

MAINE STATE LEGISLATURE

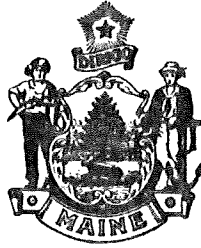
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ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

February 26, 1982

The Honorable Joseph C. Brannigan
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Brannigan:

This letter is in response to questions posed by you pertaining to the regulation of cremations.

BACKGROUND:

There are three crematories located within the State of Maine. These facilities are not now, nor have they ever been, licensed as funeral establishments, nor are they operated by individuals holding a funeral director's license. One of the facilities has apparently received money from several individuals, agreeing to handle the cremation of their bodies after death.

ISSUES:

1. Is a person engaged in the cremation of human bodies required to be licensed in the practice of funeral service by the Board of Funeral Service?
2. Is a person engaged in the cremation of human bodies subject to the requirements of 32 M.R.S.A. §1401, if he receives money during a person's lifetime under an agreement to cremate that person's body after death?
3. Who may enforce 32 M.R.S.A. §1401 if the person subject to its requirements is not licensed in the practice of funeral service?

ANSWERS:

1. A person engaged in the cremation of human bodies is not required to be licensed in the practice of funeral service by the Board of Funeral Service.

2. A person engaged in the cremation of human bodies is subject to the requirements of 32 M.R.S.A. §1401, if he receives money during a person's lifetime under an agreement to cremate that person's body after death.

3. The district attorney in the county where the violation occurs may enforce 32 M.R.S.A. §1401.

REASONS:

1. Pursuant to 32 M.R.S.A. §1451 and §1501, the State Board of Funeral Service is charged with licensing of individuals engaged in the practice of funeral service. "Practice of funeral service" is defined in 32 M.R.S.A. §1400(5) to:

. . . mean a person engaged in the care or disposition of the human dead or in the practice of disinfecting and preparing by embalming or otherwise the human dead for the funeral service, transportation, burial or cremation, or the practice of helping to meet the emotions and disposition of the bereaved, or in the practice of funeral directing or embalming as presently known, whether under these titles or designations or otherwise. It shall mean a person who makes arrangements for funeral services or who sells funeral supplies to the public or who makes financial arrangements for the rendering of such services or the sale of such supplies.

Taking the foregoing definition in an isolated context, it could be argued that the owner of a crematory is engaged in the practice of funeral service because he is in the business of disposing of dead, human bodies and because the term "cremation" is specifically mentioned in the definition. Reading Chapter 21 as a whole, however, with specific attention on 32 M.R.S.A. §1405, leads us to reach the contrary conclusion. Section 1405 provides in pertinent part that:

Any person, firm or corporation within the State, with the approval of the Department of Human Services may establish and maintain suitable buildings and appliances for the cremation of bodies of the dead and, subject to the regulations of the department, may cremate such bodies and dispose of the ashes of the same.

In clear language, § 1405 authorizes a person who has the approval of the Department of Human Services to establish and operate a crematory. There is no further requirement that the State Board of Funeral Service license or approve the facility. The specific language of § 1405 must be relied upon, rather than the somewhat ambiguous definition set forth in § 1400(5), in determining whether a person engaged in the cremation of human bodies must be licensed by the Board.^{1/}

2. 32 M.R.S.A. § 1401 provides in pertinent part that:

After September 12, 1959, all monies paid during a person's lifetime to any individual, firm, association, partnership or corporation, by such person or by someone in his behalf under an agreement that services be performed or personal property be delivered in connection with the disposition of such person's body after his death shall be deposited by the payee within 30 days after receipt thereof in a separate account in a bank, trust company or savings institution in this State in the name of the payee as mortuary trustee for the person for whose benefit the payment was made and shall be held in such account together with interest if any thereon This section shall not apply to the sale of cemetery lots, crypts, niches, cemetery burial privileges, cemetery space or perpetual care. (Emphasis added).

The language of § 1401 is quite unambiguous as to the law's applicability. By its express terms, it applies to an agreement for services to be performed in connection with the disposition of a person's body after his death. Since cremation is clearly a service performed in connection with the disposition of a human body, it is our opinion that an agreement to cremate

^{1/} The fact that it has been the practice of the State Board of Funeral Service not to require that crematories be licensed supports our interpretation of the statutory scheme. See Kelley v. Halperin, Me., 390 A.2d 1078 (1978), in which the Court stated "that the construction of a statute utilized by those whose duty it is to make the statute operative is entitled to great deference by a court when called upon to construe the statute." 390 A.2d at 1080.

falls within the statute. Had the Legislature intended that only those licensed in the practice of funeral service be bound by the provisions of §1401, then the statute would have reflected that intent.^{2/}

3. Section 1401 is contained in Chapter 21 of Title 32, as is §1455. Section 1455 provides in part that the county attorney of the county in which a violation of the chapter occurs is authorized to prosecute such violations. Accordingly, possible violations of §1401 may be referred to the appropriate district attorney.

If we can be of further assistance to you in this matter, please do not hesitate to call on us.

Sincerely,

Stephen L. Diamond
STEPHEN L. DIAMOND
Deputy Attorney General

SLD:jg

^{2/} Having offered our general interpretation of the statute, we should emphasize that the question of whether a particular agreement falls within the statute can be answered only after a review of the agreement and of any other facts which may be relevant.