



OFFICES OF THE

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ATTORNEY GENERAL OF MISSOURI
JEFFERSON CITY

November 16, 1973

OPINION LETTER NO. 232

Mr. Charles L. Arnold, Sr.
Secretary, State Board of
Embalmers & Funeral Directors
West White Street
Canton, Missouri 63435

Dear Mr. Arnold:

This opinion letter is issued in response to your request for an opinion whether:

"Can a licensed funeral director perform any acts upon the body of a deceased whereby the condition or appearance of that body might in any way be altered or changed? I am referring to those functions which have always been considered by this office to come under the duties of a licensed embalmer, namely the practice of dermatology consisting of the covering of unsightly stains with cosmetics, the masking of body mutilations with wax and cosmetics, and the normal cosmetic work involved in the preparation of a deceased for viewing."

The answer to your request depends, we believe, on the interpretation of the statutory definitions regulating embalmers and funeral directors.

Section 333.011 reads:

"As used in this chapter, unless the context requires otherwise, the following terms have the meanings indicated:

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(2) 'Embalmer', any individual licensed to engage in the practice of embalming;

(3) 'Funeral director', any individual licensed to engage in the practice of funeral directing;

* * *

(6) 'Practice of embalming', the work of preserving, disinfecting and preparing by arterial embalming, or otherwise, of dead human bodies for funeral services, transportation, burial or cremation, or the holding of oneself out as being engaged in such work;

(7) 'Practice of funeral directing', engaging by an individual in the business of preparing, otherwise than by embalming, for the burial, disposal or transportation out of this state of, and the directing and supervising of the burial or disposal of, dead human bodies or engaging in the general control, supervision or management of the operations of a funeral establishment."

We have not found any Missouri case involving these definitions or a prior statutory or common law definition. In Commonwealth v. Markmann, 144 Pa. Super. 29, 174 A. 6, 9 (1934), the court citing Webster's Dictionary defined embalm as ". . . to treat (a dead body) with special preparations, as aromatic oils or arsenic, in order to preserve it from decay. . . ."

Although not precisely in point, the Wisconsin Supreme Court in State ex rel. Kemplinger v. Whyte, 188 N.W. 607, 609 (Wis. 1922) after noting the dictionary definition of "undertaker" or "funeral director" and noting the statutory definition of embalmer¹ stated:

". . . It is apparent from these definitions of an undertaker and the statutory definition

¹"The disinfection or preservation of the dead human body, entire or in part, by the use of chemical substance, embalmer's fluid or gases on the body, or by the introduction of the same into the body, by either arterial or cavity embalming or by hypodermic injection of fluid ordinarily used for embalming." Whyte, loc. cit. 609 (Section 1409(2), Wisconsin Statutes of 1921).

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of embalming that the two are vitally different. An embalmer, as such, does not bury the dead; he does not take charge of funerals; he does not dress the body, procure the coffin, or do the many other things an undertaker does. His sole function as an embalmer is to so treat the body . . . so as to disinfect and preserve the body. . . ."

The case involved the constitutionality of Wisconsin statutes which required all undertakers to have an embalmers license in order to stay in business. The court held that the statute was unconstitutional since the functions were different and thus was unreasonable to require all undertakers to be embalmers. The court noted that there was no state statute requiring a body to be embalmed and further noted that in many rural parts of that state it was common practice that bodies were never embalmed.

Reading the statute to construe the statutory intent and giving the words their plain and ordinary meaning, it is clear that "embalming" as such is related solely to disinfecting and preserving a body from decay. Section 331.011(6) states that this is generally done by the injection of chemicals into the arteries. Like Wisconsin, Missouri has no statute requiring all bodies to be embalmed.² From your question, it is clear that the application of various waxes and cosmetics to a deceased is not related to the disinfecting and preserving of a body from decay. Rather, the purpose is to make the deceased suitable for viewing before the casket is finally closed. Also, it is clear the legislature did not intend that all funeral establishments had to have a licensed embalmer. It would be unreasonable to expect that a funeral establishment which did not have a licensed embalmer associated with it would be prohibited from making a body presentable for viewing.

²There are only two instances in which a body must be embalmed under the provisions of state statutes.

(1) If it is going to be transported by common carrier and if the individual died of certain dangerous or communicable diseases (See Sections 194.080 and 194.090, RSMo 1969). Or, the body can be shipped in a closed and hermetically sealed container.

(2) If the body is going to be transported by common carrier and if it is going to take twenty-four hours or longer to reach its destination. (See Section 194.100, RSMo 1969). Or, the body can be shipped in a closed and hermetically sealed container without being embalmed.

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Thus it is our view that the normal, simple cosmetic work is one of the functions that can be performed by a funeral director and is not within the exclusive business of a licensed embalmer. This letter is in no way to be regarded as an opinion as to any specific facts which might arise.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General