



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

May 6, 2004

The Honorable William E. Sandifer, III
Assistant Majority Leader
South Carolina House of Representatives
518-B Blatt Building
Columbia, South Carolina 29211

Dear Representative Sandifer:

You have requested an opinion from this Office concerning "preneed" funeral contracts, particularly in regards to the sale and delivery of caskets. You indicate that retailers are taking advantage of unsuspecting South Carolinians by the system of individuals purchasing caskets and then having them stored for future use. It is your understanding that a number of entities are selling caskets to customers in a "preneed" situation and are having the customer sign a form claiming delivery of the merchandise, but in reality the caskets are being stored in warehouses for future use. You have questioned the propriety of such practice.

In reviewing your question, several statutory provisions are relevant. S.C. Code Ann. Section 32-7-10(3) defines a "preneed funeral contract" as:

[A] contract, which has for its purpose the furnishing or performance of funeral services, or the furnishing or delivery of personal property, merchandise, services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, but does not mean the furnishing of a cemetery lot, crypt, niche, mausoleum, grave marker or monument. (emphasis added).

S.C. Code Ann. Section 32-7-20(A)(1) requires that:

All payments of money made to any person upon any agreement or contract or any series or combination of agreements or contracts, but not including the furnishing of cemetery lots, crypts, niches, mausoleums, grave markers or monuments, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, are held to be trust funds. (emphasis added).

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Subsection (C) of such provision states:

All payments made under the agreement, contract, or plan are and remain trust funds with the financial institution until the death of the beneficiary and until the delivery of the merchandise and full performance of all services called for by the agreement, contract, or plan, except where payment is made pursuant to Section 32-7-30. (emphasis added).

In considering your question, several rules of statutory construction are relevant. It is the cardinal rule that the primary purpose in interpreting statutes is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statute must receive a practical, reasonable, and fair interpretation consonant with the purpose, design and policy of the lawmakers. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1990).

The plain and unambiguous language of Sections 32-7-20(A) and (C), which govern payments made on preneed funeral contracts, appears to prohibit the practice of contracting to sell a casket before it is needed by the purchaser/beneficiary at the time of death, and subsequently storing the casket for future use. If the casket covered by the contract is not delivered immediately, then the contract becomes a "preneed funeral contract" in that it is "a contract...for...the furnishing or delivery of personal property, merchandise...to be furnished or delivered at a time determinable by the death of the person" as provided in Section 32-7-10(3). Pursuant to Section 32-7-20(A)(1), all payments of money in such circumstances are to be held as trust funds which pursuant to subsection (C) are to remain as trust funds "until the death of the beneficiary and until the delivery of the merchandise."¹

The language of Subsections 32-7-20(A) that "all payments of money" on a preneed funeral contract are "held to be trust funds," is contravened by the practice of selling a casket on a preneed basis, removing the casket from inventory, and storing it for future use. In such a case, the money paid under the contract is not held in trust until needed, but actually spent for a casket which it then stored instead of being transferred to a seller. This Office reached the same conclusion on this practice in an opinion dated June 5, 1987 which stated that

¹As you point out in your letter, new language in H.3617 which was ratified on March 10, 2004, provides that the State Board of Funeral Service must revoke the license of a funeral home or funeral director who "is licensed to sell preneed funeral contracts and fails to deposit the funds collected in trust in a federally insured account as required by Section 32-7-20(H)."

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If an individual purchases merchandise such as a casket or vault from a funeral home and removes the merchandise from the funeral home, no problem is presented. If, however, the individual preselects a casket or vault and the funeral home or other entity, upon payment, removes the merchandise from its inventory and stores the merchandise, the preneed burial contract laws would be violated since the merchandise has been removed from inventory and, in essence, the payment under the contract or agreement has been spent rather than placed in a trust fund in a financial institution.

Accordingly, this Office advises that the referenced practice of selling caskets in a "preneed" situation with the customer signing a form claiming delivery of the casket but where in reality, the casket is stored in a warehouse for future use constitutes a violation of both the plain language and the legislative intent behind the state statutes on preneed funeral contracts.

If there is anything further, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General