

INSPECTION OF MORTUARIES: It is the opinion of this department that paragraph 1 of Section 333.035 of House Bill No. 498 enacted by the 70th General Assembly does not authorize a member of the State Embalming Board to enter and inspect a mortuary over the protest of the owner or proprietor thereof.

October 27, 1959

FILED

12

Honorable Clifford E. Brooks  
President of the Board of Embalming  
Albany, Missouri

Dear Mr. Brooks:

Your recent request for an official opinion reads:

"The 70th General Assembly of the of the State of Missouri has amended Chapter 333, Revised Statutes of Missouri of 1949 by inserting new Section 333.035 to give the State Board of Embalming power to suspend or revoke licenses.

"The Board hereby respectfully requests an official opinion from your office as to the meaning of the words "investigate the business activities" contained in Section 1 of the aforementioned section, and further whether the statutes authorizes and empowers the State Board of Embalming to inspect Preparation rooms of licensees, by virtue of the new section."

The above section reads in part:

"1. The state board of embalming may upon its own motion and shall upon written complaint filed with the board by any person under oath investigate the business activities of any licensed embalmer and may suspend or revoke any license obtained by false or fraudulent representation or for any of the following causes:

- (1) Conviction of a felony or a crime involving moral turpitude;
- (2) Willful violation of any professional trust or confidence;
- (3) Failure to properly embalm or to properly care for the disposition of any dead human body;

Honorable Clifford E. Brooks

(4) Failure or refusal to properly provide or guard against contagious, infectious or communicable diseases or the spread thereof, during the actual embalming, or while the body of diseased person is under his care or supervision pending interment or disposition;

(5) Accepting employment from any person or persons engaged in business of embalming if the place where the embalming is conducted is unsanitary, according to the standards of the public health laws of Missouri, or would in any manner permit the spreading of contagious, infectious or communicable diseases and if the place where the business of embalming is conducted does not contain a preparation room with a sanitary floor, walls and ceiling and adequate sanitary drainage and disposal facilities including running water;

(6) The practice of embalming without a preparation room in the place where embalming is performed or operating a place of embalming where the preparation room does not have a sanitary floor, walls and ceiling and adequate sanitary drainage and disposal facilities including running water;"

Prior to writing the above letter you have orally informed us that the question in which you are interested is whether or not the Embalming Board or any member thereof could present himself to any proprietor of a mortuary, request permission to inspect the preparation room in such mortuary and, if such permission were refused, enter the mortuary over the protest of the proprietor and proceed to make an inspection of the preparation room under the authority granted by the words "investigate the business activities" contained in paragraph 1 of Section 333.035 of House Bill No. 498, supra.

Our examination of the meaning of the term "investigate the business activity" has not been particularly productive so far as its bearing upon this issue is concerned. We may state here that we find no definition of the term by Missouri Courts.

In the case of *People vs. One 1951 Cheverlot Coupe*, 248 P2d 786, l.c. 789, the California Court of Appeals held that an "investigation" is an inquiry into and examination of all reasonable available facts.

Honorable Clifford E. Brooks

We have examined numerous other definitions of the word "investigate" and note that all of them are of very much the same purport as that given above.

We have also noted numerous definitions of the word "business". In the case of Steinbeck vs. Gerosa, 151 NE2d 170, 1.c. 173, the New York Supreme Court states that "business" is a very comprehensive term including that which occupies the time, attention, and labor of men for the purpose of livelihood or profit. We have noted numerous other definitions of the word "business" and find that none of them are any more definitive than that above.

The meaning of the word "activity" is, we believe, sufficiently plain not to need definition.

Thus the words "investigate the business activity" are not very specific or definitive. It is a broad, comprehensive term which encompasses many things. It is furthermore a very loose term. We do not believe that it purports to authorize the entry of inspectors into an establishment without the consent of the proprietor thereof. In view of the fact that there is no statute, rule or regulation requiring the consent to such inspection by the licensee as a condition precedent to the issuance of a license, we do not believe that such right of inspection exists without the consent of the licensee.

#### CONCLUSION

It is the opinion of this department that paragraph 1 of Section 333.035 of House Bill No. 489 enacted by the 70th General Assembly does not authorize a member of the State Embalming Board to enter and inspect a mortuary over the protest of the owner or proprietor thereof.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh F. Williamson.

Very truly yours,

JOHN M. DALTON  
Attorney General

HFW:ar