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BEFORE THE BOARD OF FUNERAL SERVICE
STATE OF MONTANA

IN THE MATTER OF DOCKET NOS. CC-05-0097-FNR, CC-05-0099-FNR, CC-05-0098-FNR AND CC-05-0100-FNR REGARDING:

THE DISCIPLINARY TREATMENT OF THE LICENSES OF WILLIAM A. SPOJA, JR., License No. 749 CMO, A Licensed Crematory Operator, AND ALLEN C. GALLAGHER, SR., License No. 748 CMO, A Licensed Crematory Operator.	)	Case Nos. 1412-2005, 1413-2005 1410-2005, and 1411-2005 **PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW; AND RECOMMENDED ORDER**

* * * * * * * * * *

I. INTRODUCTION

These consolidated cases are before the hearing examiner for decision based upon stipulated facts submitted by the parties on cross motions for summary judgment. The parties have agreed that the sole issue to be decided by this tribunal is the question of whether licensees William A. Spoja and Allen C. Gallagher have been providing "at-need" funeral arrangements, "pre-need" funeral arrangements and/or "pre-need" funeral agreements without proper licensing. Having considered the stipulated facts as well as the parties' arguments with respect to the legal issues involved, the hearing examiner makes the following findings of fact, conclusions of law, and proposed order.

II. STIPULATED FACTS

1. William A. Spoja and Allen C. Gallagher (licensees) are licensed crematory operators in the State of Montana. Together, they operate Central Montana Crematorium in Lewistown, Montana, in operation since October 2003.

2. In contracting with representatives for the cremation of decedents, the crematorium uses two contracts, one entitled "Authorization for Cremation Services and Disposition" and the other entitled "Agreement for Cremation Services." Exhibits A and B.

3. The crematorium has a separate room where interested parties may view the cremation receptacle in which human remains have been placed. The remains are identified by a tag on the cremation receptacle.

4. The crematorium provides no services other than the cremation itself.

5. No money is paid to the crematorium pursuant to the above described agreements until after death.

6. It is the practice and philosophy of the crematorium that, upon death, the wishes of the family of the decedent shall control.

7. James Harris and Richard Brown, each owners and operators of their own funeral businesses in Lewistown, Montana, filed the complaints that resulted in the instant case before the Montana Board of Funeral Services. Brown is a member of the Montana Board of Funeral Services.

8. Harris' complaint, filed on March 1, 2004, alleges that the licensees have been providing at-need funeral arrangements and pre-need funeral arrangements without being properly licensed in Montana as either a mortician or funeral director.

9. On July 12, 2004, an investigator for the Montana Funeral Board completed a report of investigation, which is incorporated into these findings of facts by this reference. Exhibit C.

10. Pursuant to standard procedure, the screening panel of the Montana Board of Funeral Service found reasonable cause to believe that Montana Code Annotated §§ 37-1-316(18), 37-19-101(1) and 37-19-101(28)(a) and (b) and Admin. R. Mont. 24.147.1503(1), 24.147.302(9) and 24.147.302(10) may have been violated.

11. The crematorium has the right to transport a dead body, so long as proper legal authorization is given. In addition, people have a right to witness cremation provided they are only viewing the cremation receptacle.

III. DISCUSSION

A. *Propriety of Summary Judgment in Administrative Proceedings.*

Summary judgment is an appropriate method of dispute resolution in administrative proceedings where the requisites for summary judgment otherwise exist. *Matter of Peila* (1991), 249 Mont. 272, 815 P.2d 139. Summary judgment is appropriate where "the pleadings . . . and admissions on file . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), Mont. R. Civ. P.

The party seeking summary judgment has the initial burden of establishing the absence of any genuine issue of material fact and entitlement to judgment as a matter of law. Once the moving party meets this burden, the burden then shifts to the party opposing the motion to establish otherwise by more than mere denial or speculation. *Ravalli County Bank v. Gasvoda* (1992), 253 Mont. 399, 883 P.2d 1042. Reasonable inferences from the proof must be drawn in favor of the party opposing summary judgment. *Sherrad v. Prewett* (2001), 306 Mont. 511, 36 P.3d 378.

In this matter, the parties do not dispute any facts necessary to determine whether the licensees are engaged in making funeral arrangements and therefore need to be licensed either as funeral directors or morticians. As there is no dispute of fact, the only question here is one of the application of the applicable statute to the facts. Summary judgment is appropriate in this proceeding.

B. *A Licensed Crematorium Operator Does Not Violate Licensing Requirements For Funeral Directors By Entering Into A Pre-need Cremation Authorization With An Authorized Agent.*

Montana prohibits funeral directing by anyone who does not hold a funeral director's or mortician's license. Mont. Code Ann. § 37-19-301. "Funeral directing" includes (1) supervising funerals; (2) making of pre-need or at-need contractual arrangements for funerals; (3) preparing dead bodies for funerals; (4) maintaining a mortuary for preparation, disposition or care of dead bodies and (5) representing to the public that one is a funeral director. Mont. Code Ann. § 37-19-101(2). The applicable administrative rule provides that "No person, firm or corporation shall sell or offer to sell, or make or offer to make at-need funeral arrangements, pre-need funeral arrangements or prepaid funeral agreements, unless that person is a duly licensed mortician or funeral director." Admin. R. Mont. 24.147.1503(1).

Mont. Code Ann. § 37-19-101(1) defines the term "arrangements" to include: (a) planning the details of funeral service, including time of service, type of service, and, if requested, acquiring the services of clergy; (b) obtaining the necessary information for filing death certificates; (c) comparing or discussing prices, including merchandise prices and financial arrangements; and (d) providing for onsite direction and coordination of participants and onsite direction, coordination, and facilitation at funeral, grave side, or memorial services, and facilitation at funeral, grave side, or memorial services or rites. Mont. Code Ann. § 37-19-101(2) defines "at-need" arrangements as arrangements made by an authorized person on behalf of the deceased.

A person or other entity that erects, maintains, or provides the necessary appliances for the cremation of human remains and conducts cremations must have a crematory license. Mont. Code Ann. § 37-19-702(1). A person in charge of a

crematory must have a crematory operator's license. Mont. Code Ann. § 39-19-702(3). A person who performs cremations must have a crematory operator's license. Mont. Code Ann. § 39-19-702(4).

Montana permits pre-need cremation authorizations to be made between crematories and authorizing agents. Mont. Code Ann. § 37-19-708(1). Pre-need cremation authorizations can be made with a cemetery, funeral establishment, crematory, or any other party. Such authorizations must specify the ultimate disposition of the cremated remains, be signed by the authorizing agent, and meet other requirements established by the board. *Id.* "Cremation" is defined as "the technical process, using heat, that reduces human remains to bone fragments." Mont. Code Ann. § 37-19-101(11).

The rules of statutory construction require that the language of a statute be construed according to its plain meaning. *Lovell v. St. Comp. Mut. Ins. Fund* (1993), 260 Mont. 279, 860 P.2d 95. Where the language is unambiguous, courts must look at the plain meaning of the statute and may not go further and apply other means of interpretation. *Tongue River Electric Co-op v. Montana Power Company* (1981), 195 Mont. 511, 636 P.2d 862. A court must find legislative intent from the plain meaning of the language by reasonably and logically interpreting the statute as a whole without omitting or inserting anything or determining intent from a reading of only part of the statute. *Gaub v. Milbank Ins. Co.* (1986), 220 Mont. 424, 715 P.2d 443. Statutes must be read in their entirety and legislative intent may not be gained from the wording of one particular section or sentence but only from consideration of the whole. A court's duty is to interpret individual sections of the act in such a manner as to insure coordination with the other sections of the act. *State v. Meador,* (1979), 185 Mont. 32, 601 P.2d 386.

The licensees contend that the statutory requirements regarding pre-need and at-need funeral arrangements have no application to operators of crematoriums. Those statutory requirements do, however, have application to this case in this sense: the statuary prescriptions contained in Title 39, Chapter 19 provide a comprehensive regulatory scheme that regulates funeral directing, mortuaries and crematoriums. The legislature's intent to regulate all three fields comprehensively is evident not only in the plain language of the statutes, but also in the manner in which the statute was promulgated.

In construing a particular statute, all acts relating to the same subject or having the same general purpose are read as together constituting one law regulating that subject. *Ewald v. Certain Intoxicating Liquors*, (1924), 71 Mont. 79, 227 Pac. 472. The sections of the statute relating to crematoriums utilize definitions found in Montana Code Annotated § 39-19-101. Of particular importance to the instant case is the pre-

need cremation statute permitting a pre-need arrangement only for a "cremation," a term specifically defined in Montana Code Annotated § 39-19-101.

Moreover, the definitions contained in Montana Code Annotated § 39-19-101 and the portion of Title 37, Chapter 19 authorizing and regulating crematoriums were promulgated simultaneously in the same senate bill by the 1993 legislature. *See*, Chapter 38, L. 1993, Secs. 1 through 10. Because the definitional section of Montana Code Annotated § 39-19-101 and the sections relating to regulation of crematoriums were promulgated at the same time, it must be presumed that the legislature intended to enact a comprehensive regulatory scheme that would encompass funeral directors, mortuaries, and crematoriums.

Because the statute is comprehensive, the licensees' conduct in this case must be measured not only against the requirements applicable to crematoriums, but also against the statutory requirements for at-need and pre-need funeral arrangements in order to ensure that the licensees' conduct does not exceed the scope of their permissible activity under their crematory license. Thus, this tribunal must consider what licensed funeral directors and morticians can properly do regarding pre-need and at-need funeral arrangements to determine the scope of permissible pre-need cremation authorizations.

The fact that the legislature specifically permitted pre-need cremation authorizations within the comprehensive regulatory scheme of Title 37, Chapter 19, compels the hearing examiner to agree with the licensees' argument that such agreements may be made between private persons and a crematorium. The only pre-need arrangement that can be made between an authorized agent and a crematorium is one that provides for the process of cremation, *i.e.*, reducing human remains to bone fragments, as described in Mont. Code Ann. § 39-19-101(11). Nonetheless, the legislature intended that private persons could contract directly with a crematorium to complete the cremation process without involving a licensed funeral director or mortician involved in the process. Mont. Code Ann. § 39-19-701 expressly recognizes the right of individuals to seek cremation for "themselves or a loved one." Mont. Code Ann. § 39-19-708 authorizes a crematorium to enter into a pre-need cremation arrangement with "a cemetery, funeral establishment, crematory, *or any other party*" (emphasis added).

A crematorium can indeed enter into a pre-need agreement for cremation services with any person having the legal right to determine disposition of the body, provided that pre-need agreement does not go beyond an agreement for cremation. Anything beyond the process of the cremation, *i.e.*, directing or providing a memorial service or providing a place for the family to conduct its own service would, in all

likelihood, amount to "funeral directing" or funeral arranging and thus require the licensees to obtain a funeral director's or mortician's license.

The licensees maintain that they are offering nothing more than pre-need cremation services that are authorized by statute. BSD maintains that the licensees are in fact offering pre-need funeral arrangements and therefore must be licensed as either morticians or funeral directors. To determine whether the licensees needed funeral or mortician licenses under the stipulated facts of this case is a simple matter of comparing the conduct in this case to the statutory strictures. If the licensees have done nothing more than enter into a pre-need arrangement for cremation with a party having the legal right to enter into such an agreement, there is no need for the licensees to be licensed either as funeral directors or morticians.

The stipulated facts of this case show that the parties agree that the licensees had the right to transport the body of the decedent to the crematorium. The stipulated facts further state that the crematorium provides no services of any kind other than the cremation itself. The authorizations utilized by the crematorium are consistent with this stipulation and reinforce the finding that the crematorium engaged in nothing but cremation.

Construing Title 39, Chapter 19 Subpart 7 in conjunction with the overriding comprehensive regulation demonstrated in the language of Title 39, Chapter 19, it is plainly evident that the licensees were not engaged in any conduct under the stipulated facts that would have required them to be licensed either as funeral directors or morticians. They entered into a pre-need cremation agreement with a person authorized to do so and they provided no other services. Their crematorium license authorizes them to transport the dead body to the crematorium and to cremate the dead body. No violation has been proven in this case.

IV. CONCLUSIONS OF LAW

1. Title 37, Chapter 19 does not require properly licensed crematorium operators or technicians to be licensed as funeral directors or morticians in order to enter into a pre-need cremation agreement.

2. A pre-need cremation agreement which involves anything more than the cremation process (such as a set up where a crematorium provides services or provides a place for family members to hold services) would exceed the scope of the statutorily authorized conduct of crematorium operators and would require a funeral director's or mortician's license.

3. The stipulated facts in this case fail to show that the licensees engaged in anything other than a pre-need cremation authorization. Therefore, no violation has been proven under the stipulated facts of this case and summary judgment in favor of the licensees is appropriate.

4. If the board decides by a preponderance of the evidence that a licensee has not violated a provision of Title 37, Chapter 1, Part 3, Montana Code Annotated, then "the department shall prepare and serve the board's findings of fact and an order of dismissal of the charges." Mont. Code Ann. § 37-1-311.

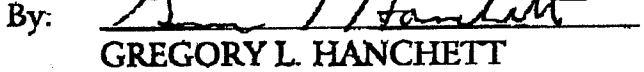
5. Because the preponderance of the evidence does not establish that the licensees' conduct violated Title 37, Chapter 1, Part 3, Montana Code Annotated, dismissal of the charges is required.

V. RECOMMENDED ORDER

Based on the foregoing, it is recommended that summary judgment be entered in the favor of licensees William Spoja and Allen Gallagher and that the charges in this case be dismissed.

DATED this 4th day of May, 2006.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: 
GREGORY L. HANCHETT
Hearing Examiner

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CERTIFICATE OF MAILING

The undersigned hereby certifies that true and correct copies of the foregoing document were, this day, served upon the parties or their attorneys of record by depositing them in the U.S. Mail, postage prepaid, and addressed as follows:

Neil E. Ugrin
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P.O. Box 1746
Great Falls, MT 59403-1746

The undersigned hereby certifies that true and correct copies of the foregoing document were, this day, served upon the parties or their attorneys of record by means of the State of Montana's Interdepartmental mail service.

Lon Mitchell, Legal Counsel
Office of Legal Services
Department of Labor and Industry
P.O. Box 200513
Helena, MT 59620-0513

DATED this 4th day of May, 2006.

Sandy Duncan

SPOJA AND GALLAGHER.POF.GHD

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