



TEXAS FUNERAL SERVICE COMMISSION

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The Honorable John Cornyn
Attorney General of Texas
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OPINION COMMITTEE

ATTENTION: OPINIONS COMMITTEE

FILE # ML-42314-01

I.D. # 42314

Dear General Cornyn:

RQ-0476-JC

The Texas Funeral Service Commission's enabling legislation is codified at Occupations Code, Chapter 651. House Bill 3067, 77th Legislature, a copy of which is attached, amended Chapter 651 in several respects. For example, §1.32 added Subchapter N requiring persons who conduct cemetery or crematory business to register with the Commission.

Section 1.13, in part, amended §651.202(c) to require the Commission to investigate each complaint relating to "a person ... registered under this chapter."

Section 1.12 added new §651.1575 which, in part, authorizes the Commission to "inspect a cemetery or crematory only if the Commission receives a complaint about that facility..."

Sections 1.21 and 1.23 add §§651.4055 and 651.4065 which set forth disclosure requirements for cemetery or crematory retail price lists and purchase agreements, respectively.

The Commission's express authority to regulate persons required to register with the Commission by House Bill 3067 is set forth in §§1.25-1.28.

Based on the foregoing, the Commission requests your opinion on the following:

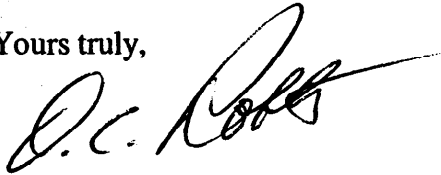
- (1) Is the Commission's authority to regulate persons required to register with the Commission limited to acts, conduct, or circumstances described in §§1.25-1.28 or does the Commission have other regulatory authority over these persons not found in House Bill 3067?
- (2) If the Commission's regulatory authority over these persons is limited by §§1.25-1.28, then is the Commission required by §1.13 to investigate only complaints alleging violations of §§1.25-1.28 or is the Commission literally required to investigate "all complaints" regarding persons required to register regardless of the Commission's authority to regulate the conduct?
- (3) If the answer to (2) is that the Commission must investigate all complaints regardless of whether the Commission may regulate the conduct, what is the Commission to do with the results of investigations under §1.13 that reveal acts, conduct, or circumstances not described in §§1.25-1.28 but that otherwise constitute offensive conduct? For example, assume that a

cemetery owner fails to place a headstone after being obligated to do so by contract. Sections 1.25-1.28 do not appear to give the Commission authority to regulate this conduct, so must the Commission investigate the complaint, and if so, what is the Commission to do with the results of the investigation?

(4) If the answer to (2) is that the Commission's authority to regulate is limited by §§1.25-1.28, then is the Commission's authority to conduct inspections under §1.12 limited to persons made the subject of complaints under §§1.25-1.28 or alternatively, is the Commission authorized to conduct inspections following the receipt of a complaint alleging conduct outside the scope of §§1.25-1.28?

The Commission authorized me to request this opinion at its last meeting held November 27, 2001. Thank you for your consideration of this matter.

Yours truly,

A handwritten signature in black ink, appearing to read "O.C. Robbins", written in a cursive style.

O.C. "Chet" Robbins
Executive Director

Attachment: House Bill 3067