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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

1995-96
(session year)

Assembly
(Assembly, Senate or Joint)

Committee on Insurance, Securities and Corporate Policy...

COMMITTEE NOTICES ...

- *Committee Reports* ... CR
- *Executive Sessions* ... ES
- *Public Hearings* ... PH

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- *Appointments* ... Appt (w/Record of Comm. Proceedings)
- *Clearinghouse Rules* ... CRule (w/Record of Comm. Proceedings)
- *Hearing Records* ... bills and resolutions (w/Record of Comm. Proceedings)
  (ab = Assembly Bill) (ar = Assembly Resolution) (ajr = Assembly Joint Resolution)
  (sb = Senate Bill) (sr = Senate Resolution) (sjr = Senate Joint Resolution)
- *Miscellaneous* ... Misc

Pat Reuter

FUNERAL DIRECTORS EXAMINING BOARD

1400 E Washington Avenue, Madison, WI 53708
Contact Person: Patricia H. Reuter (608) 266-3423

WEDNESDAY, February 28, 1996 9:00 a.m., Room 179A

AGENDA **INSERTS**

I. CALL TO ORDER
   A. Roll Call: Carlson, Densow, Gill, Janssen, Pfeiffer, Pratt
   B. Declaration of Quorum
   C. Approval of Agenda

II. APPROVAL OF MINUTES **November 14, 1996** **A**

III. ITEMS OF BUSINESS

   A. Legislative Issues

      1. Discussion and Consideration of Pre-Need Legislative Draft (LRB-3677/P3dn) (Copies from previous meeting - Please bring)

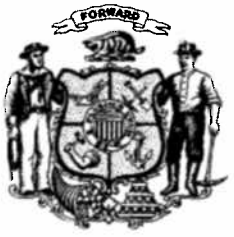
PUBLIC TESTIMONY WITH BE HEARD AT THE BEGINNING OF THE DISCUSSION

   B. Such Other Items as Authorized by Law

ADJOURNMENT

NEXT MEETING: March 19, 1996, Room 291


WISCONSIN STATE LEGISLATURE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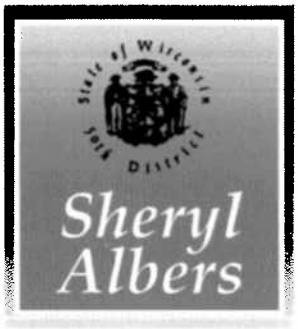

TO: Assembly Insurance, Security, and Corporate Policy members

FROM: Representative Sheryl Albers

RE: Attorney General's opinions on Pre-need

DATE: February 14, 1996

At last week's Insurance committee hearing on Assembly Bill 868, questions were raised concerning Attorney General opinions on the subject of pre-need funeral planning. Attached please find copies of various opinions.

Office: P.O. Box 8952 • State Capitol • Madison, WI 53708-8952 • (608) 266-8531
Message Hotline: (800) 362-9472

Home: S6896 Seeley Creek Rd.• Loganville, WI 53943 • (608) 727-5084

Wis. A.G.'s opinions

FUNERAL DIRECTORS AND EMBALMERS

Eye removals

Special training is required of medical personnel as well as morticians before they perform eye enucleation 77–207

Insurance agent

A plan whereby a funeral service person (a licensed funeral director, operator of a licensed funeral establishment or an employe of the same) also acts as an insurance agent and as such writes a life insurance policy naming as the beneficiary a funeral director or establishment and additionally negotiates a contract wherein the named insured in the policy contracts with a funeral director or establishment for providing burial or funeral services to the insured is illegal 76–291

Insurance beneficiary

Section 632.41(2), Stats., does not prohibit the naming of a funeral director as beneficiary of a life insurance policy in conjunction with a separate agreement between the insured and the funeral director that the proceeds will be used for funeral and burial expenses 71–7

Life insurance policy sales

Funeral service persons may be involved in the sale of life insurance if such insurance is not linked in any way to funeral or burial services 78–182

Personal property, use of

A manufacturer's plan, involving the utilization of funeral directors on a fee basis in the sale of movable concrete burial vaults to consumers for future use and for delivery to a cemetery to be later designated, constitutes use of personal property under a prearranged funeral plan. Accordingly, provision for deposit of funds in account in seller's name would be contrary to sec. 445.125, Stats., which requires trust account 71–141

Rules

Although sec. 156.03(2)(a), Stats., authorizes the state health officer and the examining council by joint action to make rules governing the business practices of funeral directors and embalmers; such rules, unless specifically exempted therefrom, should be enacted pursuant to the provisions of ch. 227, Stats., or otherwise, they could be subjected to a declaratory judgment proceeding and probably would be declared null and void 63–154

76-291

Opinion Dated November 24, 1987

SALE OF LIFE INSURANCE BY LICENSED FUNERAL DIRECTORS

You have asked for an opinion relating to the sale of life insurance by licensed funeral directors, operators of licensed funeral establishments of their employes (hereinafter referred to as funeral service persons).

Section 682.41(2), Stats., provides: "BURIAL INSURANCE. No contract in which the insurer agrees to pay for any of the incidents of burial or other disposition of the body of a deceased may provide that the benefits are payable to a funeral director or any other person doing business related to burials."

71 Op. Att'y Gen. 7, 8 (1982),* stated that this statutory provision did not prohibit the writing of a life insurance policy designating "a funeral director or funeral home as beneficiary of a life insurance policy in conjunction with a separate agreements, between the insured and the funeral director or funeral home, to use the proceeds for funeral and burial expenses."

This 1982 opinion was premised upon two assumptions:

> [T]hat the life insurance policy provides only for payment of a specific amount of money to a named beneficiary and makes no reference to payment of funeral, burial or other expenses related to disposition of the body of the deceased.
>
> . . . [T]hat the contract of insurance is solely between the insurer and the insured and that it makes no reference to any actual or contemplated contract between a funeral director, or any other person doing business related to burials, and the person who is insured, which involves payment for funeral and burial services.

71 Op. Att'y Gen. at 8.

You request an opinion under the following plan:

> The funeral service person (a licensed funeral director, an operator of a licensed funeral establishment, or an employee of same) will become licensed as an insurance agent. He or she will then sell a "pre-need funeral insurance" package to members of the public. The package will consist of: (1) a policy of life

*See Opinion dated January 13, 1982, this volume.

Added, 1988-1

insurance, issued by the life insurance company for which the funeral service person is acting as agent, with the purchaser as the insured, and the funeral service person, or the funeral establishment with which he or she is associated, as the beneficiary, and (2) a "separate" agreement between the insured and the funeral director or funeral establishment to use the proceeds of the insurance policy for funeral and burial expenses.

The plan appears to be a thinly concealed attempt to evade the proscription of section 632.41(2) and, in my opinion, must legally fail.

The critical distinction between the assumed facts in the 1982 opinion and the facts in the plan presented in your opinion request is that in the latter situation we do not have the separateness between the insurance policy and the separate agreement between the insured and the funeral service person.

The authorized acts of an agent are legally imputed to the agent's principle, *Rosecky v. Tomaszewski*, 225 Wis. 438, 274 N.W. 259 (1937). Further, *Jeske v. General Acc. F. & L. Assur. Corp.* 1 Wis. 2d 70, 87, 83 N.W.2d 167 (1957), holds that an agent's knowledge is imputed to the company he or she represents.

Under the facts assumed for this opinion, the agent knows that the benefits of the insurance policy being written are payable to a funeral director or establishment and the agent also knows that the separate agreement provides that the benefits of the policy will be used to pay or help pay for the funeral and burial expenses of the insured.

Since the acts and knowledge of the agent are imputed to the insurer, the insurer legally knows that it is agreeing to pay the insurance proceeds to a beneficiary which is a funeral director or establishment for the incidents of burial or other disposition of the body of the insured.

The obvious legislative purpose for section 632.41(2) is to prevent monopolistic or unfair trade practices that may result if an insurer writes such policies and has a tie with a particular funeral director or establishment. The explanatory note to chapter 375, Laws of 1975, creating the statutory provision involved states: "It is not the provision of burial services that is objectionable, but the tie-in arrangement between an insurer and an undertaker."

Gray v. United States, 410 F.2d 1094, 1104 (3rd Cir. 1969) held that

Added, 1988-1

two plans "separate in that they were not created by the same document, nor initiated at the same time, nor . . . mak[ing] any reference to each other" (footnotes omitted) are a single contract where the purpose of the two plans was to "form an integrated program" or a single purpose. The court stated: "One good ground for rejecting that position [that the two plans be considered separately] is to prevent attempts to avoid the reach of the statute by a series of contrived plans none of which, in itself, would fall under the section." *Id.* at 1105.

My predecessor's 1982 opinion rested upon the fact assumption that an insurer issued an insurance policy merely naming as the beneficiary a funeral director or establishment and that the insured independently entered into a separate contract with the funeral establishment or person agreeing to utilize the insurance proceeds to pay or help pay for the expenses of the funeral and burial. But the critical aspect of the assumed facts in that opinion is that the insurer was not privy to the separate contract between the insured and the funeral establishment or person.

In the case, that is not true. Since the acts and knowledge of the agent are imputed to the insurer, the insurer knows that two plans, the insurance policy naming the funeral establishment or person as a beneficiary and the agreement to use the policy proceeds to pay for the expenses of the funeral and burial, form a single purpose, that is, to pay for the incidents of burial or other disposition of the body and provide that the insurance benefits are payable to the funeral service person who will provide the funeral and burial service. The two plans must be considered as a single contract designed to "avoid the reach of the statute."

Several plans alternative to the plan stated in your letter of request have been proffered for consideration.

One plan would have the funeral establishment create a separate corporation that would write the two plans, the insurance policy and the "separate" agreement. If the separate corporation is acting as agent for the funeral establishment, my opinion remains the same. The separate corporation would still be acting as agent for both the funeral establishment and the insurer.

Another alternative plan submitted for consideration would allow the insured to change the beneficiary in the policy at a later time. Again, this would not change my opinion since the policy, as written, would still name a funeral establishment or person as beneficiary and still

Added, 1988-1

would have been written in connection with the contract between the insured and funeral establishment or person to utilize the insurance proceeds to pay for the incidents of burial.

It has been strongly advanced that it is in the public interest to allow the providing of a "pre-need" funeral and burial plan through the insurance policy route. This argument should be addressed to the Legislature. This opinion only addresses the law as it exists in relation to a specific set of facts.

Since I have determined that the plan is illegal under section 632.41(2), it is unnecessary for me to consider whether it is illegal under either section 445.12(7) or 445.12(3), or whether it is unethical and therefore prohibited.

Donald J. Hanaway
ATTORNEY GENERAL

Added, 1983-1

83.015(1), Stats.; 61 Op. Att'y Gen. 116 (1972), and exercise powers and duties pursuant to legislative enactment and authority of the county board, sec. 83.015(2), Stats. Moreover, my predecessors have on several occasions referred to the position as an office. 61 Op. Att'y Gen. 116 (1972); 48 Op. Att'y Gen. 241 (1959); 46 Op. Att'y Gen. 175 (1957). It is therefore my opinion that a member of the county highway committee is an officer as that term is used in sec. 895.35, Stats.

The fact that the individual involved was no longer a member of the county highway committee at the time the criminal charges were brought against him does not change my opinion. The information which you have provided for me indicates clearly that the charges arise out of the period of time when he was such a member. In my view it would be patently unreasonable to apply the statute on the basis of the time when the charges are made rather than the time when the alleged offense occurred. Furthermore, my opinion that the statute is applicable to former officers as long as the charges are based on incidents occurring while they were officers is in keeping with the position which this office has consistently taken on behalf of state officers, employes and agents pursuant to secs. 165.25(6), 893.82 and 895.46, Stats. While those statutes all deal with civil actions, rather than criminal, as here, the applicability of the statutes is based upon the status of the official at the time of the incident giving rise to the suit, not the time of commencement of the suit.

Your second question inquires whether criminal charges based upon submission of an allegedly false expense voucher are "brought against an officer in his official capacity." In my opinion, on the facts as you present them, the answer is yes. While I caution that questions concerning whether a public officer is acting in his official capacity must be determined on a case-by-case basis, it is my opinion that when a public officer is alleged to have completed an expense statement or voucher falsely then he is alleged to have acted in his official capacity in that he is alleged to have misused his official position.

Your third question inquires whether criminal charges based upon an officer's submission of expense statements or vouchers can be said to "grow out of the performance of official duties." In my opinion, the answer is yes. The phrase, "growing out of the performance of official duties," as used in sec. 895.35, and the same, or similar, phrases used in secs. 893.82 and 895.46, Stats., must be construed broadly to effect the legislative purpose of providing protection for public officers in all appropriate circumstances. The very use of the two different phrases in the statute, inquired about in your second and third questions, indicates a legislative intent to provide broad coverage for public officers. Again, while I would caution that different circumstances arising under this statute would have to be evaluated on a case-by-case basis, under the facts, as you present them, it is my opinion that a public officer submitting an expense voucher as a result of travel on government business is performing an act "growing out of the performance of official duties."

You are, of course, quite correct in your conclusion that *Bablitch & Bablitch v. Lincoln County*, 82 Wis. 2d 574, 263 N.W.2d 218 (1978), holds that payment of such expenses pursuant to sec. 895.35, Stats., is permissive, not mandatory as it would be in the case of a civil action involving sec. 895.46, Stats. It is therefore my opinion that since sec. 895.35, Stats., provides that the government has authority to pay expenses either based upon an action brought against an officer in his official capacity, or imposing a liability growing out of the performance of official duties, and since both tests are met in the fact situation you describe, the county is empowered to pay such expenses if it sees fit to do so.

BCL:CRL

Funeral Directors And Embalmers; Insurance; Section 632.41(2), Stats., does not prohibit the naming of a funeral director as beneficiary of a life insurance policy in conjunction with a separate agreement between the insured and the funeral director that the proceeds will be used for funeral and burial expenses. OAG 3-82

January 13, 1982.

DAVID L. RUSCH, *Chairman*
Funeral Directors and Embalmers Examining Board

You request my opinion as to "whether Wisconsin Statutes sec. 632.41(2) prohibits a funeral director (or a funeral home) being named beneficiary of a life insurance policy, where the insured and beneficiary separately agree that the purpose of naming of the

funeral director as beneficiary of the policy is to pre-arrange payment for funeral and burial services to be provided by the funeral director/beneficiary." I assume that the life insurance policy provides only for payment of a specific amount of money to a named beneficiary and makes no reference to payment of funeral, burial or other expenses related to disposition of the body of the deceased.

I also assume that the contract of insurance is solely between the insurer and the insured and that it makes no reference to any actual or contemplated contract between a funeral director, or any other person doing business related to burials, and the person who is insured, which involves payment for funeral and burial services.

Section 632.41(2), Stats., provides: "No contract in which the insurer agrees to pay for any of the incidents of burial or other disposition of the body of a deceased may provide that the benefits are payable to a funeral director or any other person doing business related to burials."

In my opinion sec. 632.41(2), Stats., does not prohibit naming of a funeral director or funeral home as beneficiary of a life insurance policy in conjunction with a separate agreement, between the insured and the funeral director or funeral home, to use the proceeds for funeral and burial expenses.

I find no ambiguity in the statute requiring construction. As stated in *Wis. Bankers Ass'n v. Mut. Savings & Loan*, 96 Wis. 2d 438, 450, 291 N.W.2d 869 (1980):

> In the absence of ambiguity in a statute, resort to judicial rules or interpretation and construction is not permitted, and the words of the statute must be given their obvious and ordinary meaning. ... A statute, phrase, or word is ambiguous when capable of being interpreted by reasonably well-informed persons in either of two or more senses.

"Insurer" as used in the statute is defined in part at sec. 600.03(27), Stats., as: "[A]ny person or association of persons doing an insurance business."

Section 632.41(2), Stats., thus prohibits a person engaged in the insurance business from writing an insurance contract providing benefits payable to a funeral director if the benefits consist of payment for incidents of burial or other disposition of the deceased. The life insurance policy contemplated by your question is not prohibited by this statute since it does not provide payment for costs of burial or other disposition of a body. Nor is the separate agreement between the insured and the funeral director prohibited since that agreement does not constitute one involving the insurer. The insurer, in your example, has contracted only to pay a specified sum of money to a named beneficiary. Section 632.41(2), Stats., does not prohibit that beneficiary from being a funeral director nor does it prohibit the benefit from being used for funeral purposes.

Neither an agreement between an *insured* and a funeral director to use life insurance benefits for payment of funeral and burial expenses nor the naming of the funeral director as beneficiary in furtherance of such agreement is prohibited by the statute. What is prohibited is a contract in which the *insurer* agrees to both "pay for any of the incidents of burial" and "provide that the benefits are payable to a funeral director or any other person doing business related to burials."

BCL:WMS

Public Records; Vocational And Adult Education; Words And Phrases; A local vocational, technical and adult education district is a "school district" within the meaning of the Wisconsin Public Records Law. Sec. 19.21, Stats. Except for any pupil records under sec. 118.125, Stats., a VTAE district must preserve records at least seven years before destruction. Sec. 19.21(7), Stats. A VTAE district may not maintain records on microfilm. OAG 4-82

January 13, 1982.

ROBERT P. SORENSON, PH.D., *State Director*
Board of Vocational, Technical and Adult Education

You ask three questions concerning the applicability of the Wisconsin Public Records Law, sec. 19.21, Stats., to local vocational, technical and adult education districts (VTAE districts). Your questions are prompted by the tremendous volume of records maintained by the VTAE districts and the costs of storage, filing and record retrieval.

Funeral Directors and Embalmers; Insurance; Funeral service persons may be involved in the sale of life insurance if such insurance is not linked in any way to funeral or burial services. OAG 35-89

October 27, 1989

FRED A. RISSER, *Chairperson*
Senate Organization Committee

You have requested a formal opinion of the attorney general concerning two questions:

1) May a licensed Wisconsin funeral director, operator of a licensed funeral establishment or his/her employee (hereafter referred to as funeral service persons) receive compensation for distribution of, or making available for distribution, promotional materials for a life insurance policy which has no link, directly or indirectly, to funeral or burial services?

2) May a funeral service person receive commissions from sales of a life insurance policy which has no link to funeral or burial services, directly or indirectly, assuming such funeral service person has obtained a valid license to sell life insurance in Wisconsin?

My answer to both questions is a guarded yes.

Section 632.41(2), Stats., provides: "No contract in which the insurer agrees to pay for any of the incidents of burial or other disposition of the body of a deceased may provide that the benefits are payable to a funeral director or any other person doing business related to burials." Section 630.15 provides:

> No life insurer may invest directly in or, except as a loan secured by a mortgage on real estate or as a policy loan, lend money to a funeral director or cemetery or any association of funeral directors or cemeteries. No funeral director or cemetery or association of funeral directors or cemeteries may control a life insurer.

The purpose of these provisions is to prevent anti-competitive "tie-in" arrangements between insurers and persons in the funeral business. 630.15 W.S.A. Committee Comments (1979) and 632.41 W.S.A. Committee Comments (1975). Neither set of facts hypothesized in your questions seems to violate the letter of either of the above-quoted statutes or their anti-competitive spirit. Nevertheless, caution should be exercised by anyone contemplating a relationship between "funeral service persons," as you refer to them, and the solicitation or sale of life insurance. Such arrangements are scrutinized by the Office of the Commissioner of Insurance and the Funeral Directors and Embalmers Examining Board, both of which agencies have reported to me their concern over various "pre-need" insurance arrangements. Two such plans were reviewed by this office in recent years.

In 71 Op. Att'y Gen. 7, 8 (1982), it was concluded that section 632.41(2) did not prohibit the writing of a life insurance policy designating "a funeral director or funeral home as beneficiary . . . in conjunction with a separate agreement, between the insured and the funeral director or funeral home, to use the proceeds for funeral and burial expenses." In 76 Op. Att'y Gen. 291 (1987), it was stated that a "pre-need funeral insurance package" did violate the statute as a "thinly concealed attempt" to tie insurance and funeral services. The package was described as:

> (1) a policy of life insurance, issued by the life insurance company for which the funeral service person is acting as agent, with the purchaser as the insured, and the funeral service person, or the funeral establishment with which he or she is associated, as the beneficiary, and (2) a "separate" agreement between the insured and the funeral director or funeral establishment to use the proceeds of the insurance policy for funeral and burial expenses.

Id. at 292. Despite the form of the arrangement, the funeral director or establishment received life insurance proceeds for the

incidents of burial or other disposition of the body of the insured.*

Your questions are general in nature and are posed in such a way as to disclaim any linkage between life insurance and funeral or burial services. The questions state that a life insurance "policy" has no link to funeral or burial services. I do not know whether the policy contemplates making a "funeral service person" a beneficiary of the policy. Moreover, the fact that a policy has no link to funeral or burial services does not necessarily mean that there is no relationship between the insurer and the funeral service person. Thus, responding to your questions, I cannot state categorically that section 630.15, prohibiting tie-in arrangements, would not be violated.

Therefore, I reiterate my earlier statement in this opinion that the questions presented can only receive a guarded affirmative answer. Any promoter of a relationship between the sale of life insurance and the provision of funeral or burial services should carefully consider the statutes discussed in this opinion as well as the two previous attorney general's opinions and, in addition, may wish to seek the advice of the Office of the Commissioner of Insurance and the Funeral Directors and Embalmers Examining Board prior to the commencement of operations.

DJH:ESM

*It was this necessary linkage that was absent from the facts reviewed in the earlier attorney general's opinion. In other words, the "separateness" which allowed the arrangement reviewed in 1982 was absent in the "package" reviewed in 1987.

Fire Department; Police; Villages; Village public safety officers are not entitled to the section 891.45, Stats., presumption unless they are designated as primarily firefighters by the village or they have duties as a firefighter during a five-year period for two-thirds of their working hours. OAG 36-89

October 31, 1989

ROBERT G. OTT, *Corporation Counsel*
Milwaukee County

You request my opinion on several questions relating to section 61.66, Stats., which authorizes certain villages to establish combined police and fire services.

Section 61.66 states in material part:

> Combined protective services. (1) Notwithstanding s. 61.65(1)(a), (2)(a) and (3g) (d) 2, any village with a population of less than 20,000 may provide police and fire protection services by any of the following:
>
> (a) A department which is neither a police department under s. 61.65(1)(a) nor a fire department under s. 61.65(2)(a), which was created prior to January 1, 1987, and in which the same person may be required to perform police protection and fire protection duties without being required to perform police protection duties for more than 8 hours in each 24 hours except in emergency situations, as specified under s. 62.13(7n).
>
> (b) Persons in a police department or fire department who, alone or in combination with persons designated as police officers or fire fighters, may be required to perform police protection and fire protection duties without being required to perform police protection duties for more than 8 hours in each 24 hours except in emergency situations, as specified under s. 62.13(7n), if those persons were required to perform those duties prior to January 1, 1987.

crystalline point at which a noncustodial interrogation becomes custodial in nature other than to indicate simply that when the person subject to the interrogation is no longer free to leave, based upon indication of a game law violation, the interrogation is at that point arguably custodial.

The fact that a warden does not realize at the point that a citation is issued that the accused is liable for prosecution under sec. 29.995, Stats., does not change the applicability of the *Miranda* doctrine. A warden may well not know at the point a citation is issued that the accused person has been convicted of a prior game law violation so as to justify a criminal prosecution. A criminal prosecution is, however, certainly a possibility whenever a citation is issued and presumably there will be only few instances in which a warden is certain that the repeater statute cannot apply. A warden issuing a citation is in a situation very similar to that of an agent of the Internal Revenue Service whose investigation may lead either to civil or to criminal action. The fact that an IRS agent did not know that his interrogation would lead to a criminal charge was held not to excuse the failure to offer a *Miranda* warning prior to interrogation of a suspect in custody. *Mathis v. United States*, 391 U.S. 1, 4 (1968). The requirement of the *Miranda* doctrine is founded upon the constitutional right of the accused and thus does not depend upon subjective knowledge of the warden.

The application of the *Miranda* doctrine in the enforcement of game laws may cause administrative difficulty and I wish, therefore, to make clear the limited and specific effect of a failure to offer the *Miranda* warning prior to a custodial interrogation. The failure to give the *Miranda* warning means that a statement taken in the course of that interrogation may later be excluded in a criminal trial. The failure to give the warning does not invalidate an otherwise proper arrest nor does it require exclusion of evidence other than the defendant's statement. *Michigan v. Tucker*, 417 U.S. 433 (1974). Indeed, it is even possible that an excluded statement may be admitted after the defense portion of a trial to impeach the testimony of the defendant. *Harris v. New York*, 401 U.S. 222 (1971); *Oregon v. Hass*, 420 U.S. 714 (1975). The failure to give a *Miranda* warning prior to a custodial interrogation may limit drastically the value of any statement obtained in that interrogation but it need not otherwise jeopardize a subsequent criminal prosecution.

BCL:DTF

Burial; Funeral Directors And Embalmers; A manufacturer's plan, involving the utilization of funeral directors on a fee basis in the sale of movable concrete burial vaults to consumers for future use and for delivery to a cemetery to be later designated, constitutes use of personal property under a prearranged funeral plan. Accordingly, provision for deposit of funds in account in seller's name would be contrary to sec. 445.125, Stats., which requires trust account. OAG 45-82

August 2, 1982.

DAVID L. RUSCH, *Chairman*
Funeral Directors & Embalmers Examining Board

You have requested my opinion as to whether a plan for sale of movable concrete burial vaults to consumers for future use, as hereafter described, would be contrary to the provisions of secs. 445.12(6) and 445.125(1), Stats.

You state that a Wisconsin manufacturer:

> [P]roposes to sell its product with the aid of licensed funeral directors. The funeral director would inform the consumer of the availability for purchase of the manufacturer's burial vaults at the time a consumer contacted the funeral director for future funeral arrangements. The funeral director would discuss with the consumer the various vaults available from the manufacturer. If the consumer decided upon the purchase of a burial vault, the consumer would execute the Certificate of Sale and the funeral director would then forward the contract to the manufacturer for its signature, along with the consumer's payment. The funeral director would not be a party to the contract. The purchase of a burial vault would not be a part of any [separate] prearranged funeral plan which might be entered into between the funeral director and the consumer. The funeral director would receive a fee for this service from the vault manufacturer, at the time of need for the vault.

The contract or certificate of sale of burial receptacle states that:

_____ is the Owner with full right, title, and interest to a burial receptacle manufactured by Seller and known as _____, for use at Owner's agent's request.

Seller does hereby further acknowledge receipt of the sum of _____ as and for payment of above mentioned burial receptacle.

This certificate is subject to the following terms and conditions:

1. Owner may rescind this purchase by giving written notice of intent to rescind to Seller within one week of date hereof. Upon failure to give said notice, this certificate shall be binding on all parties.

2. Owner understands and agrees that burial receptacle placement shall be subject to any cemetery charges, permit fees, transportation charges, etc., which shall be paid by Owner at time of placement. Delivery is f.o.b. (freight on board) Seller's plant subject to Seller's normal transportation charge at time of placement to designation of Owner's choice.

3. Owner shall be entitled to all normal warranties that are offered with the burial receptacle.

4. Owner agrees, upon resale of receptacle, to notify Seller of the name and address of the new Owner and to pay a $15.00 transfer fee.

5. Owner's act of making payment shall constitute acceptance of all the terms and conditions hereunder. All sale proceeds are to be deposited in a federally insured account or government securities under title of Lake Shore Burial Vault Pre-Need account until actual performance of services by Seller.

6. Owner or Owner's agent has a right at any time prior to placement to get full credit for a receptacle covered hereunder on a higher priced burial receptacle of this Seller; however, no refund will be made except under #7.

7. In the event of Owner's death and burial outside Seller's service area, Owner's estate or agent shall have a right to a return of One Hundred (100%) percent of purchase price plus accrued interest at a rate of Six (6%) percent per year provided a copy of the death certificate is delivered to Seller.

8. All convenants and conditions herein contained shall extend to and be binding upon the heirs, legal representative and successors and assigns of the Owner and Seller herein.

9. Seller reserves right to provide a substitute burial receptacle of similar quality, standard and price available at the time of placement.

10. Seller shall not be held liable for failure to perform by war, strike, or act of God rendering service impossible.

11. The Seller reserves the right to decide any conditions or situations which may occur, which are not expressly covered herein.

In my opinion, a funeral director who participates in the plan would not be in violation of sec. 445.12(6), Stats., which provides:

> No licensed funeral director, licensed embalmer, or operator of a funeral establishment shall operate a mortuary or funeral establishment located within the confines of, or connected with, any cemetery. No licensed funeral director or licensed embalmer or his or her employe shall, directly or indirectly, receive or accept any commission, fee, remuneration or benefit of any kind from any cemetery, mausoleum or crematory or from any proprietor or agent thereof in connection with the sale or transfer of any cemetery lot, entombment vault, burial

privilege or cremation, nor act, directly or indirectly, as a broker or jobber of any cemetery property or interest therein.

The stated facts do not indicate any connection between the vault manufacturer or funeral director and any cemetery, mausoleum or crematory, nor do the facts show that the funeral director is acting as a broker or jobber of any cemetery property or right to burial therein.

It is my opinion, however, that the plan would violate sec. 445.125(1), Stats., and participation therein by the vault manufacturer and funeral director would subject such persons to fines or imprisonment under sec. 445.15(1), Stats. Section 445.125(1), (2), Stats., as amended by ch. 64, Laws of 1981, provides in part:

> (1)(a) Whenever *any person, referred to in this section as the depositor, makes an agreement with a funeral director,* cemetery organization *or any other person referred to in this section as the beneficiary, for the final disposition of the body of a person referred to in this section as the potential decedent, wherein the use of personal property under a prearranged funeral plan* or the furnishing of services of a funeral director or embalmer in connection therewith *is not immediately required, all payments made under the agreement shall be and remain trust funds,* including interest and dividends if any, *until occurrence of the death of the potential decedent,* unless the funds are sooner released *upon demand* to the *depositor,* after written notice to the beneficiary.
>
> (b) Notwithstanding § 701.12 (1), such agreements may be made irrevocable as to the first $1,500 of the funds paid under the agreement by each depositor.
>
> (c) *Any interest or dividends accruing to a trust fund under par. (b) may be made irrevocable.*
>
> (d) *Any depositor who made an irrevocable agreement under par. (b) may designate a different beneficiary at any time prior to death, after written notice to the current beneficiary.*
>
> (e) Nothing in this section shall prevent the sale and delivery of cemetary lots, graves, crypts, niches, columbaria or grave or lot markers or monuments before their use is required.

> (2) *All such trust funds shall be deposited with a bank or trust company* ... savings and loan association ... credit union within the state ... and shall be held in a *separate account in* the *name of the depositor,* in trust for the beneficiary until the trust fund is released under either of the conditions provided in sub. (1). In the event of the death of the depositor before the death of the potential decedent, title to such funds shall vest in the potential decedent, and the funds shall be used for the personal property and services to be furnished under the contract for the funeral of the potential decedent. The depositor shall be furnished with a copy of the receipts, certificates or other appropriate documentary evidence showing that the funds have been deposited or invested in accordance with this section. The depositor or the beneficiary shall furnish the bank, trust company, savings and loan association or credit union with a copy of the contract. Upon receipt of a certified copy of the certificate of death of the potential decedent, together with the written statement of the beneficiary that the agreement was complied with, the bank, trust company, savings and loan association or credit union shall release such trust funds to the beneficiary.

While the statute excepts sale and delivery of personalty in the nature of "grave or lot markers or monuments before their use is required," it makes no reference to caskets and movable concrete burial vaults. In my opinion, a person can purchase and take delivery of a casket or concrete burial vault, without the necessity of establishment of a trust fund, where the property and services connected therewith are not part of a prearranged funeral plan. The simple sale and contemporary delivery to the buyer of a casket or vault does not, by itself, constitute an agreement for final disposition of a body. However, where there is a prearranged funeral plan for the final disposition of the body of a decedent, involving the future delivery and use of personal property such as a casket or movable burial vault, as here, the statute requires that payments made "shall be and remain trust funds including the interest thereon until the death of the person whose funeral is so provided for or the funds are sooner released upon the demand of the person making the pay-

ments ...." *Grant County Service Bureau v. Treweek*, 19 Wis. 2d 548, 551, 120 N.W.2d 634, 637 (1963). The court continued:

> Regardless of the somewhat misleading and confusing language of the statute, it is apparent the intent of the legislature was to secure the performance of the funeral services and burial contracted for by creating a trust of the payments made. Funeral directors before performing the contract might go out of business, die or be unable to perform the contract for other reasons. The enactment of the legislature recognizes the validity of prearranged and prepaid funerals and the public interest in securing the performance of such arrangements.

Under the stated facts, the concrete vault is intended for burial use by a named owner as potential decedent. The vault is not to be delivered presently, but is intended for delivery to "designation" [destination] at owner's or owners' agent's request for placement in a cemetery. The seller retains a right to substitute a different burial receptacle at the time of placement. The contract provides that all sale proceeds shall be deposited in a federally insured account or government securities "under title of Lake Shore Burial Pre-Need Account." Such account is not a "separate account," nor is it "in the name of the depositor" as required by sec. 445.125(2), Stats. Under the stated facts, and sec. 445.125(1), Stats., the seller and funeral director would be beneficiaries rather than the depositor. The transaction constitutes an agreement for the use of personal property, the burial vault, under a prearranged funeral plan. The statute is applicable to prearranged funeral plans which may not cover every aspect of final disposition. Here the plan fails to provide for a trust fund as required by statute. You do not advise as to the dollar amounts involved in such contracts and I therefore decline to discuss aspects of revocability and right to refund.

BCL:RJV

Public Service Commission; Public Utilities; Words And Phrases; The Public Service Commission has the authority to determine that a holding company, formed by a public utility corporation to engage in non-utility business ventures, is itself a public utility within the meaning of sec. 196.01(1), Stats., where the holding company possesses the power to control the utility plant or equipment or where the arrangement is a device to enable the public utility corporation to evade regulatory jurisdiction. OAG 46-82

August 3, 1982.

FRED A. RISSER, *President*
State Senate

You have requested my opinion as to whether a holding company formed by a public utility corporation would itself be a "public utility" within the meaning of sec. 196.01(1), Stats., and thus subject to the regulatory jurisdiction of the Public Service Commission (Commission).

You indicate in your request that a public utility corporation has formulated a plan to create a holding company corporation. One element of the plan is an exchange of stock through which the newly formed holding company would acquire all common stock of the public utility corporation while each current shareholder would receive an equivalent number of shares in the holding company corporation. I understand that this plan is founded upon the assertion that the proposed holding company would be beyond the regulatory jurisdiction of the Commission and would therefore be able to engage in non-utility business ventures entirely free of regulatory control. You do not indicate in your request the degree to which the existing public utility corporation and the new holding company would share directors, officers, equipment, facilities, personnel, information and other resources.

There appear to be two legal bases upon which the Commission could conclude that such a holding company would be a "public utility" within the meaning of sec. 196.01(1), Stats. The Commission could properly regard the holding company to be a "public utility" within the meaning of sec. 196.01(1), Stats., if it determined that the holding company held the power to exercise direct or indirect con-

Informal A.G. Opinions

1) June 6, 1990

2) October 15, 1992

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

DONALD J. HANAWAY
ATTORNEY GENERAL

Mark E. Musolf
Deputy Attorney General

June 6, 1990

Division of Legal Services
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123 West Washington Avenue
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William H. Wilker
Assistant Attorney General
608/266-1795

Mr. Don Cleasby
Legislative Attorney
Office of the Commissioner of Insurance
121 East Wilson Street
Madison, Wisconsin 53702

Dear Mr. Cleasby:

You requested an informal opinion as to the legality under section 632.41(2), Stats., of a prepaid or prearranged funeral program which involves a life insurance policy. While my answer is that the proposed program facially comports with the statutory proscription, because of the complexity of the program, the facts of a specific arrangement will determine its legality.

The prearranged funeral program, the Guardian Plan, structurally involves a parent corporation and two wholly owned subsidiary corporations. One of the subsidiaries is an insurance company and the other is apparently a service corporation (hereinafter referred to as the Plan Company) that develops a network of funeral establishments ("participating establishments") to provide funeral goods and services to consumers.

The program consists of three basic components that may be employed separately or in concert at the consumer's option: (1) a preselection or prearrangement of funeral merchandise and services to be provided by a funeral establishment of the consumer's choosing; (2) a funding mechanism which may be either a cash funded prearrangement trust, an insurance policy, or an annuity; and (3) a revocable assignment of death benefits under an insurance policy or an annuity.

The customer first selects a funeral establishment and the desired merchandise and services. If the funeral establishment is a non-participating establishment, the Plan Company representative contacts the funeral establishment and asks whether the establishment will honor the program prearrangement. If the establishment wishes to participate, it signs a participation agreement.

Next, the funding options are discussed. If the customer does not wish to fund the prearrangement, then documentation memorializing the arrangement is forwarded to the selected funeral

establishment. This prearrangement is nonbinding and provides no cost protection, however, it does indicate to the establishment the customer's desires.

If the customer wishes to fund the prearrangement and obtain the benefit of guaranteed cost, the customer can prefund by either establishing a prearrangement funeral trust, or purchasing a life insurance policy or annuity. If the customer chooses the life insurance policy or annuity, the Plan Company representative (who is also a licensed life insurance agent for the subsidiary life insurance company) takes an application from the customer for a policy or contract with a face amount equal to the current price of the prearrangement. The life insurance policy or annuity need not be purchased from the subsidiary insurance company. The Plan Company will accept any life insurance policy or annuity with substantially similar benefits. The customer then designates a policy beneficiary, typically a family member or friend.

The customer then executes a revocable assignment of the policy death benefit to the Plan Company, which in turn agrees to pay the proceeds to the funeral establishment upon certification that the merchandise and services have been supplied for the insured's funeral. The customer retains all other incidents and rights of policy ownership.

Section 632.41(2), Stats., provides: "No contract in which the insurer agrees to pay for any of the incidents of burial or other disposition of the body of a deceased may provide that the benefits are payable to a funeral director or any other person doing business related to burials." The purpose of this provision is to prevent monopolistic or unfair trade practices. 76 Op. Att'y Gen. 291. Further, it is not the provision of burial services that is objectionable, but the tie-in arrangement between an insurer and an undertaker. See Committee Comments, 632.41 W.S.A. (1975).

In 71 Op. Att'y Gen. 7 (1982), it was concluded that section 632.41(2) did not prohibit a life insurance policy designating "a funeral director or funeral home as beneficiary . . . in conjunction with a separate agreement, between the insured and the funeral director or funeral home, to use the proceeds for funeral and burial expenses." However, in 76 Op. Att'y Gen. 291 (1987), it was stated that a "pre-need funeral insurance package" did violate the statute as a "thinly concealed attempt" to tie insurance and funeral services. The package was described as:

> (1) a policy of life insurance, issued by the life insurance company for which the funeral service person is acting as agent, with the purchaser as the insured, and the funeral service person, or the funeral establishment

> with which he or she is associated, as the beneficiary, and (2) a "separate" agreement between the insured and the funeral director or funeral establishment to use the proceeds of the insurance policy for funeral and burial expenses.

Id. at 292.

Based upon the submitted facts, it seems that the program now under consideration, on its face, does not violate the letter of the statute as interpreted by the two opinions of the attorney general. The program does not involve a single contract in which the Plan Company pays for the incidents of burial and in which the benefits are payable to the funeral establishment. Rather, the program is flexible and consists of several different steps: The customer first contracts for a life insurance policy and designates anyone as policy beneficiary; the customer next executes a revocable assignment of the policy death benefit to the Plan Company; and finally the Plan Company pays the proceeds to the funeral establishment at the time of death

The two cited opinions of the attorney general are instructive in considering the arrangement now under consideration and raise some points that lend caution to the affirmative answer of this opinion. The 1982 opinion discusses two assumptions: (1) that the life insurance policy makes no reference of payment to the funeral establishment, and (2) that the life insurance policy makes no reference to any actual or contemplated contract between the funeral establishment and the insured. Here, there is no reference of payment in the policy and there is no contract between the funeral establishment and the customer; however, there is a participation agreement between the Plan Company and the funeral establishment. This might be of concern because of the aforementioned prohibited "tie-in arrangement" between the insured and the funeral establishment.

The 1987 opinion stresses "separateness" between the insurance policy and the contract--to which the customer and the funeral establishment are parties. Again, this is different from the present program because there is no contract between the customer and the funeral establishment; however, the 1987 also raises the larger question of whether the program consists of a series of contracts that "form an integrated program" or a single purpose . . . to avoid the reach of the statute, 76 Op. Att'y Gen. 293 (1987), or whether the program consists of legally separate independent contracts that would be permissible within the purview of 71 Op. Att'y Gen. 7 (1982).

Due to the complex nature of the relationships between the customer and the Plan Company and the funeral establishment in the present program, I cannot state categorically that section 632.41(2), Stats., would not be violated. Although the program facially satisfies the statute, it would depend on the facts of a specific arrangement to determine if the statutory purpose of the prevention of monopolistic or unfair trade practices were violated. Similarly, the facts of a specific arrangement would be relevant in determining if the prohibited "tie-in arrangement" between the insured and the funeral establishment existed. Because the attorney general has no authority to decide questions of fact, 77 Op. Att'y Gen. 36 (1988), my response to your request must be qualified.

Therefore, I reiterate my conclusion that this program facially satisfies the statutory provisions of section 632.41(2), Stats., with the qualification that the fact situation of a specific arrangement will play an important role in determining if the legislative purpose of the statute has been violated. The corporation offering this program should carefully consider the purpose of section 632.41(2), Stats., as well as the two previous attorney general's opinions when implementing the program in the state of Wisconsin.

Sincerely,

William H. Wilker
Assistant Attorney General

WHW:kf/V0580LTR

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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William H. Wilker
Assistant Attorney General
608/266-1795

October 15, 1992

Ms. Diane Ramthun
Attorney
Office of the Commissioner
of Insurance
121 East Wilson Street
Madison, Wisconsin 53702

Dear Ms. Ramthun:

You have requested an opinion on whether two insurance or annuity-funded, prepaid funeral plans violate section 632.41(2), Stats. Since receiving your request, one additional plan has been submitted to me for a similar assessment. I will discuss each plan separately after the following introductory discussion of the law.

APPLICABLE LAW

Section 632.41(2) reads: "No contract in which the insurer agrees to pay for any of the incidents of burial or other disposition of the body of a deceased may provide that the benefits are payable to a funeral director or any other person doing business related to burials."

Confusion has arisen because of two opinions issued by this office, 71 Op. Att'y Gen. 7 (1982) and 76 Op. Att'y Gen. 291 (1987). It is well to keep in mind that the 1982 opinion was a general exposition of the law. Conversely, the 1987 opinion, while making some general observations concerning the law, was an opinion on the application of the law with respect to a specific fact situation.

The content of the 1982 opinion, the generic opinion, is summarized in the caption, which reads: "Section 632.41(2), Stats., does not prohibit the naming of a funeral director as beneficiary of a life insurance policy in conjunction with a separate agreement between the insured and the funeral director that the proceeds will be used for funeral and burial expenses."

The 1987 opinion dealt with a marketing arrangement whereby an agent of both the funeral establishment and insurance company marketed two separate contracts: (1) an insurance policy naming

the funeral establishment as beneficiary of the policy, and (2) an agreement to use the insurance proceeds to pay for the funeral goods and services to be furnished by the funeral establishment. The 1987 opinion concluded that, since the agent was acting for both the funeral establishment and insurance company and since the agent's knowledge was imputed to both principals, the contract "package," although two separate contracts, violated the provisions of section 632.41(2). The knowledge and acts of the agent were legally imputed to the insurer. The critical distinction between the two opinions is stated in the 1987 opinion, which reads:

> [The] 1982 opinion rested upon the fact assumption that an insurer issued an insurance policy merely naming as the beneficiary a funeral director or establishment and that the insured independently entered into a separate contract with the funeral establishment or person agreeing to utilize the insurance proceeds to pay or help pay for the expenses of the funeral and burial. But the critical aspect of the assumed facts in that opinion is that the insurer was not privy to the separate contract between the insured and the funeral establishment or person.

76 Op. Att'y Gen. at 293. The 1987 opinion also observed that the purpose of the law is to prevent unfair trade practices resulting from a tie-in arrangement between an insurer and a funeral provider.

THE WISCONSIN PLAN

Based upon the facts furnished to this office, it is my opinion that the Wisconsin Plan does not violate section 632.41(2). The facts represented are as follows:

A funeral provider and a pre-need client enter into a contract whereby the client agrees to fund his or her funeral expenses, either in whole or in part, with the proceeds of a life insurance policy. The insurance policy can be either an existing policy or one that the client will secure. If the insurance policy is preexisting, the client agrees to assign the proceeds to the funeral provider. If the policy is to be purchased, the client agrees to name as beneficiary one of the following: (1) a named individual or entity, (2) a funeral provider, to the extent of the funeral goods or services provided with any excess to be paid to a named individual or entity, or (3) a named person or entity and a funeral provider to the extent of the funeral goods and services

provided, with any excess to be paid to a named individual or entity.

The pre-need contract is negotiated by the funeral director and the pre-need client. The funeral director does not market the insurance policy on behalf of an insurer, although the funeral director may provide the client with information on securing insurance if a policy is not already in effect. The client is free to assign an existing policy or to secure an insurance policy from an insurer of the client's own choosing.

If the client, in assigning or securing insurance to fund the funeral, names as a beneficiary a person or entity other than the funeral provider (option numbered 1) or names as beneficiary both the funeral provider and a person or entity (option numbered 3), the pre-need contract contains provisions whereby the named person or entity agrees to use the insurance proceeds to pay for the funeral goods and services to the extent of their cost.

Under these assumed facts, the insurer does not agree to pay for the "incidents of burial or other disposition of the body of a deceased."

THE GOLD KEY PLAN
(Consolidated National Life Insurance Company)

While there are some troubling aspects of the Gold Key Plan, I am inclined to conclude that, if a funeral provider is not named as a beneficiary in the insurance policy that issues, the plan is facially in compliance with section 632.41(2).

The Gold Key Plan is troublesome because, although the insurance agent who markets the insurance policy utilized to fund the funeral goods and services discloses that neither he/she nor Consolidated are affiliates of the funeral provider, by virtue of his/her showing funeral goods and services offered by the funeral provider and his/her assisting the client in selecting funeral goods and services in the event that the funeral provider is selected, the insurance agent becomes an agent of the funeral provider. I must conclude this because to conclude otherwise would necessarily suggest that funeral provider is in violation of Wisconsin Administrative Code § FDE 2.03. A further troubling aspect of the Gold Key Plan is the fact that the insurance agent leases office space and operates from the funeral establishment. Thus, the agent is the agent for both the funeral provider and the insurance company. This is troubling since the legislative purpose

behind section 632.41(2) was to proscribe a tie-in between the insurer and the funeral provider.

Nevertheless, it is my opinion that the Gold Key Plan is not in violation of the statute. This conclusion rests upon the assumption that the funeral provider is not a named beneficiary of the insurance policy issued. The facts submitted for consideration disclose that the insured makes an assignment of the policy to a person or entity, not the funeral provider, who is free to select any funeral provider to fund the client's funeral needs at the time of death.

Under the reported facts, there is no contractual relationship between the insurer, the insurance agent, the insured or the assignee/beneficiary on one part and the funeral provider on the other. The pre-need contract that the client receives from the funeral home does not contain a requirement that the client or assignee/beneficiary engage the funeral home at the time of death.

NSM PLAN
(Monumental Life Insurance Company)

Like the Gold Key Plan just discussed, the NSM Plan is troublesome since the insurance agent markets the insurance policy and arranges for the provision of funeral goods and services to the client to be furnished by the funeral home at the time of death. Additionally, under the particular arrangement submitted for consideration, the insurance agent operates out of the funeral home.

However, if the insurance policy issued does not name the funeral provider as a beneficiary, the NSM Plan does not run afoul of the statute. While the materials submitted for consideration would seem to indicate that the funeral provider is not made a beneficiary of the insurance policy issued, it is troubling to note that a brochure apparently given to the client at the time the insurance agent negotiates with the client contains the following statement:

> After pre-arrangement plans are established through the funeral firm, you may then apply for the NSM Plan. The funeral director assists you in completing a life insurance application and, within a short period of time after acceptance, a policy is issued. You are the owner of the policy and, at time of death, the proceeds of the NSM Plan are paid to the funeral firm to cover the expenses of your pre-arranged service.

I am assuming, for the purposes of this opinion, that the funeral provider is not named as a beneficiary of the policy and that the subsequent assignment of the proceeds of the policy is not made to the funeral provider. If my assumption in this respect is not correct, then the NSM Plan may run afoul of the statute under the reasoning of the 1987 opinion of this office.

In closing, I would observe that an opinion such as this is not an entirely satisfactory method of resolving the issue presented. It would be preferable to have the issue resolved by a contested case or hearing where evidentiary facts are established and be subject to challenge.

Sincerely,

William H. Wilker
Assistant Attorney General

WHW:gn

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ASSEMBLY COMMITTEE ON INSURANCE, SECURITIES AND CORPORATE POLICY

Representative Sheryl Albers	127 West
Representative Bill Lorge	302 North
Representative Frank Lasee	137 South
Representative Gregg Underheim	11 North
Representative Robin Kreibich	107 West
Representative Mary Lazich	307 North
Representative Tim Hoven	17 North
Representative Mark Green	115 West
Representative Al Baldus	118 North
Representative Barb Notestein	218 North
Representative Judy Robson	124 North
Representative David Cullen	5 North
Representative Robert Ziegelbauer	207 North


FORWARD
E PLURIBUS UNUM

MEMORANDUM
OFFICE OF BOARD LEGAL SERVICES
WISCONSIN DEPARTMENT OF REGULATION & LICENSING

TO: Marlene Cummings and Rick Berg

FROM: Jacquelynn B. Rothstein

DATE: March 13, 1996

Comments Regarding LRBs0580/1

I have been asked to review this draft to determine whether it adequately addresses the consumer protection issues that were raised during our meeting on February 21, 1996. Consequently, my comments do not necessarily reflect the position or perspective of the Funeral Directors Examining Board, but rather focus instead on whether this draft contains sufficient consumer protection guarantees for those individuals who are interested in purchasing life insurance policies to fund prearranged funeral plans. Given the time constraints of my review, I have focused primarily on the major areas of concern, and hope that I have addressed most of them. Please let me know if you need anything additional.

(1) Current *federal* law requires that funeral directors make a variety of price disclosures to consumers. It also prohibits them from making various misrepresentations. Under this new proposal, "agents" who engage in the making of prearranged funeral plans with consumers are not required to make these same disclosures, nor are they prohibited from making misrepresentations. Since these agents will be discussing and planning virtually the same things with a consumer that a licensed funeral director would be discussing and planning, they should certainly be subject to the same federal requirements (*i.e.*, 16 CFR Part 453). That way, the consumer would not be subjected to different standards and would instead be reasonably protected against the unscrupulous acts of an agent.

(2) There is no "buyer's remorse" provision contained in this draft. In other words, once the buyer signs the insurance agreement, she is not given an opportunity to back out of it within a certain amount of time, and thus has no visible recourse, other than to stop making premium payments. Consequently, consideration should be given to adding a provision of this type (*e.g.*, cancellation within 72 hours would be permissible).

(3) There is no specific provision indicating to whom the premium payments should be paid. Likewise, there is no provision indicating to whom the proceeds of the life insurance plan should be paid. These items should be included.

(4) The auditing provision on Page 14, Lines 12-15 should be broadened in scope to more closely resemble the auditing provision contained in §157.62 (6), Stats.

(5) The draft does not include a specific provision about who should receive the original funeral plan document. I recommend that the original go to the consumer. In addition, there is no provision regarding whether the funeral director or establishment should keep a copy of the life insurance plan. There is also no provision requiring the insurance intermediary to give the actual life insurance plan to the consumer; such a provision should be added.

(6) The ratification provision is not very specific (See Lines 15-20). Under it, the buyer is not required to be present. Nor is there a provision for what should occur if the funeral director does not ratify it, or believes that amendments should be made before the plan can be ratified.

(7) In the drafter's cover memo, he asks whether a consumer should be able to cancel an agreement to purchase a life insurance policy within a thirty-day period. The consumer should be given that opportunity.

(8) This draft requires a substantial amount of rulemaking. It also requires the development of a brochure for distribution, standard contract language, training requirements, burial agreement forms, etc. While each of these provisions is essential to ensure adequate consumer protection, it will require labor intensive efforts by legal counsel and department staff. The fiscal note should therefore reflect those needs.

(9) The Board should be allowed to impose forfeitures on violators of these provisions. Currently, the draft does not include this.

(10) There is a reference to "health and family services" in Lines 6 and 13 on Page 16. I believe that agency is now called "health and *social* services."

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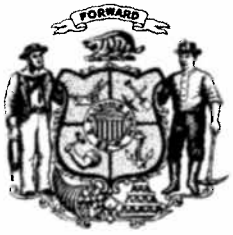
WISCONSIN STATE LEGISLATURE


FORWARD

Rep. Albers

State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Marlene A. Cummings
Secretary

Tommy G. Thompson
Governor

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MADISON, WISCONSIN 53708-8935
(608) 266-2112

Alice O'Connor
255-2203

TO: Senators Schultz, Rude, Fitzgerald, and Representative Albers

FROM: The Wisconsin Funeral Directors Examining Board

DATE: March 19, 1996

Comments Regarding LRBs0580/1 (Substitute amendment to SB 535)

On March 19, 1996, the Board reviewed LRBs0580/1, the substitute amendment to SB 535. According to this draft, non-funeral service personnel would be permitted to make preneed funeral arrangements. The Board firmly opposes that proposal. Indeed, it is the Board's position that *only licensed funeral directors* be allowed to make preneed funeral service arrangements. The Board does not believe that insurance agents should be permitted to sell or solicit preneed funeral service arrangements. However, it does recognize the current right of licensed insurance intermediaries to sell life insurance to fund the amount of a prearranged funeral plan. Should this current legislative proposal go forward in spite of the Board's opposition to it, the following suggestions should be incorporated. In addition, the Board has attached a copy of Jacquelynn Rothstein's memo regarding LRBs0580/1. We endorse the suggestions she has made in it.

(1) Door-to-door sales or solicitations of preneed funeral service arrangements should be prohibited.

(2) Telephone calls selling or soliciting preneed funeral service arrangements should be prohibited. ***Only*** telephone calls initiated by a potential consumer would be permissible.

(3) Affirmative disclosures in which the funeral director, operator of a funeral establishment, or a funeral director/establishment's designated agent inform a consumer that he or she is not obligated to purchase the life insurance policy from that director, establishment, or agent should be included.

(4) The definition of "cash advance item" on Page 8, Line 19 should be amended to say "includes but is not limited to."

(5) Page 10, Line 6 does not include the term "establishment permit." This provision should be added.

(6) Omit the phrase "of the operator" included on Page 11, Line 2. By omitting this phrase, the identity of the funeral establishment will be made clear to the consumer.

(7) A provision should be included so that the consumer can have a "30 day free look" at the insurance policy and preneed plan. If, at the end of the thirty days, the consumer is no longer interested in pursuing the policy and plan, he or she can simply cancel it.

(8) Delete the phrase "the licensed funeral director or operator of" included on Page 11, Lines 8-9. There should only be a reference to the "funeral establishment."

(9) Delete the phrase "the funeral director or operator of" on Page 12, Lines 22-23. There should only be a reference to the "funeral establishment."

(10) A provision should be added to prevent a funeral director, operator of a funeral establishment, or a funeral establishment from charging an "administrative transfer fee" should the consumer decide to change funeral establishments.

(11) If excess funds exist following a funeral, that money should ***not*** be retained by a funeral director, operator of a funeral establishment, or a funeral establishment.

(12) "[O]perator of a funeral establishment" should be deleted from Page 14, Line 12.

(13) The Board should be allowed to impose forfeitures on violators of these provisions. Currently, the draft does not include this.

(14) There is no provision indicating to whom the proceeds of the life insurance plan should be paid. The Board believes the payments should be made to the funeral establishment, rather than to an individual funeral director.

(15) The Board believes that it should have at least nine months to promulgate its rules, rather than six.

cc: Assembly Committee on Insurance, Securities, and Corporate Policy
Senate Committee on Business, Economic Development and Urban Affairs

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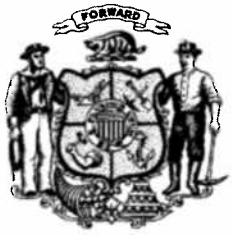
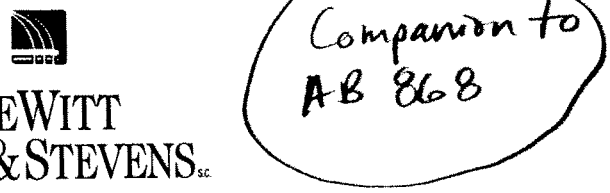
WISCONSIN STATE LEGISLATURE





DEWITT
ROSS & STEVENS S.C.
LAW FIRM

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8000 Excelsior Drive, Suite 401
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Please respond to: Capitol Square Office

March 20, 1996

Senator Dale Schultz
P.O. Box 7882
Madison, WI 53707

Senator Brian Rude
P.O. Box 7882
Madison, WI 53707

Representative Sheryl Albers
P.O. Box 8952
Madison, WI 53708

RE: Senate Bill 535--Pre-Need Funeral Arrangements

Dear Senators Schultz and Rude and Representative Albers:

I have previously shared with you the Wisconsin Pre-Need Coalition's ("WPNC") objections to Sections 17 and 23 of the substitute amendment to SB-545. I detailed WPNC's objections to Section 23 in a letter to Senator Schultz dated March 18, 1996. Section 17 pertains to rules on telemarketing.

Since that letter, I have met with both Senators Schultz and Rude and have discussed the respective positions of WPNC and the Wisconsin Funeral Directors Association ("WFDA") on the substitute amendment. I have conveyed to my client your sincere attempts at compromise regarding this difficult issue. My clients respect and appreciate your efforts in this regard.

Although we continue to have misgivings about some of the language in the substitute amendment, we are willing, in the spirit of compromise, to support in total and without amendment, the substitute amendment as written, if the WFDA does the same.

If, however, the WFDA does not support the substitute amendment, then we will continue to pursue the language changes in Section 23 which we noted in our previous correspondence.

Once again, on behalf of my client, we wish to thank you all for your support and help in this endeavor. We have come as far as we can; it is now up to the WFDA.

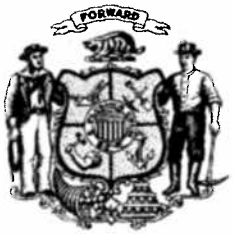
Very truly yours,

DEWITT ROSS & STEVENS s.c.

Stephen E. Bablitch

Stephen E. Bablitch

WISCONSIN STATE LEGISLATURE



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701–2536
Telephone (608) 266–1304
Fax (608) 266–3830

DATE: March 25, 1996

TO: INTERESTED LEGISLATORS

FROM: Gordon A. Anderson, Senior Staff Attorney

SUBJECT: Proposed Senate Substitute Amendment 1 to 1995 Senate Bill 535 and Assembly Substitute Amendment 1 to 1995 Assembly Bill 868, Relating to the Sale of Burial Agreements Funded With Life Insurance Policies, Granting Rule-Making Authority and Providing a Penalty

A. INTRODUCTION

Under current law, life insurance contracts may be sold, the proceeds of which are used to pay for a funeral. Under s. 632.41 (2), Stats., no contract in which the insurer agrees to pay for any of the incidents of burial or other disposition of the body of a deceased may provide that the benefits are payable to a funeral director or any other person doing business related to burials. However, in 1982, Attorney General Bronson C. LaFollette held that the statute did not prohibit a funeral director or a funeral home being named as the beneficiary of a life insurance policy where the insurer and beneficiary separately agree that the purpose of naming the funeral director as beneficiary of the policy is to prearrange payment for funeral and burial services to be provided by the funeral director or beneficiary [71 OAG 7].

Under s. 630.15, Stats, no life insurer may invest directly in or, except as a loan secured by a mortgage on real estate or as a policy loan, lend money to a funeral director or a cemetery or any association of funeral directors or cemeteries. No funeral director or cemetery or association of funeral directors or cemeteries may control a life insurer.

Section 445.125, Stats., regulates burial agreements. When a person makes an agreement with another person who is selling or offering for sale funeral or burial merchandise or services or the furnishing of the services not immediately required, all payments made under the agreement are made in trust.

Thus, under current law, a life insurance salesman may sell life insurance that is used for the purpose of paying for a funeral. A funeral director or funeral establishment may enter into an agreement to provide burial services, which agreement may either be:

1. Unfunded.

2. Funded through a burial trust.

3. Funded with life insurance proceeds.

A life insurance agent may not sell the burial agreement or enter into a burial agreement on behalf of a funeral establishment.

The Substitute Amendments authorize a life insurance agent to sell a burial agreement on behalf of a funeral establishment if the burial agreement is to be funded with the proceeds of a life insurance policy. The Substitute Amendments establish procedures through which the agent can become qualified to make such sales, the requirements for the relationships between the funeral establishment and the agent, provisions for protection of consumers in the transaction and penalties for violation of the new law. Following is a description of the provisions of the Substitute Amendments.

B. AUTHORIZATION

A licensed funeral director ("funeral director"), an operator ("operator") of a funeral establishment ("establishment"), an agent of a licensed funeral director or an agent of an operator of a funeral establishment may sell or solicit the sale of a burial agreement that is to be funded with the proceeds of a life insurance policy. The burial agreement must meet the requirements specified in the Substitute Amendments and in the rules promulgated by the Funeral Directors Examining Board ("Board"). Also, the funeral director, operator or agent must be licensed as an insurance intermediary under ch. 628, Stats.

The funeral director or operator may authorize an agent who is an insurance intermediary and who the meets the training requirements established by the Board to sell or solicit the sale of a burial agreement funded with the proceeds of a life insurance policy if it meets the requirements specified in the Substitute Amendments.

The funeral director or operator must report to the Board the identity of any authorized agent and provide evidence that is satisfactory to the Board that the agent meets the training requirements established by the Board. The Board is required to promulgate rules establishing training requirements and procedures for making reports and providing the required evidence of compliance.

No agent of an operator may solicit the sale of or sell a burial agreement funded with the proceeds of a life insurance policy, unless he or she has a contract that authorizes them to act as the agent of a funeral establishment and satisfies the requirements established by the Board.

If such an agreement is entered into, the funeral director or operator is responsible for and bound by any act of an agent that is within the scope of the agent's authority while under a contract between the agent and the funeral director or operator.

If an agent solicits the sale of or sells a burial agreement funded with the proceeds of a life insurance policy, the agent must disclose to the prospective purchaser of the burial agreement the identity of the funeral establishment of which he or she is an agent. He or she must also furnish to the applicant a copy of a booklet prepared and distributed by the Board that describes the differences between funding burial agreements with the proceeds of a life insurance policy and entering into a burial agreement funded by a burial trust.

C. CONTENTS OF BURIAL AGREEMENTS

A burial agreement that is funded with the proceeds of a life insurance policy must:

1. Specify in the agreement the funeral establishment that will be used to provide the funeral services or funeral merchandise.

2. Include a provision setting forth the nature and extent of any price guarantee for the funeral merchandise or funeral services.

3. Provide that the funeral director who owns the funeral establishment or is an agent of the operator will ratify the burial agreement, in writing, with his or her signature.

4. State that the price of any funeral merchandise or funeral services may not exceed the price for the merchandise or services that, at the time the merchandise is provided or the services are performed is set forth in the funeral establishment's general price list required under the funeral industry practices regulations of the Federal Trade Commission.

5. Before the applicant's initial premium is accepted, the agent, funeral director or operator shall comply with requirements specified in item 6, below, and disclose the following, in a writing, that is clear and conspicuous to the applicant:

a. The fact that a life insurance policy is involved in, is connected to, or being used to fund the burial agreement.

b. The type of insurance instrument that is funding the burial agreement.

c. The effect of the burial agreement on changing the life insurance policy, including changing the assignment of the policy proceeds, changing the beneficiary designation, or changing the use of the proceeds, any penalties incurred by the policyholder as a result of failing to make premium payments and any penalties incurred or money received as the result of cancellation or surrender of the insurance policy.

d. The nature of the relationship between the insurance intermediary who solicits or sells the policy and the funeral establishment that will provide funeral or burial merchandise or services.

e. The relationship of the life insurance policy to the funding of the burial agreement and terms of any guarantees other than are described in item f, below.

f. A list of the funeral merchandise and funeral services that are applied for or contracted for under the burial agreement and all relevant information concerning the price of funeral services provided under the burial agreement. This statement must be included on whether the purchase price of the merchandise or services are guaranteed at the time of the purchase or whether the purchase price of the funeral merchandise or services is to be determined at the time of the need and a statement that the price of the funeral merchandise or services is subject to the limit described in Section C, 4, above.

g. All relevant information concerning what occurs, and whether any entitlements or obligations arise, if there is a difference between the proceeds of the policy and the amount of money actually needed to fund the burial agreement.

h. Any restrictions, including geographic restrictions, or penalties relating to delivery or performance under the burial agreement, including any restrictions or penalties relating to the inability of the operator of the funeral establishment to perform.

i. A statement as to whether a sales commission or other form of compensation is being paid to the agent who sold or solicited the sale of the burial agreement and, if so, the identity of the person to which the commission or other compensation is paid.

D. RULE-MAKING BY THE BOARD

The Board is required to promulgate rules establishing the following:

1. Training requirements that an agent must satisfy to sell or solicit the sale of a burial agreement that is to be funded with the proceeds of a life insurance policy.

2. Minimum standards that a burial agreement must satisfy if it is to be funded with the proceeds of a life insurance policy.

3. Minimum standards that a contract between an agent and an operator must satisfy to authorize the agent to sell or solicit the sale of a burial agreement that is to be funded with the proceeds of a life insurance contract on behalf of the operator.

4. The form and content of written notice that a funeral director, operator or agent is required to provide to the Board with respect to termination of burial trusts.

In addition, the Board is authorized, but not required, to promulgate rules establishing standards for marketing practices for burial agreements, including standards for telephone solicitation of prospective purchasers. The rules may prohibit a method of telephone solicitation if the Board determines that the prohibition is necessary to protect the public.

The Board is required to prepare and distribute a booklet that describes the differences between funding a burial agreement with the proceeds of a life insurance policy and entering into a burial agreement funded by a trust. The Board may charge a reasonable fee for the cost of preparation and distribution of the booklet.

E. PROHIBITIONS

Funeral directors, operators and agents may not solicit the sale of a burial agreement that is to be funded with the proceeds of a life insurance policy by doing any of the following:

1. Knowingly contacting a prospective purchaser of a burial agreement in a hospital, health care facility or similar facility or institution.

2. Knowingly contacting a relative of a person whose death is imminent or appears to be imminent.

3. Contacting a prospective purchaser of a burial agreement by door-to-door solicitation or in a manner that violates the rules promulgated by the Board.

The funeral director, operator or agent may solicit a sale by contacting any person if the prospective purchaser requests the contact or if the contact is part of a mass mailing, television, radio, print or other type of advertising campaign that is not directed solely towards a person in a hospital, health care facility or similar facility or institution or toward the relatives of a person whose death is imminent or appears to be imminent.

A licensed funeral director, agent or operator is not prohibited from using mass marketing practices or in-person contacts or communications permitted under the above provisions or by a rule promulgated by the Board.

No funeral director or operator may require a person who enters into a burial agreement to purchase a life insurance policy that is used to fund the agreement from an agent specified by the funeral director or operator. Further, no funeral director or operator may authorize an agent to solicit or sell a burial agreement funded by the proceeds of a life insurance policy unless the agent meets the training requirements established by the Board, by rule.

F. MISCELLANEOUS

If an applicant is terminating a burial trust, the agent, licensed funeral director or operator of the funeral establishment must, before accepting the applicant's initial premium, forward a written notice to the Board that satisfies requirements established by the Board, by rule, and may not accept the applicant's initial premium until 30 days after providing written notice.

An agent authorized by a funeral director or operator may not engage in unfair or deceptive acts or practices specified in the funeral industry practices regulations of the Federal Trade Commission and shall comply with requirements to prevent unfair or deceptive acts or practices specified in those regulations.

A funeral director or operator who either directly or through an agent solicits or sells a burial agreement funded with the proceeds of a life insurance policy must maintain a record of the burial agreement that identifies the life insurance policy used to fund the agreement. The record maintained must be made available to the Board if the Board submits a written request to examine the record at least three days before the examination is to occur.

G. PENALTIES

The Board may limit, suspend or revoke a license of a funeral director, a certificate of registration of an apprentice or a permit of an operator and reprimand such persons for any violation of ch. 445, Stats., or any rule of the Board by an agent authorized by the funeral director or operator.

Also, in addition to, or in lieu of, a reprimand, suspension, limitation or revocation of a license or permit, the Board may assess against any person who violates the provisions of the legislation or the implementing rules, a forfeiture of not more than $1,000 for each violation. Further, a funeral director or operator who violates the requirements with respect to burial agreements funded by life insurance proceeds may be fined not more than $5,000 for each violation. Each day that an agent authorized by a funeral director or operator fails to meet the training requirements established by the Board constitutes a separate violation.

H. INSURANCE PROVISIONS

The current law [s. 632.41 (2), Stats.] that prohibits contracts from providing that the benefits that are payable to a funeral director or other person doing business related to burial, is amended to provide that a life insurance policy may provide for the assignment of the proceeds of the policy to a funeral director or operator, if the agent who sells or solicits the sale of the policy is not an agent of the funeral director or operator of the funeral establishment or if the assignment of proceeds is contingent on the provision of funeral merchandise or services provided for in a burial agreement that satisfies the requirements of the legislation and the rules promulgated by the Board.

The Commissioner of Insurance must, by rule, establish minimum standards for benefits, claims payments, marketing practices, compensation arrangements and reporting practices for life insurance policies that are sold for the purposes of funding burial agreements.

A life insurance policy sold for this purpose must permit the policyholder to designate a different beneficiary, after written notice to the current beneficiary, and a different funeral director or operator of a funeral establishment that is to receive the assignment of proceeds after written notice to the funeral director or operator of the funeral establishment.

I. PREPARATION OF RULES AND BOOKLET

The Office of the Commissioner of Insurance must submit its proposed rules to the Legislative Council Staff no later than the first day of the seventh month beginning after the effective date of the provision (the day after publication of the legislation as an act).

The Board must submit its proposed rules no later than the first day of the seventh month beginning after the effective date of the provision (also, the day after publication of the legislation as an act).

The Board must prepare for distribution the booklet required by the act, no later than the first day of the seventh month after the effective date of the act.

Except for the above provisions, the act takes place on the first day of the 13th month beginning after publication.

GAA:rjl;lah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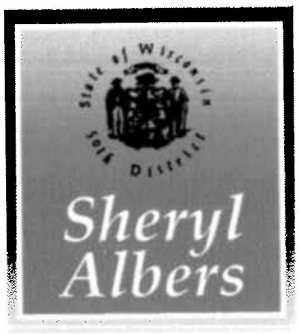


TO: Assembly Insurance, Securities and Corporate Policy Committee Members

FROM: Representative Sheryl Albers

RE: Substitute amendment to AB 868

DATE: March 25, 1996

Attached please find a copy of the Senate substitute amendment to Senate Bill 535, the senate companion bill to Assembly Bill 868 relating to the sale of burial agreements funded with life insurance policies (pre-need).

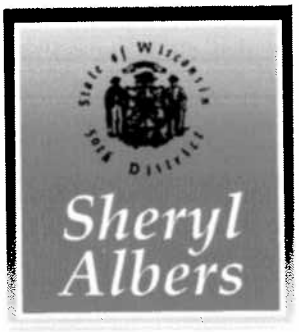
The **exact** substitute amendment is being drafted to the Assembly bill and will be taking up upon adjournment tonight by the Assembly Insurance Committee. In the interest of time, I wanted to get a copy out to members to allow you to review it before the hearing tonight.

I will get the Assembly substitute and letters of support out to you as soon as they arrive in my office. Legislative Council will also be sending around a memo explaining the substitute later this morning.

Please direct any questions regarding the hearing tonight, to my office.

Office: P.O. Box 8952 • State Capitol • Madison, WI 53708-8952 • (608) 266-8531
Message Hotline: (800) 362-9472

Home: S6896 Seeley Creek Rd.• Loganville, WI 53943 • (608) 727-5084



TO: Assembly Insurance, Securities and Corporate Policy Committee Members

FROM: Representative Sheryl Albers

RE: Amendments for hearing

DATE: March 25, 1996

Technical

Enclosed please find a substitute amendment and two amendments to the substitute amendment for the executive session on AB 868.

Enclosed also find testimony on SB 533 from the Office of Commissioner of Insurance, also up for hearing today.

Office: P.O. Box 8952 • State Capitol • Madison, WI 53708-8952 • (608) 266-8531
Message Hotline: (800) 362-9472

Home: S6896 Seeley Creek Rd.• Loganville, WI 53943 • (608) 727-5084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WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701–2536
Telephone (608) 266–1304
Fax (608) 266–3830

DATE: March 27, 1996

TO: INTERESTED LEGISLATORS

FROM: Gordon A. Anderson, Senior Staff Attorney

SUBJECT: Senate Amendments 1 and 2 to Senate Substitute Amendment 1 to 1995 Senate Bill 535, Relating to Sale of Burial Agreements Funded with Life Insurance Policies, Granting Rule-Making Authority and Providing a Penalty

A. SENATE AMENDMENT 1

Senate Substitute Amendment 1 to Senate Bill 535 regulates only burial agreements that are funded with the proceeds of a life insurance policy. On page 15, line 4, a provision authorizes the Funeral Directors Examining Board to promulgate rules establishing standards for marketing practices for burial agreements. Senate Amendment 1 amends the provision to provide that those rules relate to burial agreements that are funded with the proceeds of a life insurance policy.

B. SENATE AMENDMENT 2

SECTION 8 of Senate Substitute Amendment 1 creates s. 445.12 (3) (b), Stats., which provides that it does not prohibit the solicitation or sale of burial agreements to the extent permitted by ss. 465.12 (3g) and 445.125 (3m), Stats., as created by the legislation. However, currently, solicitation of burial agreements is permitted under s. 445.125 (1) (a), Stats. Thus, Substitute Amendment 1 would appear to prohibit burial agreement solicitations if they are to be funded with burial trusts.

Therefore, Senate Amendment 2 amends SECTION 8 of Senate Substitute Amendment 1 to provide that solicitation or sale of burial agreements is permitted under s. 445.125 (1), Stats. (the current law), as well as the solicitation and sale of burial agreements under s. 445.125 (3m), Stats., the new procedure created by the Substitute Amendment.

(OVER)

The second part of Senate Amendment 2 corrects a reference in current law. Under current s. 440.03 (1), Stats., the Department of Regulation and Licensing (DRL) may promulgate rules defining uniform procedures to be used by DRL and "...all examining boards...for receiving filing and investigating complaints, for commencing discipline proceedings and for conducting hearings." Also, s. 445.18 (1), Stats., authorizes the Funeral Directors Examining Board to conduct hearings and to take disciplinary action subject to the rules promulgated under s. 440.03 (1), Stats.

However, under current s. 445.13 (2), Stats., no reprimand or order limiting, suspending or revoking a license, certificate of registration or permit shall be made until after a "public hearing" conducted by the Funeral Directors Examining Board.

The DRL has promulgated ch. RL 2, Wis. Adm. Code, relating to procedures for pleadings and hearings.

Under these rules, hearings may not necessarily be "public." For example, hearings before the Funeral Directors Examining Board, according to staff of the DRL, may be requested to be closed by persons who bring complaints, such as the members of a deceased person's family. Since the statute appears to require a public hearing when in fact the hearing may be closed pursuant to the rules of the DRL, Senate Amendment 2 deletes "public" from the hearing requirement.

If you have any questions, or if I can be of further assistance, please let me know.

GAA:rjl:wu;lah

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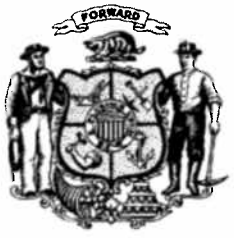

State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Marlene A. Cummings
Secretary

Tommy G. Thompson
Governor

1400 E. WASHINGTON AVENUE
P.O. BOX 8935
MADISON, WISCONSIN 53708-8935
(608) 266-2112

March 28, 1996

TO: Senators Schultz, Rude, Fitzgerald, Representative Albers and Other Interested Parties

FROM: The Wisconsin Funeral Directors Examining Board

RE: LRBs0580/2 (Substitute Amendment to SB 535)

The Wisconsin Funeral Directors Examining Board met this morning via teleconference, and made the following motion:

The Funeral Directors Examining Board endorses Senate Substitute Amendment to 1995 Senate Bill 535 (LRBs0580/2) because it contains substantial consumer protection provisions as well as essential rulemaking authority; however, the Board remains convinced that only licensed funeral directors should be allowed to make preneed funeral service arrangements.


FORWARD
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Wisconsin Pre-Need Coalition

9000 West Capitol Drive
Milwaukee, Wisconsin 53222
(414) 464-4640 FAX (414) 464-9651

May 7, 1996

MAY 7 1996

Representative Sheryl Albers
PO Box 8952
Madison, WI 53708

Companion to AB868

Dear Representative Albers:

Thank you for the law!

On Thursday, April 25th, Governor Thompson signed into law SB 535 which now regulates insurance funding of funerals. The law brings to a constructive conclusion a perplexing issue with a ten year history. The issue has been upsetting and burdensome for consumers, funeral directors, the Commissioner of Insurance, the Department of Regulation and Licensing, and the legislature.

Your sponsorship and staunch support of SB 535 as amended was responsible for its passage and hence bringing order out of chaos. You remained faithful and dedicated to the cause of bringing good consumer legislation forward even though the process was, at times, demanding and clouded. There certainly was a lot of pressure that you withstood and we will forever remember your unwavering trust in our cause.

The new law gives broad rule making authority to the Commissioner of Insurance and the Funeral Directors Examining Board. We must be vigilant that the intent of the law is achieved. We will follow the progress closely and keep you informed when necessary.

We truly appreciate the countless hours you and your staff passionately committed to our cause. It is with a deep sense of gratitude that we thank you for your trust and dedication.

Sincerely,

Bill Krause

For The Steering Committee