PRIOR APPROVAL, WHICH IS A CONTRADICTION. Throughout the Rules approval is needed for everything.

EXAMPLE:

You receive a call from a Nursing Home to remove a deceased individual, as you are listed as the Funeral Home to call. You are unable to contact a family member or authorized person. In trying to contact the family, you must exhaust all means known, given the time constraints. The FTC does not define due diligence, all means known, or provide a time limit. If you have refrigeration you may be required to take more steps (like what???) all steps were exhausted if you had no refrigeration.

The family is located six days after the date of death; can we charge for refrigeration if the family selects Direct Cremation??? If the family wants embalming, can we charge for refrigeration and embalming???

The FTC states you may embalm the Remains if you have no reason to believe the family does not want embalming. This is a dangerous assumption to make from a standpoint of liability. How do you come to this conclusion??? Every Funeral Director does not know all the families he serves. Some families have members that believe in full-service Funerals and some who believe in Direct Cremation.. Why is the FTC even involved in this type of situation???

Assuming you embalm the Remains, and un-beknown to you the deceased had converted to Judaism or become a Moslem. What do you do now???? From a spiritual point of view you have desecrated the Remains, this no doubt would leave you liable for a possible lawsuit or complaint, the FTC does not discuss this possibility. The FTC further states that if the family wants a formal viewing you can charge them for embalming, if they decide on Direct Cremation, you cannot charge them for embalming.

(7)

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If you embalm the Remains you are doing this as a consideration for the family, should they desire to have formal viewing, it should be the Funeral Director's decision... whether or not to charge for embalming, not the FTC.

The above situation is not a remote possibility, it happens to me 3-5 times a year, but I have refrigeration facilities, most Funeral Homes do not. The FTC should not be involved in this type of situation, it should be left to the disgression of the trained Funeral Director.

Assuming we do not use any of the options on the previous page, it then leaves us with an immediate burial. The question is where, if we know of a family lot most cemeteries require that the owner of the lot sign an interment order, if it is a multiple lot which grave do we use, do we use a cement grave box or a vault, what type of Casket, religious service. Did the deceased leave special clothing, information for an obituary, etc...If we follow through with the immediate burial, we have charged a family without giving them a GENERAL PRICE LIST, if there is no family lot that we know of, the other option is Pauper's Field, in order to obtain one of these lots the deceased must be on Public Assistance, if not, a grave cannot be obtained. My question to the FTC is WHAT DO WE DO NOW???

Most Hospitals, Medical Examiner's Offices will not store un-embalmed Remains, this also applies to cemeteries that have outside TOMBS, most of which are old and not secure.. If one of these options were used, most families would resent the choice, and if they had desired formal viewing would have preferred embalming. It is un-fortunate that the FTC and Funeral Service critics consider embalming a method the Funeral Director uses to extract additional money from the consumer. rather than a method to preserve the Remains.

The last scenario would be if we followed through with an immediate burial, and when the family was located they informed us that their loved one wanted to be cremated.

(8)

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Could a family refuse to pay for the charges incurred with the immediate burial???

Would the Funeral Director be responsible for any charges required to rectify the immediate burial to direct cremation if this is what the family would have desired, such as a disinterment charge???

Could a family sue the Funeral Director because he didn't preserve the Remains for the family to view???

Could a family refuse to pay any charges as they did not receive a General Price List and a Statement of Goods and Services Selected and Payment Agreement???

A simple answer to resolve the situations described in the previous pages would be: if the Funeral Director is confronted with this situation and does not have refrigeration and does not want to assume that the family would not want embalming, after 2-3 days the Board of Health could be contacted and their permission requested that the Remains be embalmed as the lack of embalming could cause a Public Health problem. The family should have to pay for the embalming whether they chose formal viewing, direct cremation or immediate burial.

(9)

3. All of the following apply:

- You are unable to contact a family member or other authorized person after exercising due diligence. In trying to contact the family, you must exhaust all means known, given the time constraints.

Note: If refrigeration is available, you may be required to take more steps to contact the family and to obtain embalming authorization than if no refrigeration is available.



- You have no reason to believe that the family does not want embalming performed.
- After embalming the body, you obtain subsequent approval. In seeking approval, you must tell the family that if they select a funeral where embalming would be required (such as a funeral with formal viewing), you will charge a fee, but that you will not charge a fee if they select a funeral where embalming would not be necessary (such as a direct cremation with a memorial service). If the family then expressly approves embalming or chooses a funeral where embalming is required, you may charge them for the embalming you performed. But, if the family chooses a funeral where no embalming would be required, you cannot charge for the embalming.

Note: The required disclosure regarding embalming on the itemized Statement (see page 25) will let consumers know that they do not have to pay for embalming if you did not get their prior approval.

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§ 453.5 Services Provided Without Prior Approval

(a) Unfair or Deceptive Acts or Practices

In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:

(1) State or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make; or

(2) Prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or

(3) The funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider must disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(b) Preventive Requirement

To prevent these unfair or deceptive acts or practices, funeral providers must include on the itemized statement of funeral goods and services selected, required by § 453.2(b)(5), the statement: "If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below."

§ 453.6 Retention of Documents

To prevent the unfair or deceptive acts or practices specified in § 453.2 and § 453.3 of this rule, funeral providers must retain and make available for inspection by Commission officials true and accurate copies of the price lists specified in §§ 453.2(b)(2) through (4), as applicable, for at least one year after the date of their last distribution to customers, and a copy of each statement of funeral goods and services selected, as required by § 453.2(b)(5), for at least one year from the date of the arrangements conference.

§ 453.7 Comprehension of Disclosures

To prevent the unfair or deceptive acts or practices specified in § 453.2 through § 453.5, funeral providers must make all disclosures required by those sections in a clear and conspicuous manner. Providers shall not include in the casket, outer burial container, and general price lists, required by §§ 453.2(b)(2)-(4), any statement or information that alters or contradicts the information required by this Part to be included in those lists.

§ 453.8 Declaration of Intent

(a) Except as otherwise provided in § 453.2(a), it is a violation of this rule to engage in any unfair or deceptive acts or practices specified in this rule, or to fail to comply with any of the preventive requirements specified in this rule;

(b) The provisions of this rule are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

(c) This rule shall not apply to the business of insurance or to acts in the conduct thereof.

§ 453.9 State Exemptions

If, upon application to the Commission by an appropriate state agency, the Commission determines that:

(a) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule;

then the Commission's rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the state requirement.

By direction of the Commission.

Donald S. Clark
Secretary

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(10)

NON-DECLINABLE-BASIC SERVICES FEE

Many critics consider this a loophole provided by the FTC for us to include all our overhead. Where would the critics like us to put our legitimate overhead?? Such as: Salaries, Payroll Taxes, Real Estate Taxes, Insurance, Utilities, Telephone, Licenses, Supplies, Federal & State compliance costs, Mortgages, Interest, Landscaping, Automobiles, etc.. and the general maintenance of an up-to-date Funeral Home, which the public demands. Without these qualities in place, a Funeral Home won't do much business.

Some critics would have us include it in the Casket markup as was done in some instances prior to the inception of the Funeral Rule. This would put the Funeral Director at a distinct dis-advantage in competing with third party Casket Sellers who have much lower overhead.

(10)

Graham, Putnam & Mahoney Funeral Parlors

WH GRAHAM CORP.

Tel. (508) 754-1717

Tel. (508) 755-3183

1-800 852-0115

FUNERAL DIRECTORS

ESTABLISHED 1910

PETER A. STEFAN
PRESIDENT-TREASURER

838 Main Street, Worcester, MA 01610-1444

July 26, 1999

(11)

EXPANDING THE FUNERAL RULE TO COVER PROVIDERS ON THE FRINGE OF FUNERAL SERVICE

1. CEMETERIES

Cemeteries provide grave openings, sell graves and mausoleum space. If they sell cement grave containers or vaults. they generally do not sell these items to the general public, they are ordered through the Funeral Director. They have provided itemized price lists long before the Funeral Rule required them of Funeral Director's.

2. CREMATORIES

Crematories provide Cremation Services, and some sell URNS and Niches for Cremains. They also have provided price lists for many years.

3. THIRD PARTY CASKET SELLERS

It is assumed that they already provide a price list, as Caskets are the only merchandise they sell.

4. MEMORIAL SOCIETIES

Memorial Societies for the most part provide people with information on how to arrange a Funeral or Cremation. They do not provide Funeral Services.

5. MONUMENT DEALERS

Monument Dealers do not provide Funeral Services.

It is interesting to note that few States have Regulatory Agencies or Commissions relative to the above groups. Consumer complaints are handled through the oversight Agencies already in existence.

(11)

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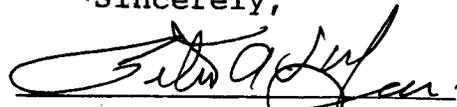
July 26, 1999

(12)

SUMMARY

1. The Funeral Rule has not increased competition in an effort to lower costs for the consumer, it in fact has increased costs.
2. The majority of families choose a Funeral Director or Funeral Home because of ethnic or religious background, past experience, confidence and trust, attractiveness and convenience of the Funeral Home. Cost is usually not a factor. People who shop usually have limited funds to spend on Funeral Services.
3. The Funeral Rule in some ways is an experiment in Consumer handholding. It is absurd to think that the majority of people lose their minds, judgement, sense of values, and shrewdness when a death in the family occurs. The FTC and Funeral Critics at times, misjudge the intelligence of the American Public.
4. Many Funeral Service Providers and Funeral Associations feel that the Funeral Rule should be extended to cover other so called Funeral Service Providers. This reflects a "MISERY LOVES COMPANY" attitude.
5. Enclosed, copy of partial report of the Subcommittee on Activities of Regulatory Agencies relative to the Funeral Rule and its effect on small business. This report dates back to 1976, some of the comments still effect Funeral Service today.
6. Enclosed, copy of dissenting statement by James C. Miller III, Chairman Federal Trade Commission, on the Funeral Rule----- (Federal Register, Volume 47, No. 186, September 24, 1982), Some of his comments apply to Funeral Service today.

Sincerely,



Peter A. Stefan

FEDERAL TRADE COMMISSION'S PROPOSED
FUNERAL INDUSTRY TRADE REGULATION RULE:
ITS EFFECT ON SMALL BUSINESS

A REPORT

OF THE

SUBCOMMITTEE ON ACTIVITIES OF REGULATORY
AGENCIES

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES



OCTOBER 20, 1976.—Committed to the Committee of the Whole House
on the State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

89-006 O

WASHINGTON : 1976

D. Effect on Small Business

"But generally it has appeared to me," observed Congressman Bedell, "that the more we impose bureaucratic regulations upon any industry, the more difficult we make it for the small operator to continue to exist." (Hearings pt. III, p. 463.)

The subcommittee finds itself in complete agreement with Mr. Bedell's conclusion. Government regulations so often have a distinct anti-small-business bias because the fixed costs of compliance can be better borne by larger firms having a greater number of income-producing units. The proposed FTC funeral T. R. R. is no different. Larger funeral homes can spread the cost of compliance with the regulation (e.g., administrative costs, capital investment, legal fees, and the compiling, printing, and completing of forms) over a greater number of funerals, thus deriving a competitive advantage from the cost of complying with the regulation.

According to Business Week magazine—

The pinch of lost volume and increased costs of doing business will be hardest on the 50 percent of U.S. funeral homes that conduct fewer than 100 funerals a year. (Business Week, October 6, 1975.)

The article then quotes Robert L. Waltrip, chairman of Service Corp. International, the largest funeral operator in the country:

Rules like these mean a real opportunity to us because independent funeral directors will be more willing to join our company.

SCI is the largest funeral operator in the country with 161 funeral homes, 8 cemeteries, and 10 crematories. In 1975 it earned \$4.8 million on revenues of \$75 million, according to Business Week.

Besides, by accelerating the trend toward bigness, the proposed regulation does damage to the professional reputation of funeral directors.

As Congressman McCollister said at the hearings, the FTC held on the proposed regulation:

The FTC would require funeral directors to provide consumers with a statement telling them what is not required by law for funerals. It would demand they tell their customers where they can buy like goods for less.

It is anathema to the American enterprise system. The consequences of this aspect of the regulation will be to destroy the personal integrity, self-esteem, and community respect of honest funeral directors, who, in my opinion, constitute the vast majority of the funeral directors in this country.

Mr. McCollister later said, in the question and answer session—

The inference that runs through the regulation is that there is gross consumer fraud and misrepresentation and that there are unfair, deceptive practices in great number. I think that is on the surface, injurious to the reputation of an industry.

The subcommittee believes the regulation, as a result of its strict detail, will seriously infringe upon the decisionmaking rights of businessmen. By forcing funeral directors to itemize all component parts of a funeral, the regulation is prohibiting the funeral director from structuring his business according to the clientele he seeks to serve. Priorities and preferences differ as to people, businesses, and geography and the regulation ought to allow for that kind of flexibility.

The subcommittee also believes that the paperwork imposed upon the small funeral home by the proposed regulation is overburdensome, forcing the funeral director to raise costs, hire additional employees, or go out of business.

The subcommittee concludes that the proposed FTC regulation, if enacted, will adversely affect the small funeral homes in this country.

E. The Cost of Government Regulation

Since January of 1975 the FTC has spent \$449,000 proposing the substantive funeral T. R. R. This does not include staff time spent in 1972, 1973, or 1974, the staff's preliminary investigation, price survey in the District of Columbia, or formal investigation between October 1973 and December 1974. Nor does the cost represent what the FTC will yet spend in revising, promulgating, or enforcing the T. R. R.

those items that are used. If we are required by law to use any items, we will explain the reasons in writing below."

(ii) 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.

§ 453.5 Services provided without prior approval.

(a) *Unfair or Deceptive Acts or Practices.* In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:

(1) State or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make; or
 (2) Prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or

(3) The funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider must disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(b) *Preventive requirement.* To prevent these unfair or deceptive acts or practices, funeral providers must include on the contract, final bill, or other written evidence of the agreement or obligation given to the customer, the statement: "If you selected a funeral which requires embalming, such as a funeral with viewing you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below."

§ 453.6 Retention of documents.

To prevent the unfair or deceptive acts or practices specified in § 453.2 and § 453.3 of this rule, funeral providers must retain and make available for inspection by Commission officials true and accurate copies of the price lists specified in § 453.2(b) (2) through (4), as applicable, for at least one year after the date of their last distribution to

customers, and a copy of each statement of funeral goods and services selected, as required by § 453.2(b) (5) for at least one year from the date on which the statement was signed.

§ 453.7 Comprehension of disclosures.

To prevent the unfair or deceptive acts or practices specified in § 453.2 through § 453.5, funeral providers must make all disclosures required by those sections in a clear and conspicuous manner.

§ 453.8 Declaration of intent.

(a) Except as otherwise provided in § 453.2(a), it is a violation of this rule to engage in any unfair or deceptive acts or practices specified in this rule, or to fail to comply with any of the preventive requirements specified in this rule;

(b) The provisions of this rule are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

(c) This rule shall not apply to the business of insurance or to acts in the conduct thereof.

§ 453.9 State exemptions.

If, upon application to the Commission by an appropriate state agency, the Commission determines that:

(a) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule; then the commission's rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the state requirement.

§ 453.10 Mandatory review.

No later than four years after the effective date of this rule, the Commission shall initiate a rulemaking amendment proceeding pursuant to section 18(d)(2)(B) to determine whether the rule should be amended or terminated. The Commission's final decision on the recommendations of this proceeding shall be made no later than eighteen months after the initiation of the proceeding.

Dissenting Statement of James C. Miller III, Chairman, Federal Trade Commission on Funeral Rule

I cannot in good conscience go along with a final rule affecting the funeral industry at this time. I do not oppose a rule in principle. Indeed, I've always said that this is an area worthy of Commission investigation. But for

the reasons set forth below, I believe that action at this time is ill-advised.

Furthermore, I want to make it clear that I respect the views held by my colleagues on the Commission. This is neither a Republican nor a Democratic issue. It is neither conservative nor liberal. The question is whether the action taken today can be defended. I believe it cannot.

The basic reason for my opposition to today's action is the lack of evidence in the record. That record is woefully inadequate for a proceeding that has lasted 10 years. In my view, the Commission does not have a reliable description of the industry, much less a working knowledge of how it operates. The facts presented are often contradictory, are heavily anecdotal, and may not be representative of industry practices. From what description can be gleaned from the record, two theories seem to fit equally well: (a) That the industry is operating quite effectively; and (b) that the industry is vitiated with market imperfections crying out for governmental intervention.¹

Nor do we have any basis in the record to conclude that the rule approved today will adequately deal with alleged market imperfections, assuming they exist. For example, the requirement that services be "unbundled" can easily be circumvented by funeral directors' simply charging higher prices for services a la carte. (The point about the price of a new automobile's being far less than the summed prices of all new parts is particularly relevant here.)

Moreover, certain provisions may actually harm consumers. For example, the only empirical evidence we have of the effects of forced unbundling (in Minnesota) suggests increased costs to consumers. Also, the requirement of prior authorization before embalming may well raise costs to consumers, diminish their satisfaction with the overall service, or have both effects.

Because of the paucity of evidence in the record, I believe it is likely the courts would sustain a legal challenge to the rule. This risk could have been mitigated if the Commission had taken my recommendation and had reopened the rulemaking record for the submission of additional evidence. The Commission's own "baseline" study, in particular, should have been entered into the record, even if this would have meant a few months delay while the Commission accepted public comment on it.

Portions of the baseline study seriously challenge the theory of market imperfections that is implicit in the Commission's action. For those who think the baseline study actually supports the Commission's rule, it is ironic that by refusing to admit it into evidence the Commission forgoes the opportunity to use the study's results to support the rule, but enable anyone to use it in challenging the Commission's action.

Beyond the integrity and sufficiency of the formal record—on which of course the Commission's decision must be based—there is one other matter I wish to touch upon

¹The memoranda of Timothy J. Muris, Director of the Bureau of Consumer Protection, and Robert D. Todtson, Director of the Bureau of Economics, disclose in detail these deficiencies in the record.

briefly. I believe that the Commission's action today will make it considerably more difficult to resist efforts by the "learned professions" to obtain exemption from FTC laws concerning unfairness and deception, and from FTC enforcement of the antitrust laws. Indeed, there is a plausible argument that the objects of the Commission's action—funeral directors—would be exempt under the language already adopted by the Senate Commerce Committee ("Federal Trade Commission Amendments Act of 1982").

In conclusion, I fear that the Commission has deceived a very vulnerable segment of American consumers. The Commission's action is deceptive because it raises expectations of lower prices for funerals and better service, when in fact we have little evidence to believe the rule would have these effects. It is also deceptive because the rule may well be reversed in the courts. As if this were not enough, the Commission's action places in further jeopardy a much more important matter—the Commission's efforts

to police anticompetitive, unfair, and deceptive practices in the professions.

In view of the inadequacy of the record, I respectfully dissent from the Commission's action. In the larger view of all that is at stake, I fear that in this case the Commission is showing signs of returning to its errant past of regulating first and asking the right questions later.

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