



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable L. D. Hartwell  
County Attorney  
Hunt County  
Greenville, Texas

Dear Sir:

Opinion No. 0-2812

Re: Whether a licensed embalmer may lawfully maintain a place of business in each of two different towns and related questions.

We are pleased to reply to your request of October 7th, submitted by your assistant, Eugene Brady, for opinion on the above and related questions. We appreciate the complete statement of facts and helpful discussion of authorities contained in your letter. The fact situation, as set out in your letter, is as follows:

"A is engaged in the Hardware and Furniture Business in the town of X, Hunt County and as part of this business sells caskets. A is not a licensed Funeral Director. A in a room not connected directly with the main business room of said store equips and provides a room for the preparation of dead bodies for burial, which room meets the requirements of the State Board of Embalming. A then leases this room to B, a licensed Embalmer of the town of L, Hunt County for a stipulated monthly rental and a stipulated amount each time this preparation room is used by B in preparing a body for burial.

"In the case of a death in the town in which A does business those interested either call B directly, or call A who immediately calls B by telephone to come and take charge of the body. A has no part in the preparation or burial of the body. This is handled by B under his own direction as he sees fit. A receives no compensation for calling B to take charge of said funeral. His only interest in the matter being in selling the casket and collecting the agreed rental from B.

"B has complete control over said preparation room, and he personally supervises the burial from the time he receives a call until interment is completed. B lives in a town some twenty-five miles from the town in which A's place of business and said preparation room is located."

We shall assume that B is a duly licensed funeral director as well as embalmer.

Upon these facts you ask our opinion on the following questions:

"Question No. 1: Is A violating any section of Article 4582-a RCS or Article 762-a Penal Code, that is, is A engaged in the business or practice of Funeral Directing in violation of said Articles?"

"Question No. 2: Is B violating said law in assisting an unlicensed person to engaged in the business of Funeral Director as that term is defined by law?"

"Question No. 3: Is it a violation of said Article for B to engage in the practice of Funeral Directing in a town other than the one in which he resides?"

Section 7 of Article 4582a, Vernon's Civil Statutes of Texas, as amended Acts, 1935, reads:

"A 'Funeral Director' is a person engaged in or conducting or holding himself out as engaged in or conducting the business of, (a) preparing, other than by embalming, for the burial or disposal and directing and supervising the burial or disposal of dead human bodies, (b) providing for or maintaining a place for the preparation, for the disposition or for the care of dead human bodies, or (c) who shall, in connection with his name or business, use the words 'Funeral Di-

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rector,' 'Undertaker,' 'Mortician,' or any other title implying that he is engaged in the business here described."

We agree with your conclusion with respect to question 1, that "from the facts stated above it seems clear that A is not violating said section (7) in that he has nothing to do with the conducting of the funeral or burial and is not holding himself out as engaged in or conducting said business", and consequently A is not violating any of the provisions of Article 4582-a, R. C. S., or Article 762-a of the Penal Code.

It necessarily follows, that if A is not engaged in the business or practice of funeral directing, that B can not assist him in so doing, wherefore your second question is answered in the negative.

We likewise agree with your conclusion that your third question should be answered in the negative, and we adopt your discussion thereof as expressing the views of this Department:

"Question No. 3: Rule 4 (promulgated by the State Board of Embalming under authority of said Article 4582a) provides that 'Conducting a Funeral shall mean the personal supervision of a licensed Funeral Director from the time of the first call until interment is completed'. Rule 5 provides: 'The business of Funeral Directing must be conducted and engaged in at a fixed place or establishment; and no person shall open or maintain a place or establishment at which to engage in or conduct or hold himself out as engaging or conducting the business of a funeral Director as defined in said law without a licensed funeral director in charge thereof at all times'.

"Under the facts stated above it appears that B lives in a town some twenty-five miles from the town in which A's place of business and said preparation room is located.

"It seems that Section 4 is not violated by the arrangement set out above for B, a licensed Funeral Director, assumes personal supervision of the body and the funeral from the time of the first call until interment is completed.

"As to Rule 5. Under the arrangement above set out the business of funeral directing is conducted and engaged in at a fixed place or establishment. The only question then as to such rule is to the part of said rule which provides that 'a funeral director must be in charge thereof at all times'. Of course, B would not be personally present and physically in charge of said room at each minute of the day, but it appears to me from the facts that B would be in charge thereof at all reasonable times and at all times when said room was being used or when a funeral was being directed.

"In *Bizelle v. State*, 116 S. W. 2d, page 385, our Court of Criminal Appeals in passing on a law which provided that a beauty school in this state must be 'at all times' under the direct supervision of a registered hairdresser or cosmetologist held that the words 'at all times' appearing in said statute must be given a rational construction consistent with the legislature's intent and must be construed as meaning at all reasonable times. It seems that the words 'at all times' appearing in Rule 5 should be given the same construction, and B, who would be present personally at all times when said preparation room was being used and when a funeral was being directed and supervised and while a body was being prepared for burial and buried, would under a reasonable construction of said rule as set out in *Bizelle v. State* be held to be present and in charge thereof at all times."

Our opinion herein is based solely on the facts presented to us, and upon somewhat different facts we might reach a different conclusion.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED OCT 30, 1940

WRK:BBB

Gerald H. Mann  
ATTORNEY GENERAL OF TEXAS

BY *Walter R. Koch*  
Walter R. Koch  
Assistant

