



INSTITUTE FOR JUSTICE

May 16, 2007

**Via Certified Mail, Return Receipt Requested**

Mr. Paul Harris  
Executive Director, North Carolina Board of Funeral Service  
1033 Wade Avenue, Suite 108  
Raleigh, NC 27605

*RE:* Letter to Mary Brack, Funeral Consumers Alliance of Central Carolinas

Dear Mr. Harris,

I write on behalf of the Institute for Justice to express our grave concern about the Board of Funeral Service's recent representations that citizens of North Carolina would violate North Carolina law if they (1) make "arrangements" with family members, (2) obtain obituary and death certificate information, or (3) publish obituaries to the media.

The Institute for Justice is a public interest law firm that litigates to secure people's right to earn an honest living, own private property, and freely express themselves. We have litigated issues surrounding the funeral industry on a number of occasions. In 2002, we successfully challenged a Tennessee law that permitted only licensed funeral directors to sell caskets, and we defeated a similar attempt by the Missouri State Board of Embalmers and Funeral Directors to prevent non-morticians from selling caskets and advising people about how to conduct private burials. Following our successful legal challenge, the Federal Trade Commission has sued the Missouri Board for improperly interfering with citizens' right to sell caskets free from illegal and unconstitutional government meddling.

We believe there are serious constitutional concerns with the Board's position set forth in the March 19, 2007, letter from the Board's General Counsel Stephen Dirksen to Mary Brack (copy attached) in which Mr. Dirksen states that the practice of funeral directing includes "without limitation: making arrangements with family members, obtaining obituary and death certificate information, and publishing obituaries to the media." First of all, we have been unable to find any such provisions in any North Carolina statute. Specifically, we found nothing whatsoever that would in any way restrict members of the public from "obtaining obituary or death certificate information," and the purported prohibition against "making arrangements with family members" is far broader than the narrow restriction contained in the statute against "making arrangements for funeral service."

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Second, even the more limited proscription of the making of funeral arrangements that does exist in North Carolina law was plainly *not* intended to prohibit people from assisting families in making those arrangements but was instead meant to prevent unlicensed individuals from making arrangements on behalf of funeral establishments. Mr. Dirksen's overbroad conception of the practice of funeral directing would improperly sweep all kinds of activities under the regulation of the Board, including perfectly lawful activities of clergy, family friends, caterers, and even the local sheriff, all of whom might make "arrangements with the family" regarding a funeral. Mr. Dirksen's assertion that a family may not ask a consumer advocacy group like the Funeral Consumers Alliance of Central Carolinas for assistance in dealing with a funeral director is utterly unsupported by North Carolina law and blatantly unconstitutional to boot.

We are both surprised and disappointed that the Board would endorse such a broad, unsupported, and constitutionally problematic interpretation of N.C. Gen. Stat. § 90-210.18 *et seq.*, and we would appreciate some clarification on this matter. We look forward to your prompt response.

Yours,



Valerie Bayham\*  
Staff Attorney

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