



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

Division of Marketing Practices

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Mr. David Nixon, President
Nixon Consulting, Inc.
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Dear Mr. Nixon:

You have requested clarification of the portion of Staff Opinion 07-2 that addressed the use of a vehicle to obtain death certificates.¹ That opinion stated staff's view that if the use of an automobile to obtain necessary permits and death certificates is "common to virtually all forms of disposition or arrangements" of a funeral provider, the cost should be included in the provider's basic services fee. The opinion added that a separate charge for the use of a vehicle could be included in the provider's General Price List ("GPL") only if the use of a vehicle for that purpose is not "common to virtually all forms of disposition or arrangements."

As an initial matter, the test of whether a service is "common to virtually all forms of disposition or arrangements" does not apply to the 13 specific services the Rule requires a provider who offers those services to itemize in its GPL.² That is because the definition of the basic service fee in Section 453.1(p) of the Rule,³ expressly excludes fees for those services. The Rule states that the basic services covered by the fee are "not to be included in other categories [of the mandatory GPL disclosures] in § 453.2(b)(4)" of the Rule.⁴

Conversely, none of the fees for the specific services that the Rule requires a provider to itemize in the GPL may be included in the basic services fee. These fees must be separately disclosed as mandated by the Rule, regardless of whether or not they are common to "virtually all forms of disposition or arrangements." Accordingly, the costs of "Other Preparation of the Body," "Transfer of Remains," and the use of a "Hearse" should not be included in the basic

¹ Staff Opinion 07-2 (Mar. 21, 2007), available at <http://www.ftc.gov/bcp/online/edcams/funerals/opinions/opinion07-2.pdf>.

² 16 C.F.R. § 453.2(b)(4)(A)-(M).

³ 16 C.F.R. § 453.1(p).

⁴ 16 C.F.R. § 453.2(b)(4).

services fee because the Rule requires funeral providers to itemize the prices of each of these three services separately in the GPL.

You question why a separate charge for the use of a vehicle to obtain permits is not permitted when the use of a vehicle for “Transfer of Remains” is no less “common to virtually all dispositions or arrangements.” The answer is that Section 453.2(b)(4) of the Rule requires an itemized price for “Transfer of Remains,” but does not require an itemized price for the use of a vehicle to obtain permits or death certificates. If the use of a vehicle to obtain permits or death certificates is “common to virtually all dispositions or arrangements,” this cost is basically an overhead cost that should be included in the basic services fee.

You also ask whether it would still be the case that the use of a vehicle to obtain death certificates, although “common to virtually all dispositions or arrangements” of a funeral provider, may not be listed separately in the provider’s GPL if the provider receives remains from other funeral homes that have obtained death certificates already. The answer depends, of course, on the relative proportion of the funeral provider’s arrangements involving receipt of remains from other funeral homes that have obtained the death certificates compared to its regular funeral arrangements, and cannot be answered definitively in the abstract. If the receipt of such remains is infrequent or occasional at best, amounting to a *de minimis* portion of a funeral provider’s business, the provider would have no basis for listing a separate fee in its GPL for the use of a vehicle to obtain death certificates.⁵

Finally, you inquire whether a funeral provider can include a separate charge in its GPL for the use of a vehicle to obtain permits simply by deleting any reference to “obtaining necessary permits” from its description of the services included in the basic services fee. If obtaining permits is not “common to virtually all form of disposition or arrangements,” a funeral provider should not include that cost in its basic services fee, and may list a separate fee in its GPL for obtaining the permits, including the use of a vehicle to do so. On the other hand, if obtaining permits is, in fact, “common to virtually all forms of disposition or arrangements,” the funeral provider should include all the costs of obtaining them, including the use of a vehicle, in its basic services fee.

In view of your questions, it is worth emphasizing that funeral providers may include the cost not only of the services of the funeral director and staff in the basic services fee, but also such overhead costs as the cost of operating a vehicle used to obtain permits or death certificates, as noted above. In addition, there is nothing in the Rule to prevent a funeral provider from placing reasonable limits on the time it will spend and/or the distance it will travel to obtain

⁵ Nothing in the Rule, however, prevents a funeral provider from limiting the quantity of death certificates it will obtain as part of its basic services to the number of copies that is “common to virtually all forms of dispositions or arrangements,” provided that this limitation is spelled out in the description of the “principal basic services provided” in return for the basic services fee as required by § 453.2(b)(4)(iii)(C)(1) of the Rule, 16 CFR § 453.2(b)(4)(iii)(C)(1), and separately listing a fee in its GPL for additional copies.

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permits or death certificates as part of its basic services fee, and listing a separate fee on its GPL for any additional time and/or distance that may be required in unusual circumstances. A funeral provider will, of course, have the burden of demonstrating that any such limits are reasonable, and broad enough to encompass “virtually all dispositions or arrangements.”

As you know, 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 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