



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

Division of
Marketing Practices

Thomas A. Cohn
Attorney

July 18, 1995

George W. Lemke
Executive Director
Casket & Funeral Supply Association of America
708 Church Street
Evanston, IL 60201

Re: Staff Opinion Regarding Refusal to Sell Caskets Only

Dear Mr. Lemke:

This office has received your recent request for an advisory opinion. In your letter, you ask whether a funeral director must sell a casket to a consumer although he or she has no intent to have services conducted by the funeral home and it is not the practice of the funeral home to sell caskets only or advertise caskets for sale independent of funeral services. Let me begin by setting forth the Rule provisions relevant to your inquiry.

Section 453.4(b)(2)(ii) of the Funeral Rule states:

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.

Section 453.4(b)(1)(i) of the Funeral Rule states:

In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this part

Finally, Rule Section 453.1(i) defines a "funeral provider" as "any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public," and Rule Section 453.1(p) defines the "services of funeral director and staff" as "the basic services . . . that are furnished by a funeral provider in arranging any funeral"

Staff interprets these definitions to mean that the Rule is based upon an understanding that funeral providers are persons

who furnish funeral arrangements, and not persons who simply sell a particular good or service as a separate sales transaction. Therefore, it is impractical, in our opinion, for a business operation thus defined to be required to function as something else, such as a casket seller.

We do not believe it to be the Commission's intention to require a funeral provider to sell an isolated good or service that is not to be used in conjunction with a funeral arranged by that funeral provider. The Statement of Basis and Purpose for the original Funeral Rule supports this view. There the Commission stated that it:

would not consider it a violation of section 453.4(b) for a funeral provider to refuse doing business with a consumer who said 'we have our own casket, transportation, flowers, etc., but wish to use your viewing facilities for two hours next Monday.' The Commission wishes to stress, however, that this provision does not give funeral providers the option to reject arrangements which are practical to provide but which do not comport with the provider's judgment of what is appropriate under the circumstances.

47 FR 42260, 42282 (Sept 24, 1982), fn. 230. Thus, in adopting the Rule, the Commission merely sought to ensure that package pricing was not the only option for consumers making funeral arrangements, and that such consumers could choose and purchase only what they desired for such arrangements.

However, if a consumer asked the funeral home to make funeral arrangements, and the funeral home stated that a casket could only be furnished if the requestor purchased other funeral goods or services, such a response would violate the Rule's anti-tying provision, Section 453.4(b)(1)(i). For those consumers making funeral arrangements, the Rule's anti-tying provision protects them from having to purchase unwanted goods or services, as a condition for receiving the items they do want.

Therefore, the Rule does not require funeral providers to sell a casket or any other item separately to anyone upon demand. The Rule does require funeral providers to allow persons arranging a funeral the freedom to choose and pay for only the goods and services they desire for the funeral.

As you know, the Federal Trade Commission has amended the Funeral Rule, and the changes became effective on July 19, 1994. The enclosed Guidelines explain the Rule's requirements and answer many basic questions about how to comply with the revised Rule. The Guidelines also offer sample price lists and a sample

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statement of goods and services selected to assist you in bringing your forms into compliance with the revised Rule.

Finally, please be advised that the views expressed in this letter are those of the FTC staff. They have not been reviewed, approved or adopted by the Commission, and they are not binding upon the Commission. However, they do reflect the opinions of those staff members charged with enforcement of the Funeral Rule.

I hope that this information is helpful to you.

Sincerely,



Thomas A. Cohn
Funeral Rule Enforcement Staff

Enclosure: 6/94 Funeral Rule Guide