



TEXAS FUNERAL SERVICE COMMISSION

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October 15, 1997

Opinions Committee  
Texas Attorney General  
P.O. Box 12548  
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Opinion Committee

Dear General Morales:

The Texas Funeral Service Commission requests the Attorney General's opinion on the meaning of the term "personal supervision" in connection with the provision of acts of funeral service. The legal interpretation of this term is important because it determines the standard of supervision a licensed funeral director or embalmer must provide to a provisional funeral director or embalmer during the course of a provisional licensing program. The term "personal supervision" is defined in Article 4582b, Vernon's Civil Statutes, as follows:

Section 1.

R. "Personal supervision" means that a licensed funeral director or embalmer must be physically present at the specified place and time of the provision of acts of funeral service.

Texas law provides that a license to practice the science of embalming shall not be issued unless and until the applicant therefor has served a provisional license program of not less than twelve (12) months under the personal supervision and instruction of a licensed embalmer. (Article 4582b, Vernon's Civil Statutes, Section 3(D)(1)). (Emphasis added). Moreover, the embalming cases a provisional embalmer assists in handling must be certified by the licensee under whose personal supervision the provisional embalmer performed the work. (Article 4582b, Section 3(D)(1)(c)). (Emphasis added). In contrast, Texas law provides that the funeral service cases a provisional funeral service licensee assists in handling must be certified by the licensee under whom the provisional funeral director performed the work. (Article 4582b, Vernon's Civil Statutes, Section 3(D)(2)(b)). (Emphasis added.) Notwithstanding the fact that different language is used to describe the level of supervision required to be provided a provisional embalmer and provisional funeral service director, Texas law provides in each case that the Commission by rule shall establish guidelines for provisional licensee supervision under which the provisional embalmer licensee and provisional funeral service director licensee are each granted increased responsibilities during the course of their respective programs. (Article 4582b, Vernon's Civil Statutes, Sections 3(D)(1)(b) and 3(D)(2)(c)). These guidelines are found in Commission rule 203.6 (T.A.C. Section 203.6).

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Under Commission rule all work performed by participants in a provisional license program must be performed under the direct and personal supervision of a duly licensed funeral director or embalmer, depending on the provisional license. (22 T.A.C. Section 203.6(a)). (Emphasis added.) Consistent with the Commission's authority to establish guidelines for provisional licensee supervision set forth in the statute the question is whether under Texas law the Commission can prescribe a rule under which a licensed embalmer or funeral director can provide personal supervision to provisional licensee participants in appropriate circumstances (which will be detailed in the rule) by being present on the premises at the time and place that the provisional training occurs; provided the licensed embalmer or funeral director has prior knowledge of the provisional training activity, approves the provisional training activity, and reviews the activity as soon as possible after completion. This would be in contrast to requiring the licensed embalmer or funeral director to be present in the room with the provisional licensee at all times during the course of the provisional training activity.

Any questions regarding this matter may be directed to me.

Very truly yours,



Jeffrey L. Schrader  
Legal Counsel

cc: Eliza May, Executive Director