much such Justice of the Peace might be subjected to criticism, I do not find that he is prohibited from practicing law in city courts.

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OFFICIAL OPINION NO. 96

October 4, 1949.

Mr. George H. Herrmann,
Secretary-Treasurer,
State Board of Embalmers and Funeral Directors,
1505 South East Street
Indianapolis, Indiana.

Dear Sir:

Your letter of September 9, 1949 has been received requesting an official opinion construing Chapter 38 of the Acts of 1949, same being the new statute regarding Embalmers and Funeral Directors. You specifically desire an answer to the following questions:

"1. What will be the status of the Funeral Directors licenses issued under Section 6 (e) of the old law. Will they continue in force or be automatically cancelled?

"2. Does an embalming room have to be maintained in a branch establishment?

"3. Can a funeral director's license be issued to an unemployed embalmer? Also, if he is employed and leaves his place of employment is his license cancelled?

"4. Will there be two type of funeral directors licenses

(a) An Operator's License covering the Owner and Operator of a funeral home.

(b) A Professional License covering a man employed in a funeral home.
Or, will one type of license cover both classes of funeral directors?"

Preliminary to answering your questions it is pointed out that the 1949 Law to a great extent has rewritten many of the sections of the old statute concerning Embalmers and Funeral Directors and among other things has authorized corporations to engage in the business of Funeral Directing when conducted in accordance with the provisions of the statute. It has also deleted some of the previous provisions of the statute including Clause (e) of Section 6, Chapter 165 Acts 1939, same being Section 63-722 Burns' 1943 Replacement, which authorized persons otherwise qualified to engage in the business of funeral directing where a partnership was formed and approved by the Board, in which partnership, a licensed Embalmer was the owner of one-third (1/3) interest in said partnership business.

1. In answer to your first question as to the present status of Funeral Directors Licenses issued under Section 6 (e) of the old law, as previously pointed out, this Clause as to such type of partnership agreements, was completely deleted. Under the old law it was generally considered that since such unqualified persons were by virtue of such partnership arrangement issued Funeral Directors Licenses that the same ceased on the dissolution of the partnership and that the same did not grant to such unqualified licensees any vested rights of renewal after such dissolution.

However, Section 6 of Chapter 38 of the Acts of 1949 contained the following new provision:

"* * * All embalmers' licenses and funeral directors' licenses hereafter shall automatically terminate on the thirty-first day of December in each calendar year. On or before the last day of each calendar year each embalmer or funeral director, now or hereafter licensed to act as an embalmer or funeral director or to engage in the funeral directing business, shall transmit to the secretary-treasurer of the state board of embalmers and funeral directors an application for renewal of his license, together with the fee for such renewal hereinafter prescribed. If any holder of an embalmer's license and/or a funeral director's license
fails to secure the renewal certificate herein provided for by the first day of March of the calendar year succeeding the previous renewal date, such failure shall, without any action by the board, automatically cancel and annul the license previously granted, together with any related renewal certificate, and no renewal license shall be issued until a regularly prescribed re-examination has been passed by the applicant to the satisfaction of the board: Provided, however, That any license may be renewed by the board, subsequent to its expiration date and prior to the first day of March of the next succeeding calendar year upon payment by the applicant of the required renewal fee and a penalty of ten dollars.”

Words in a statute must be construed in their plain, ordinary and usual meaning, unless a contrary purpose clearly appears. (Sec. 1-201 Burns’ 1933).

Dreves v. Oslo Twp. (1940), 217 Ind. 388, 397.

It is further recognized that courts will look to the general purpose and scope of a statute to determine the legislative intent.

City of Indianapolis v. Evans (1940), 216 Ind. 555, 567.

When the above Section of the statute is considered in the light of the above authority, it is clear the legislature has not only authorized, but has required, all persons acquiring Embalmers and Funeral Directors to renew their licenses within the time above provided, or on failure to do so the licenses are cancelled and annulled. While differently worded from the usual “Grandfather Clause” regarding continuing license of present licensees as contained in another similar statute, it in my opinion has the same force and effect.

It is to be observed that while the old provision, above referred to, as to such special partnerships has been deleted from the new Statute, Section 4 of the new Act provided in part as follows:

“When more than one person proposes to engage in the funeral directing business as partners, it shall be
necessary for one 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 answer to your first question, I am therefore of the opinion that present holders of Funeral Directors' Licenses issued under Section 6 (e) of the old law are authorized and required to renew their Funeral Directors' Licenses under Section 6, supra, of the new law. That their status is fixed as a qualified licensee and that no change in their partnership arrangement is necessary. Such licensee could be individually licensed as a Funeral Director to qualify a Funeral Establishment being operated by partnership. On a dissolution of such partnership they would still be entitled in their individual capacity to qualify for Funeral Directors' Licenses, at an established place of business, the same as any other person duly licensed and qualified as a Funeral Director.

2. In answer to your second question, I am of the opinion an Embalming Room does not have to be maintained in a branch establishment. Under the old law, and due to its phraseology, it was considered necessary that each branch establishment have an approved embalming room, but that all embalming need not be done at the branch establishment, but could be done at the branch establishment if desired. However, Section 4 of Chapter 38 of the Acts of 1949 provides in part as follows:

"All premises in which the business of funeral directing is conducted including branch establishments, shall be maintained in a clean and sanitary condition. An operating, or emblaming room shall be maintained with painted (not papered) or tile walls, and tile, linoleum, cement, or other material approved by the board, covering the entire floor. The top surface of the operating table shall be of glass, metal, porcelain, or other non-porous material, approved by the board before any embalming shall be done in such branch establishments."

This part of said new statute is new and the above exception has been added by the legislature and it is reasonable to
assume the legislature added such language in view of the interpretations given former acts and regulations and the manner of administration of the old law by those in authority. The exception above underlined applied to any embalming room.

The legislature is presumed to be acquainted with existing law on any subject and to have in view its provisions together with the construction placed thereon by the courts.

State Petroleum Company v. Department of Audit and Control (1936), 211 Ind. 400, 405; Town of Brownstown v. Truckseos (1933), 98 Ind. App. 322, 329.

A change of legislative intent will be presumed from a material change in the wording of the statute.

State ex rel. Beal (1926), 185 Ind. 192, 197; Chism et al. v. State of Indiana (1932), 203 Ind. 241, 244.

In answer to your second question I am therefore of the opinion it is not necessary that a branch Funeral Directors' Establishment maintain an embalming room. However, an approved embalming room must be maintained if any embalming is to be done in such branch establishment.

3. In your question number 3, you desire to know if a Funeral Directors' License can be issued to an unemployed embalmer. You also desire to know if he is employed and leaves his place of employment, is his license cancelled.

Section 4 of Chapter 38 of the Acts 1949 provides in part as follows:

"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 business 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. * * *

From the foregoing it is my opinion Funeral Directors' License are not limited to a matter of employment but can only be issued for the purpose of carrying on such business, if an employee, or otherwise, at a designated place of business. It would therefore be necessary that such an embalmer, before being issued a Funeral Directors' License, have a definite business connection as an owner or employee at a designated funeral directing establishment and that upon severing such connection with such designated place of business his license would terminate upon an order to that effect issued by the Board, and he would 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 event there was a chance in the name of such business.

4. In your fourth question you desire to know if a Funeral Directors' License should be of one form or whether they should be divided in two types, one for operators and owners and the other for employees.

Section 4 of Chapter 38 of the Acts of 1949 in part provides:

"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 establishment at one time; but may operate part time at more than one place when each such place is at all times also operated by one or more
other persons either so licensed or employed by such license-holders so licensed and present there."

Said section of said Act further provides and authorizes Funeral Director Licensee to form corporations and requires at all times that one or more persons who are actively engaged as officers or directors thereof shall also be licensed under said Act as Funeral Directors and Embalmers and that at least one thereof shall devote his entire time to such business of the corporation, and also provides that he or some other licensee, as an employee, shall be available in the active conduct of such business for which he is so licensed.

From the foregoing it is very evident, especially when considered in pari materia with the other sections of said statute, that Funeral Directors' Licenses may be issued not only to the owner and operator of the business but to the employees otherwise duly qualified for licensure. The statute makes no requirement for a distinction between such forms of licenses but only requires that the conditions upon which they are issued be fully recorded with the Board and passed on by the Board at the time such Funeral Directing Establishment is approved and such license issued.

In answer to your question numbered four, I am therefore of the opinion only one type of Funeral Directors' Licenses is required to be issued by the Board but that it should be issued for the purpose of carrying on such business at a designated place of business.

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OFFICIAL OPINION NO. 97

Honorable Otto K. Jensen,
State Examiner, State Board of Accounts,
Room 304, State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter of July 14, 1949 requesting an official opinion on the following question: