



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

January 24, 2005

The Honorable Louie A. Jacobs
Commissioner of Banking
State of South Carolina
Board of Financial Institutions
P. O., Box 12549
Columbia, South Carolina 292

Dear Mr. Jacobs:

In a letter to this office you questioned the authority of the State Board of Financial Institutions ("the Board") to issue an order to cease and desist against a company found by your office to be in violation of Chapter 7 of Title 32 of the State Code dealing with the sale of preneed funeral contracts.

Please be advised that based upon my review, I am unaware of any authority for the Board to issue a cease and desist order in the circumstances referenced. As referenced above, the provisions of S.C. Code Ann. §§ 32-7-10 et seq. deal with the sale of preneed funeral contracts in this State. The authority of the Board with regard to preneed funeral contracts is set out in Section 32-7-110 which provides as follows:

(A) The board shall enforce the provisions of this chapter and has the power to make investigations, subpoena witnesses and documents, require audits and reports, and conduct hearings as to violations of any provisions, and to promulgate such regulations as are necessary to carry out the provisions of this chapter.

(B) Upon its own initiative or upon receipt of a complaint, the board must investigate any funeral home, funeral director, individual, or business the board has reason to believe is acting as a provider without a license. In order to conduct its investigation, the board must review the books, records, and accounts of: (1) any funeral home or funeral director licensed by the State Board of Funeral Service even if the funeral home or funeral director is not licensed to sell preneed funeral contracts, or (2) any individual or business the board has reason to believe is acting as a provider without a license. If the board discovers that a violation of this chapter has occurred by any funeral home, funeral director, individual, or business that is not licensed to sell preneed funeral contracts, the board must report the violation to the State Board of

The Honorable Louie A. Jacobs
Page 2
January 24, 2005

Funeral Service or to the Attorney General, a circuit solicitor, or an appropriate law enforcement agency.

A prior opinion of this office dated August 30, 1994 determined that a state agency or state official would have to derive authorization to issue an order to cease and desist from a legislative enactment. Based upon my review, there is no statutory authority or regulation which grants the Board the authority to issue a cease and desist order in circumstances dealing with preneed funeral contracts. The absence of such authority is in contrast with other statutory provisions which do grant the Board the authority to issue cease and desist orders in specified situations. See, e.g., S.C. Code Ann. §34-26-210(3) (authority to issue cease and desist orders against credit unions in specified circumstances); §34-30-520(B) (authority to issue cease and desist orders against savings banks in specified circumstances); § 34-39-220 (authority to issue cease and desist orders with regard to deferred presentment services); § 34-41-100 (authority to issue cease and desist orders against persons engaged in check cashing services). Moreover, I am unaware of any statutory authority granting State boards and agencies the authority to issue cease and desist orders generally unless specifically authorized. See, e.g., S.C. Code Ann. § 34-36-40(B) (authority for the Department of Consumer Affairs to order a loan broker to cease and desist in specified circumstances); § 23-45-150 (authority for the State Licensing Board for Contractors to issue a cease and desist order in association with violations of the State Fire Protection Sprinkler Systems Act); § 27-32-190(B)(5) (authority for the State Real Estate Commission to issue a cease and desist order in the referenced circumstances); § 37-16-70(1) (authority for the Department of Consumer Affairs to issue a cease and desist order against a prepaid legal services company).

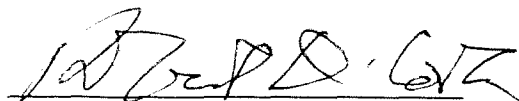
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General