

Thus, the answer to your first question would not be controlling. If the municipality is not an employer within the meanings of the term used in Chapter 183 (*supra*) such a pay roll deduction is clearly valid, and if the municipality is an employer, the deduction is valid under subsection (c) (1) of Section 2.

I am therefore of the opinion that within the discretion of the municipal corporation, it may accept assignments of wages for payment of premiums upon memberships in the Blue Cross Hospital Service.

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OFFICIAL OPINION NO. 32

April 2, 1946.

Hon. Earl K. Parson, Secretary,  
State Board of Embalmers and Funeral Directors,  
801 West Adams Street,  
Muncie, Indiana.

Dear Sir:

Your letter of March 25, 1946, received in which you request an official opinion as to whether or not Clause (e) of Section 6, Chapter 165 of the Acts of 1939 is unconstitutional in that it permits a person to form a partnership with a licensed embalmer owning one-third of the interest in the business and thereby permits such individual to secure a funeral director's license without meeting all the requirements contained in such section of the statute for the issuance to other persons of a funeral director's license.

In your letter you desire to know if the exception contained in Clause (e) of said statute discriminates against persons regularly licensed as a funeral director under the other provisions of said section of said statute to an extent that would render Clause (e) of said statute unconstitutional.

Clause (e) of Section 6, Chapter 165, Acts 1939, same being Section 63-722 Burns' 1943 Replacement, reads as follows:

"In lieu of any and all requisites and requirements set forth in subsections (b), (c) and (d) of this sec-

tion, the board shall issue a funeral director's license to any individual who files an application to be so licensed with the board on a form prescribed by the board, if said application is accompanied by a signed or verified copy of a partnership agreement which discloses that the application (applicant) for such license proposes to associate or is associated as a partner in the funeral directing business with the holder of an Indiana embalmer's license and that said holder of such embalmer's license is the bona fide owner of at least one-third interest in the partnership funeral directing business."

Subsections (b), (c), and (d) of said section of said statute, above referred to, read as follows:

"(b) Has been graduated by an accredited high school;

"(c) Has successfully completed a one (1) year's course in a recognized college of embalming which is acceptable to and accredited by the board;

"(d) Has filed an application with the board for an examination as to his fitness, on a form prescribed by the board, at a time not later than fifteen (15) days prior to the date set by the board for such examinations and has successfully passed said examination as required by the board in its rules and regulations. Such application shall be accompanied by the fee hereinafter prescribed in this act."

If a law is a general law of uniform operation applicable equally to all persons under like circumstances said statute is not unconstitutional as special or class legislation.

State v. Troxler (1930), 202 Ind. 268, 270, 271.

From an examination of the embalmer's and funeral director's statute it is clear such regulation is an exercise of the police power of the State in the interest of public health. An exception in favor of persons practicing podiatry at the time of the passage of the podiatry statute, without such persons showing evidence of qualifications and without examination,

was contained in the podiatry Act, same being Section 3, Chapter 8, Acts 1925. In ruling on the validity of this exception the Supreme Court of Indiana in the case of *Indiana State Board of Medical Registration and Examination v. Seulean* (1941), 219 Ind. 321 at pages 326 and 327, said:

“The purpose of the proviso in section 3 of the above act was to grant to certain persons upon application filed, a license to practice podiatry without an examination as to qualifications. The Legislature has the power to grant such a concession, or to withhold it, and to require all persons engaged in the practice of podiatry to first obtain a license by examination if it sees fit to do so. \* \* \*”

An examination of Clause (e) of Section 63-722 Burns' 1943 Replacement, *supra*, reveals that the beneficial provision of said statute is equally open to any person in this State desiring to take advantage of it, including persons who have taken and secured funeral director's licenses under other provisions of said section of the statute. It is therefore not discriminatory nor class legislation but is a general statute within the meaning of the foregoing authorities.

While you indicate in your letter some desire to have Clause (e) of the foregoing statute construed as to its intents and purposes, it is sufficient to point out the enactment of said statute was within the province of the Legislature under the police powers of the State. This Clause in said statute being free from ambiguity there is no room for judicial construction by court.

*State v. Squibb* (1908), 170 Ind. 488;

*Kunkalman v. Gibson* (1909), 171 Ind. 503;

*Cain v. Staley Manufacturing Company* (1933),  
97 Ind. App. 235;

*Williams v. Michigan City* (1935), 100 Ind.  
App. 136.

I am therefore of the opinion Clause (e) of Section 63-722 Burns' 1943 Replacement is an exception as to qualifications for a person for a license as a funeral director which is clear and unambiguous, is not subject to construction, and within

the province of the Legislature to enact. That said exception is general and uniform in its application and therefore does not constitute class legislation, is not discriminatory, and is constitutional.

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OFFICIAL OPINION NO. 33

April 4, 1946.

Hon. Noble R. Shaw, Director,  
Indiana Employment Security Division,  
141 South Meridian Street,  
Indianapolis, Indiana.

Dear Sir :

I am in receipt of your recent letter in which you ask my official opinion upon the following questions:

“1. Are the members of the review board of the Indiana Employment Security Division considered as members of the classified or unclassified service of the state, under the provisions of the Indiana Personnel Act?

“2. If the members of the review board are in the unclassified service of the state, are they entitled to vacation pay under the provisions of the Indiana Personnel Act, the rules of the Indiana Personnel Board, or section 2 of regulation 2 of the departmental personnel regulations of the Indiana Employment Security Board?

“3. Is Mr. John A. Rothrock, as chairman of the review board of the Indiana Employment Security Division, entitled to vacation pay of fourteen days, based upon one day of vacation for each month of his service in that position?”

Chapter 139 of the Acts of 1941 (Section 60-1302, Burns' 1943 Replacement) reads in part as follows:

“As used in this act and in the definitions provided in this section, unless a different meaning appears from