

Letter re: Rule v. State law (LA)
ie NO casket stores

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

Division of Marketing Practices

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VIA FACSIMILE AND REGULAR MAIL

May 25, 1998

Michael H. Rasch, Esq.
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Metairie, Louisiana 70002

Dear Mr. Rasch:

I apologize for the delay in responding to your inquiry. I appreciate your concern regarding the interaction of the Federal Trade Commission's Funeral Rule and the state laws of Louisiana.

First, as a matter of background, an essential purpose of the Funeral Rule is to "ensure that consumers have access to sufficient information to permit informed purchase decisions, that consumers are not required to purchase items they do not want and are not required by law to purchase and that misrepresentations are not used to influence consumer purchase decisions." Statement of Basis and Purpose, Funeral Industry Practices Trade Regulation Rule, 59 Fed. Reg. at 1593 (January 11, 1994) (reprinted from the 1982 Statement of Basis and Purpose). As you know, the Funeral Rule governs the activities of funeral providers, who are defined as entities that engage in the sale of both funeral goods and funeral services. In summary, the Funeral Rule: (1) requires funeral directors to provide consumers with a general price list, a casket price list, an outer burial container price list and an itemized statement of funeral goods and services selected by the consumer; (2) prohibits misrepresentations regarding embalming, casket or outer burial container requirements, legal and cemetery requirements, and protective value claims; (3) prohibits funeral directors from requiring the purchase of certain goods

and services as a condition for purchasing other goods and services; and (4) prohibits embalming without prior approval, except in limited circumstances.

You have requested an informal staff advisory opinion regarding the interaction between the rules and regulations of the Louisiana State Board of Embalmers and Funeral Directors and the FTC's Funeral Rule.

1. In reviewing the state law and the rules and regulations of the Louisiana State Board of Embalmers and Funeral Directors does a conflict exist between these provisions and the Funeral Rule concerning the retail sale of caskets?

The Louisiana state law and the Louisiana State Board of Embalmers and Funeral Directors' rules and regulations state that it is an unlawful practice for any individual or entity that is not a licensed funeral director to engage in the retail sale of funeral goods, including caskets. In addition, the Louisiana rules and regulations also require that prices of caskets be available in the display room and in the caskets. The provisions of the Funeral Rule relating to caskets include the provision which prohibits casket handling fees and specific provisions regarding the Casket Price List.

First, the Funeral Rule prohibits charging fees, apart from the Basic Services fee, other than those for the goods or services selected by the consumer or the goods and services required to be purchased as a matter of law. This prohibition was specifically directed at the practice of charging consumers who provided their own caskets a casket handling fee. The Louisiana State Board of Embalmers and Funeral Directors Rules and Regulations touches on a related issue by limiting retail casket sales to licensed funeral directors and licensed funeral establishments. The Funeral Rule does not prohibit this type of regulation, nor does it demand that retail casket sales be open to entities other than licensed funeral establishments. Accordingly, there is no direct conflict between the provisions of the Funeral Rule and the provisions of the Louisiana regulations. This opinion is limited to the interaction between Louisiana state regulations and the FTC's Funeral Rule. It does not reach the issue of whether the Louisiana regulations are in compliance with other FTC rules, regulations and statutes including, but not limited to, those addressing restraint of trade.

Tensions exist, however, between the spirit and intention of the FTC's Funeral Rule and the Louisiana Regulations. Although the FTC's Funeral Rule does not address what entities may sell caskets or what entities a consumer may buy a casket from, the Funeral Rule does encourage consumer choice in the area of funeral goods and services, and the Louisiana statute may have the effect of restricting a consumer's choice of suppliers of funeral goods or their choice of funeral goods and services.

During one of our conversations, you stated that, in Louisiana, some consumers have purchased caskets from funeral homes other than the one where services were performed and that some consumers have furnished home made caskets. Because of these instances, you stated that the

Louisiana regulation did not significantly limit consumers' choices as they could still purchase caskets from competing funeral homes or provide home made caskets. It is likely, however, that limiting the types of entities that may sell caskets may have the overall effect of reducing the number of casket choices or choices of suppliers of caskets.

For additional information, I am enclosing a letter to The Honorable Franklin P. Hall from the Director of the FTC's Bureau of Competition. The letter addressed a similar issue with respect to proposed legislation in the state of Virginia which sought to limit the sales of pre-need funeral planning. The Commission authorized the Director to send this letter, which stated, in pertinent part, that

The Commission is concerned with restrictions that allow only licensed funeral directors to sell pre-need funeral plans, including funeral goods and arrangements for providing funeral services. Such restrictions may harm consumers by preventing the introduction and development of innovative forms of competition and lower cost alternatives for funeral products and services for which the professional expertise of a funeral director is not required. For example, consumers may be harmed if owners of cemeteries and manufacturers of funeral goods are completely prohibited from selling caskets and burial vaults to consumers in Virginia.

Thus, although the Funeral Rule does not directly address this issue, the Commission has previously expressed concerns regarding the competitive effects of regulations which restrict the types of entities which may sell funeral goods.

Second, the Funeral Rule requires funeral providers, defined as entities offering both funeral goods and funeral services, to either list the retail price of each casket on the General Price List or prepare a separate Casket Price list including the effective date of the list and the retail prices and sufficient identifying information for caskets and alternative containers offered. Further, the Funeral Rule requires funeral providers to offer consumers an opportunity to review the Casket Price List upon a discussion of caskets, but prior to showing consumers caskets. The Louisiana State Board of Embalmers and Funeral Directors Rules and Regulations, however, simply require that the funeral service licensee have the prices of caskets available in the display room and in the casket in public view. Note, in order to comply with the FTC's Funeral Rule, funeral providers must provide a casket price list prior to showing the display room.

2. Does the Funeral Rule have any specific provisions which allow the retail sale of caskets by any individual or group?

The FTC's Funeral Rule provisions regarding the sale of caskets are limited to the requirement to provide a Casket Price List, the prohibition against casket handling fees, and the prohibitions against

misrepresenting the necessity of or preservative effects of a casket. The Funeral Rule does not address the retail sale of caskets by a particular individual or group. It neither prohibits nor allows the retail sale of caskets. The prohibition on casket handling fees, however, assumes or encourages a competitive market in the retail sale of caskets.

3. If the Funeral Rule would not apply to a "casket store" is it not proper for such an entity to comply with all state laws concerning the retail sale of funeral merchandise?

The FTC's Funeral Rule governs the activities of funeral providers, who are defined as entities that engage in both the sale of funeral goods and funeral services. Funeral goods are "goods which are sold or offered for sale directly to the public for use in connection with funeral services." Funeral services are: (1) services used to care for and prepare bodies for burial, cremation or other final disposition; and (2) services used to arrange, supervise, or conduct the funeral ceremony or final disposition of human remains. Thus, if a "casket store" engaged solely in retail sale of caskets or even other funeral goods, the Funeral Rule would not apply unless the "store" also engaged in the sale of funeral services.

As the Compliance Guide states, "you must comply with all state regulations, as well as the FTC Funeral Rule," unless your state has been granted an exemption. Louisiana is not exempt from the Funeral Rule, so funeral providers must comply with both the FTC's Funeral Rule and any state regulations.

With respect to entities which are not covered within the definition of "funeral provider," the FTC's Funeral Rule does not apply. The regulation of those outside this definition or such outside entities' compliance with any other regulation is simply beyond the scope of opinion of the staff charged with enforcement of the Funeral Rule.

Please note that the views expressed in this letter are those of staff only. They have not been reviewed, approved or adopted by the Commission, and they are not binding on the Commission. They do, however, reflect the opinions of the staff charged with enforcement of the Funeral Rule.

I hope that you find the above information helpful. Please do not hesitate to contact me if you have any additional questions.

Sincerely,

Laurie Meehan
Funeral Rule Enforcement Staff

Enclosure