

1979 WL 43039 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 31, 1979

***1 Re: Solicitation or Advertising of Pre-need Burial Contracts**

Mr. Jennings B. Johnson
Inspector
South Carolina State
Board of Funeral Service
102 Gibson Road
Lexington, S. C. 29072

Dear Mr. Johnson:

You have asked whether the prohibition of solicitation or advertising of Pre-need Burial Contracts ([South Carolina Code § 32-7-90](#)) has any effect upon the applicability of those prohibitions against soliciting contained in the Funeral Service Law ([South Carolina Code § 40-19-190](#)). It is the opinion of this Office that there is no conflict between the two statutes and that each is fully applicable.

[South Carolina Code § 32-7-50](#) provides that no person may accept or hold payments made on Pre-need Burial Contracts without first securing a license from the State Board of Bank Control. Code § 32-90 prohibits any licensee from soliciting or publicly advertising the availability of Pre-need Burial Contracts. Thus the prohibition contained in [§ 32-7-90](#) only applies to those persons who are licensed by the State Board of Bank Control to sell Pre-need Burial Contracts.

The South Carolina Funeral Service Law (§§ 40-19-10 et seq. of the South Carolina Code) generally provides for the licensing and regulation of funeral directors and embalmers. [§ 40-19-190](#) prohibits solicitation by persons who are licensed as funeral directors or embalmers and provides penalties for such conduct. In the same way that the prohibition contained in [§ 32-7-90](#) applies only to those persons licensed by the State Board of Bank Control, the prohibition contained in [§ 40-19-190](#) only applies to those persons licensed by the State Board of Funeral Service. And while it is true that in some instances the prohibition of [§ 32-7-90](#) may also apply to licensed funeral directors and embalmers, there is nothing in the law which requires that a licensed funeral director or embalmer obtain a license from the State Board of Bank Control to sell Pre-need Burial Contracts. Hence, if [§ 32-7-90](#) is construed to supersede the prohibition contained in [§ 40-19-190](#), then there could easily exist the possibility that there is no prohibition against solicitation as it applies to those licensed funeral directors and embalmers who have not also gotten a license to sell Pre-need Burial Contracts from the State Board of Bank Control. This would hardly seem to have been within the intention of the Legislature, and it is therefore the opinion of this Office that [§ 32-7-90](#) does not in any way supersede or nullify the prohibitions against solicitation contained in the Funeral Service Law.

Very truly yours,

L. Kennedy Boggs
Assistant Attorney General

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