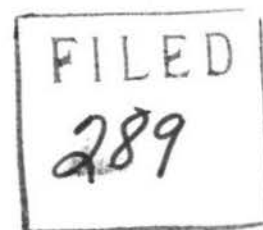


September 14, 1971

OPINION LETTER NO. 289
Answer by letter-Jones

Mr. O'Garlan C. Ricks
Member of the Board
Embalmers & Funeral Directors
107 South Fifth Street
Elsberry, Missouri 63343



Dear Mr. Ricks:

This letter is to acknowledge receipt of your request for an opinion from this office in regard to an interpretation of Section 333.031, RSMo 1969, concerning the question as to whether an individual who has made an application for a license to practice embalming, not accompanied by any fee, and who has subsequently made an application for a license to practice funeral directing accompanied by a fee of forty dollars, must pay a fee of ten dollars or forty dollars in order to receive his license to practice embalming.

In connection with the above, Section 333.031, RSMo 1969, provides in part as follows:

"Each application for a license to practice either embalming or funeral directing shall be in writing, addressed to the board, on forms prescribed by the board and shall be verified and shall contain such information as is required by the board. Except as provided in subsection 6 of section 333.041, each application shall be accompanied by a fee of forty dollars except that a holder of a license to practice embalming shall be licensed to practice funeral directing upon the payment of a fee of ten dollars. Any applicant for both a license to practice embalming and to practice funeral directing shall pay a fee of fifty dollars. . . ."

Mr. O'Garlan C. Ricks

The assumption is made that subsection 6 of Section 333.041, RSMo 1969, is not applicable as this statutory provision relates to the granting of a funeral director's license to an individual who is a resident of this state or a contiguous and adjacent county of another state and who was engaged in the practice of embalming or funeral directing prior to 1965.

It is our understanding that the individual in question has made an application for a license to practice embalming, not accompanied by any fee, and has subsequently made an application to practice funeral directing accompanied by a fee of forty dollars. It should be noted that the statute provides that "each application shall be accompanied by a fee of forty dollars." In this regard, when used in statutes, the word "shall" is generally regarded as mandatory and one which must be given a compulsory meaning. Stanfield v. Swenson, 381 F.2d 755 (8th Cir. 1967). Therefore, it is our view that the individual's application to practice embalming should not have been accepted unless it was accompanied by a fee of forty dollars.

However, to answer the question presented in which an individual has made an application to practice embalming without payment of a fee and then subsequently made an application to practice funeral directing accompanied by a fee of forty dollars, it is also our view that under the provisions of the above statute an individual is required to pay forty dollars to obtain a license to practice embalming regardless when his application to practice funeral directing is submitted. Section 333.031, RSMo 1969, provides in part that each application shall be accompanied by a fee of forty dollars except that a holder of a license to practice embalming shall be licensed to practice funeral directing upon the payment of a fee of ten dollars. The statute does not say that a holder of a license to practice funeral directing shall be licensed to practice embalming upon the payment of a fee of ten dollars. It is only when an individual applies for licenses to practice embalming and to practice funeral directing that a fee of fifty dollars is payable. In this connection, there is authority for the view that when a statute enumerates the subjects or things on which it is to operate, or the persons affected, it is to be construed as excluding from its effect all those not expressly mentioned, Giloti v. Hamm-Singer Corp., 396 S.W.2d 711 (Mo. 1965). In addition, it has been held that the primary purpose of all statutory construction is to determine the intent of the legislature. State ex rel. Schwab v. Riley, 417 S.W.2d 1 (Mo. banc 1967). Subsection 1 of Section 333.041, RSMo 1969, relating to qualifications of applicants for a license to practice funeral directing requires an individual to be at least twenty-one years of age, a person of good moral character and either a citizen and bona fide resident of the

Mr. O'Garlan C. Ricks

state or entitled to a license under the nonresident provisions of Section 333.051, RSMo 1969. On the other hand, subsection 2 of Section 333.041, RSMo 1969, relating to qualifications of applicants for a license to practice embalming, not only requires an individual to be at least twenty-one years of age and a person of good moral character, but also requires that he personally embalm at least twenty-five dead human bodies, that he is a graduate of an accredited institute of mortuary science and that he take an examination on various subjects relating to embalming. Consequently, it is our view that because it is more difficult to obtain a license to practice embalming, the legislature intended that an individual be required to pay forty dollars to obtain said license.

As a result of the above, it is our opinion that under the factual situation presented, an individual who is not a holder of a license to practice embalming, but who makes application for a license to practice funeral directing accompanied by a fee of forty dollars, is also required to pay a fee of forty dollars when he makes an application for a license to practice embalming.

Yours very truly,

JOHN C. DANFORTH
Attorney General