



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

Division of Marketing Practices

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Michael P. A. Cohen, Esq.
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Dear Mr. Cohen:

On behalf of Selected Independent Funeral Homes (“SIFH”), a professional association of independent, locally owned funeral homes, you have requested a staff opinion on the application of the Funeral Rule to cemeteries. You state that many SIFH members also own cemeteries, and argue that staff’s analysis in Opinion 08-1¹ of the Rule’s application to crematories “applies with equal force to cemeteries,” and compels a conclusion that the Rule likewise applies to cemeteries.

As you may know, the Commission noted when it promulgated the Rule that a cemetery “would generally not be considered a ‘funeral provider’” because it “only arranges or conducts final dispositions” and “does not prepare human remains for burial or other dispositions.”² In 2008, the Commission decided not to commence a rulemaking proceeding to amend the Rule to cover all cemeteries operated for profit.³ Nothing in Opinion 08-1 is inconsistent with these determinations.

In Opinion 08-1, staff noted that the Rule applies only to “funeral providers” that sell or offer to sell *both* “funeral goods,” as defined by § 453.1(h) of the Rule,⁴ *and* “funeral services,” as defined by § 453.1(j).⁵ We stated that *if* a crematory sells or offers to sell “funeral goods,” such

¹ Staff Opinion 08-1, *available at* <http://www.ftc.gov/bcp/online/edcams/funerals/opinions/opinion08-1.pdf>.

² 47 Fed. Reg. 42260, 42285 (Sept. 24, 1982).

³ 73 Fed. Reg. 13740, 13742 (Mar. 13, 2008). The Commission observed that under the FTC Act, 15 U.S.C. § 45, it would have jurisdiction over for-profit cemeteries, but not over non-profit cemeteries, and that the “lopsided application of the Rule to some, but not all, cemeteries would likely prove unduly costly.” 73 Fed. Reg. at 13744-45.

⁴ 16 CFR § 453.1(h).

⁵ 16 CFR § 453.1(j). The definition of “funeral provider” in § 453.1(i) of the Rule requires the offer or sale of both “funeral goods” and “funeral services.” 16 CFR § 453.1(i).

as urns, it would be covered by the Rule because crematories also perform “funeral services.” Staff’s view that crematories perform “funeral services” was based, in turn, on our analysis of the two tests prescribed by the definition of that term:

‘Funeral services’ are any services which may be used to:

- (1) Care for and prepare deceased human bodies for burial, cremation or other final disposition; and
- (2) arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human remains.⁶

While we agree that the second element in the definition applies equally to cemeteries and crematories, because both “arrange, supervise or conduct . . . the final disposition,” staff is not persuaded that most cemeteries “care for and prepare deceased human bodies for burial,” as required by the first element. Unlike cemeteries, crematories typically must refrigerate and store remains for waiting periods prescribed by state law, and physically handle remains to transfer them from regular or rental caskets to flammable containers, check for and remove prosthetics, pacemakers, and jewelry prior to cremation, and collect the ashes when the process is completed. It cannot be said that cemeteries likewise “care for an prepare deceased human bodies for burial” since they generally deal only with casketed remains.

While the Funeral Rule generally does not apply to cemeteries, there may be some circumstances in which commercial cemeteries are “funeral providers” and are obliged to comply with the Rule. For example, *if* a commercial cemetery provides “funeral services” *and* offers or sells “funeral goods,” it would be obligated to comply with the Rule.

As you know, the views expressed in this letter are those of the FTC staff. They have not been reviewed, approved, or adopted by the Commission, and they are not binding on the Commission or any individual Commissioner. However, they do reflect the views of FTC staff charged with enforcement of the Funeral Rule. Staff Funeral Rule opinions are routinely posted on the FTC website at <http://www.ftc.gov/bcp/conline/edcams/funerals/staffopinions.shtm>.

Sincerely,

/s/

Craig Tregillus
Funeral Rule Coordinator

⁶ 16 CFR § 453.1(j)(1)-(2).