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Also, it may be noted that the Acts of 1905, Ch. 129, Sec. 243, as amended, as found in Burns' Indiana Statutes (1950 Repl., 1955 Supp.), Section 48-702, authorizes a remonstrance against the proposed annexation only by *group* action, necessitating an appeal "by either a majority of the owners of land in the territory or by the owners of more than seventy-five [75] per cent in assessed valuation of the real estate in the territory \* \* \*." If, for example, the annexation ordinance were to provide for an increase in assessment and were considered as binding, an appeal from such would require the necessary group action and deprive affected property owners of their *individual* rights to have the assessment reviewed by the procedures now afforded under applicable taxing statutes.

In view of the above reasons, I must state that in my opinion the provision in said ordinance relating to the manner of assessing the annexed territory is not binding, but should be considered only as a recommendation to the proper taxing officials. Therefore, it is my opinion that the common council of a city does not have the authority, under existing statutes, by the enactment of an annexation ordinance to adopt a binding classification of land for tax assessment purposes.

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### OFFICIAL OPINION NO. 51

December 7, 1956

Mr. Bernard M. Sleeth  
Secretary-Treasurer  
State Board of Embalmers and Funeral  
Directors of Indiana  
406 South Harrison Street  
Shelbyville, Indiana

Dear Mr. Sleeth:

Your letter, in which you request my Official Opinion, has been received and reads, in substance, as follows:

The Board has directed me to request an official opinion from you concerning the legality of certain advertising used by the A and B Mortuaries.

A is deceased and the mortuaries are operated by his widow, B. Both A and B were licensed funeral directors and B continues to hold her license.

B is continuing to use the pictures and names of both of them in her advertising although in a number of her newspaper ads she has put the words "deceased" under A's name. She maintains that she has a right to follow this practice because her name is a part of the firm title and that she is not advertising illegally.

Also, the telephone directory just published continues to list A as a funeral director giving the address and phone number of one of the A and B Mortuaries as his location.

Since A's funeral director's license was automatically cancelled at the time of his death, we wish to know whether such advertising whether it be by newspaper, telephone directory, or in another form is a violation of Rule 17, subsection a of the Indiana Board of Embalmers and Funeral Directors which states:

"Pursuant to Section 5, Sub-section (g) of the Indiana State Embalmers' and Funeral Directors' Law, approved March 10, 1939 (Section 5, Sub-section (b) of the Indiana State Embalmers' and Funeral Directors' Law, approved February 28, 1949), the following practices, acts, or omissions shall be considered unethical and therefore grounds for suspension or revocation of licenses:

"(a) False or misleading advertising as a funeral director; advertising or using the name of an unlicensed person in connection with that of any funeral establishment; advertising superiority of service or equipment; or advertising in or about a hospital."

If you hold that A's name and/or picture can be used, what are the limitations which would govern the usage in accordance with the law?

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As a corollary of this and again referring to Rule 17a, is it permissible for a funeral establishment to use the names and/or pictures of living unlicensed personnel in its advertising or publicity? Also, is it illegal to use such names and/or pictures of such unlicensed personnel if the titles of their positions with the firm such as receptionist, organist, etc. are designated in the advertisement of publicity?

The above-referred to statute is the Acts of 1939, Ch. 165, Sec. 5, as amended, as found in Burns' Indiana Statutes (1951 Repl.), Section 63-721, subsection (b), which empowers the Board to:

“(b) Make, promulgate, alter, amend or repeal rules and regulations for the conduct of the meetings of the board, and for the holding of license examinations and license revocation hearings before such board for the granting and revocation of license, for the practice of embalming and the operation of funeral homes and establishments, and for the enforcement of any of the rules and regulations adopted and promulgated by the board and as set out in this act.”

The Acts of 1939, Ch. 165, Sec. 6, as amended, as found in Burns' Indiana Statutes (1951 Repl.), Section 63-722, provides, in part, as follows:

“On and after the effective date of this act, no funeral home establishment, or any other place pertaining to funeral directing or the conducting of funerals, shall be established and operated for that purpose, in the State of Indiana, under any name which does not disclose the surname of one or more holders of an Indiana funeral director's license and under whose active direction and management such establishment is operated. Natural persons only shall be eligible to apply for and receive a funeral director's license and no person shall hereafter be granted an initial funeral director's license to operate as a funeral director of more than one [1] establishment at one [1] time; but may operate part time at more than one [1] place when each such place is at all times also operated by one [1] or more other persons

either so licensed or employed by such licenseholders so licensed and present there.

“When more than one [1] person proposes to engage in the funeral directing business as partners, it shall be necessary for one [1] of such persons to secure a license under this act to operate as a funeral director, except however that no silent partner or any partner not so licensed shall hold himself out through advertising or otherwise as being a licensee.

“In the case of any funeral home, mortuary or establishment, which has been licensed under any other act, prior to the effective date of this act, to operate under a firm, trade or corporate name, its owner shall be permitted to continue the use of such name and be authorized to transfer or retransfer, sell and re-sell such funeral home, mortuary or establishment to any Indiana licensed funeral director or directors, and to include as part of the consideration for such transfer or retransfer, sale or re-sale, the continued use of such firm, trade or corporate name, or any portion thereof, which the purchaser or transferee may so desire to use. All such transfers, with complete information, shall be reported to the board thirty [30] days prior to purchase or transfer.

“It shall be unlawful for any individual or individuals, so licensed, to engage in such business, in any manner, under any name other than that authorized by this act and which name and address must be at all times registered with the board.

“An individual licensed as a funeral director is limited in his operations as such, to the place or places designated in the records of the board as the location of his business, and also to the name so registered and under which the business is conducted. In the event that the individual ceases to operate or to hold himself out as operating at the designated place or places and under the name registered with the board, his funeral director's license shall thereupon terminate upon an order to such effect by the board. The individual or individuals, so licensed and conducting any such busi-

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ness shall be required to apply to the board, on forms prescribed by the board, for any change in the designated place or places of operation, or in the name of such business.”

The Acts of 1939, Ch. 165, Sec. 10, as amended, as found in Burns' Indiana Statutes (1951 Repl.), Section 63-726, also provides:

“Any license issued pursuant to the provisions of this act shall automatically cease to exist upon the death of the licensee on and after the effective date of this act. The board shall, because of death or other emergencies affecting the active status of a license or affecting the business of the licensee or the firm operated by the licensee, have the power to grant temporary license authority to individuals who, because of such death or other emergency affecting such licensee, have acquired a managerial interest in the property of the licensee. Such temporary license authority shall be granted for the express purpose of authorizing temporary operation of the funeral directing establishment of the licensee until such time as may be necessary to dispose of it or to meet such emergency as may have arisen, and shall be revoked or renewed at the discretion of the board. A temporary license shall not be extended for a period of more than two [2] years.”

Rule 17, subsection a of your Board was duly adopted pursuant to the statute establishing a uniform method for the adoption of rules and regulations of state agencies, same being Acts of 1945, Ch. 120, as found in Burns' Indiana Statutes (1951 Repl.), Section 60-1501 *et seq.*, and approved by the Attorney General's office as to form and legality. It is, in my opinion, consonant with the authority above referred to and consistent with the intent of the Legislature as expressed in the provisions of the statute above quoted. The formal adoption and publication of a rule by a state administrative agency would amount to an administrative construction of the statute which is entitled to great weight, particularly where the Legislature by inaction through several sessions has indicated satisfaction with that construction: see Gross Income Tax Division

v. Colpaert Realty Corp. (1952), 231 Ind. 463, 479, 109 N. E. (2d) 415.

From said statute it is clear that on the death of a licensed funeral director, his license qualifying his place of business is automatically cancelled so that in such event, he is not only prevented by death from carrying on such business, but the licensure coverage of said place of business ceases, except that the Board may grant a temporary license, in a necessary emergency, for the carrying on of such business under the conditions and limitations imposed by the last quoted section of the statute. In the instant case, no such emergency is shown for the reason that the surviving partner was also a duly licensed funeral director.

Under the provisions of the second above quoted section of the statute, on A's death, his widow, also a licensed funeral director, was entitled to carry on said business under the firm name of A and B. However, thereafter, the business could only be conducted by her under her qualification of such establishment by her own funeral director's license, and the business was no longer operated by A. Under the clear provisions of said section, of the statute, and the requirements of said Rule, aforesaid, no advertising of A, except as appeared in the firm name, was permissible. In addition to the foregoing, any listing in the telephone directory of A as a funeral director at one of the firm's mortuaries, was also a violation of the foregoing statute and Rule and could be considered false and misleading advertising.

From the foregoing, I am of the opinion that any reference to any use of A's name, under the above circumstances, except as would appear in the firm name, constitutes a violation of the statute and Rule referred to.

On the other questions suggested, I am of the opinion that the advertising and use of the names or pictures of living unlicensed personnel, including those classed as receptionists and organists, are violative of said statute and Rule of the Board.