

1 - Funeral Home Rule v. State Law (LA)

ie No casket stores
435



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Division of Marketing Practices

Laurie Meehan
Staff Attorney

Direct Dial
(202) 326-3755

VIA FACSIMILE AND REGULAR MAIL

May 25, 1998

Michael H. Rasch, Esq.
Dunn & Rasch, Ltd.
3500 North Causeway Blvd.
Suite 1216
Executive Towers One
Metairie, Louisiana 70002

Dear Mr. Rasch:

I apologize for the delay in responding to your inquiry. I appreciate your concern regarding the interpretation of the Federal Trade Commission's Funeral Rule and the state laws of Louisiana

127

and services as a condition for purchasing other goods and services; and (4) prohibits embalming without prior approval, except in limited circumstances

Louisiana regulation did not significantly limit consumers' choices as they could still purchase caskets from competing funeral homes or provide home made caskets. It is likely, however, that limiting the types of entities that may sell caskets may have the overall effect of reducing the number of casket choices or choices of suppliers of caskets.

For additional information, I am enclosing a letter to The Honorable Franklin P. Hall from the Director of the FTC's Bureau of Competition. The letter addressed a similar issue with respect to proposed legislation in the state of Virginia which sought to limit the sales of pre-need funeral planning.

~~_____ in this letter which stated in pertinent part that~~

The Commission is concerned with restrictions that allow only licensed funeral directors to sell pre-need funeral plans, including funeral goods and arrangements for providing funeral services. Such restrictions may harm consumers by preventing the introduction and development of innovative forms of competition and lower cost alternatives for funeral products and services for which the professional expertise of a funeral director is not required. For example, consumers may be harmed if ~~owners of cemeteries and manufacturers of funeral goods are~~

misrepresenting the necessity of or preservative effects of a casket. The Funeral Rule does not address the retail sale of caskets by a particular individual or group. It neither prohibits nor allows the retail sale of caskets. The prohibition on casket handling fees, however, assumes or encourages a competitive market in the retail sale of caskets.

3. If the Funeral Rule would not apply to a "casket store" is it not proper for such an entity to comply with all state laws concerning the retail sale of funeral merchandise?

The FTC's Funeral Rule governs the activities of funeral providers, who are defined as entities that engage in both the sale of funeral goods and funeral services. Funeral goods are "goods which are sold or offered for sale directly to the public for use in connection with funeral services." Funeral services are: (1) services used to care for and prepare bodies for burial, cremation or other final disposition; and (2) services used to arrange, supervise, or conduct the funeral ceremony or final disposition of human remains. Thus, if a "casket store" engaged solely in retail sale of caskets or even other funeral goods, the Funeral Rule would not apply unless the "store" also engaged in the sale of funeral services.

Enclosure