OFFICIAL OPINION NO. 84

August 26, 1946.

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

Dear Sir:

Your recent letter has been received requesting an official opinion on the following questions:

1. May an individual, or a corporation, operating under the grandfather clause of the Embalmers and Funeral Directors Act of 1939, increase the number of establishments under the present law? If so, what procedure is necessary in order to qualify said establishment?

2. Is it legal for a person to qualify a mortuary in one city or town, while living in another city or town? If so, how far distant can a person live from his funeral home, and still qualify his place of business?

1. Section 63-721 Burns’ 1943 Replacement, same being Section 5, Chapter 165, Acts 1939, provides in part as follows:

“(e) The term ‘funeral director’s license’ shall mean the license issued by the Indiana state board of embalmers and funeral directors to an individual, being a resident of Indiana, for the purpose of licensing him to engage in the profession and business of a funeral director or funeral directing at a designated place and in compliance with the requirements defined, set out and authorized in this act. (Our emphasis).

“A ‘funeral director’s license’ as used in this act shall be construed to mean a business-professional license, issued to individuals for the purposes set forth in this act, and because of the business and health features of such license, the issuance thereof shall be subject to the requirements of this act and whatever requirement or requirements deemed necessary by the board
in its rules and regulations to limit the operation thereunder to a designated place within the state of Indiana. Any individual who holds himself out to the public as a funeral director, or who manages, supervises and has a financial interest in the operation of a mortuary, funeral home or funeral business, is required to obtain a funeral director's license according to the provisions of this act. (Our emphasis).

“(f) The term 'individual' or 'person' shall mean natural persons only. The singular shall include the plural and the masculine gender include the feminine.”

Section 63-722 Burns' 1943 Replacement, same being Section 6, Chapter 165, Acts 1939, provides in part as follows:

"On or after the passage 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 in the state of Indiana under any name other than that of the holder of an Indiana funeral director's license or the holders of Indiana funeral directors' licenses under whose direction and management such establishment is operated and for which such license has been issued. Natural persons only shall be eligible to apply for a funeral director's license and no person shall hereafter be granted an initial funeral director's license to operate as the full-time funeral director of more than one (1) establishment at one (1) time. When more than one (1) person propose(s) to engage in the funeral directing business, either as partners or in some other noncorporate association, it shall be necessary for all persons in such partnership or other noncorporate association, regardless of the degree of financial participation, except those who are members of a nonprofit or cooperative association, such as described in subsection (g) of section 4 (§ 63-720) hereof to secure a license to operate as a funeral director from the state board of embalmers and funeral directors: Provided, however, That the owners of any funeral home, mortuary or establishment which has been licensed prior
to the effective date of this act to operate under a firm, trade or corporate name, shall be permitted the continued use of such name and be authorized to transfer and retransfer, sell and resell such funeral home, mortuary or establishment to any Indiana licensed funeral directors and to include as part of the consideration for such transfer or retransfer, sale or resale the continued use of such firm, trade or corporate name, or any portion thereof which the purchaser or transferee may so desire to use." (Our emphasis.)

Section 63-723 Burns' 1943 Replacement, same being Section 7, Chapter 165, Acts 1939, reads as follows:

"Funeral directors' licenses heretofore issued by the state board of embalmers and funeral directors are hereby canceled and annulled. The owners of funeral firms and establishments which have been heretofore licensed by the state board of embalmers and funeral directors, pursuant to the provisions of chapter 62 of the acts of the general assembly of Indiana of 1923, as amended, and who are on the effective date of this act actively engaged in the profession and business of funeral directing as herein defined, as licensed embalmers and funeral directors, shall be licensed to engage in the business and profession of funeral directing, under this act, without examination, upon filing an application to be so licensed with the state board of embalmers and funeral directors, on a form prescribed by the board, within ninety (90) days from the effective date of this act. Such application shall be accompanied by such proper evidence of identification, ownership and previous licensing, as the board may deem necessary, and for this purpose the board may consider the information heretofore submitted in the embalmers' and funeral directors' license renewal applications to the board for renewal licenses for the calendar year 1939, and by a license transfer fee in an amount which shall be determined by the board, but which in no event will exceed two dollars ($2.00). (Our emphasis.)
"Before any such application shall be considered and approved by the board, the individual must show to the satisfaction of the board that he has a bona fide business or financial interest in a now existing funeral firm, partnership or corporation. Upon receipt of said license, the individual licensees shall hereafter comply with all of the requirements set out in this act or set out in the rules and regulations adopted and promulgated by the board regarding the annual renewal of said licenses." (Our emphasis.)

From the foregoing sections of the statute it is clear the enactment of said law was under the police powers of the State, in the interest of health. The business of carrying on a funeral directing establishment has been therein properly classified by the Legislature as a profession.

It is to be further observed the statute specifically cancelled and annulled all previous licenses of funeral directors and provided that thereafter only natural persons could be licensed. It also provided that funeral directors engaged in the funeral directing business who had theretofore been licensed, and who were on the effective date of said Act actively engaged in such profession and business, shall be licensed to engage in such business, without examination, upon filing an application with the board within ninety (90) days from the effective date of the Act, providing, of course, proof of such facts are shown to the satisfaction of the board.

It is also apparent from the language used in said statute that a corporate name or firm trade name theretofore licensed under the previous Act could be continued, or sold and assigned to another licensed funeral director for his use in operating a funeral home. From the foregoing I am of the opinion a corporation operating one or more establishments prior to the effective date of the aforesaid statute, could not continue to operate the same. However, all persons financially interested in such corporation could apply for and secure, in each of their individual names, a funeral director's license for the purpose of operating those establishments previously operated by such corporation. I am further of the opinion that such a cancellation by statute of the right of a
corporation to carry on such a profession was within the police powers of the State acting through its Legislature.

State ex rel. Indiana State Board of Dental Examiners v. Boston System Dentists (1939), 215 Ind. 485, 489, 490.

I am further of the opinion that under the foregoing sections of the statute any individuals licensed after the effective date of said statute could only be authorized to operate that number of establishments which they were operating at the time the Act became effective and under which they claim the right to operate under such grandfather clause of said Act. Such a license would necessarily be issued to such designated places where they had previously operated. Since new licensees under the 1939 law were restricted to the operation of one establishment it is equally clear that persons or corporations operating more than one establishment prior to such 1939 law, and continuing to operate the same under new licensure under the 1939 law could not thereafter open additional funeral homes or branch establishments but would be restricted to the number that they were operating at the time the Act became effective.

Therefore, in answer to your question number one I am of the opinion that individuals or corporations who were operating one or more establishments prior to the enactment of the 1939 law, and who qualified for licensure, without examination, for the continued operation of such establishment or establishments under the 1939 law, cannot now add additional branch establishments.

2. In answer to your second question I wish to advise Section 63-725 (f) Burns' 1943 Replacement, same being Section 9, Chapter 165, Acts 1939, provides in part as follows:

"Each establishment opened after the passage of this act for the rendering of any service pertaining to the funeral business, * * * shall be at all times in the personal charge of and constantly under, the supervision of a licensed funeral director of the state of Indiana. * * *"
OFFICIAL OPINION NO. 85

September 5, 1946.

Hon. Otto F. Walls, Administrator,
Department of Public Welfare,
141 South Meridian Street,
Indianapolis 14, Indiana.

Dear Sir:

Your letter requesting an official opinion concerning out of state paroles for feeble-minded patients requires a construction of the following part of Section 22-1743 Burns’ 1945 Supplement, (Section 4, Chapter 119, Acts 1939):

"* * * Furloughs and discharges may be given to the patients as provided by such regulations."

You specifically desire to know if the Superintendent of the Fort Wayne State School under the above statute approves a boy’s furlough to the State of Illinois, must the State Department of Public Welfare also approve and effectively carry out such furlough under agreements entered into with such other states in conformity with other referred to statutes.

Section 22-1743 Burns’ 1945 Supplement, supra, refers to feeble-minded persons placed in the custody of the Fort Wayne State School or the Muscatatuck State School, and that part of said statute pertinent to the question presented is as follows:

I do not find any section of the statute requiring funeral directors to reside in the same city or town in which they operate their funeral establishment, however the foregoing quoted section of the statute requires such establishment to be at all times in the personal charge and custody and under the supervision of such licensed funeral director. It is therefore a question of fact rather than one of law as to what distance a funeral director may reside from his place of business and still be able to comply with the foregoing section of the statute. Such question of fact would therefore be one for your board to determine in the particular instance, your action of course would be subject to review on appeal.