

Arkansas State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services

Board Meeting Minutes

Tuesday, May 19, 2020

1 Commerce Way
Cafeteria – 1st Floor
Little Rock, AR
9:00 a.m. – 2:41 p.m.

Chairman Bill Booker called the meeting to order. Member(s) present: Billy Curl, Professional Member, Rausch Hodges, Professional Member, Commissioner, Alan McClain, Professional Member, Josephine Perry, Senior Citizens Member, and Steve Whitwell, Professional Member and Vice-Chair.

Member(s) absent: Chuck Dearman, Professional Member, Stephanie Neipling, Consumer Member, and James Bruce Smithson, Professional Member.

Staff present, Robert Akers, Director, Funeral Services Division, Darriel Ezell, Inspector/Investigator, Amy Goode, Executive Secretary, Amelia Vestal, Senior Securities Examiner, Amanda Gibson, Arkansas Insurance Department, Associate Counsel, and Jim Brader, Arkansas Insurance Department, General Counsel.

Staff absent: Lorin Hillery, Auditor.

1. **Call to Order** – Introduction of Board members and staff.

Newly appointed Commissioner McClain formerly introduced himself to the meeting attendees. Mr. Booker noted that the Board was holding their meeting in unusual location due to the COVID-19 concerns. The meeting is being held in the cafeteria of the Arkansas Department of Commerce building. The best possible meeting location to operate within the CDC and Arkansas Department Health guidelines, concerning social distancing. Hand sanitizer and disinfecting wipes were available for use during the meeting.

2. **Approval of the Agenda**

Chairman Booker inquired, if there was any desire to change or deviate from the proposed agenda. Hearing none, the Board preceded with the agenda as prepared by staff.

3. **Administrative**

- a. **Approval of the March 10, 2020, regular meeting minutes; and,**
- b. **Approval of the April 22, 2020, special meeting minutes**

Motion made by Whitwell to approve the minutes of the March 10, 2020, regular meeting and the April 22, 2020, special meeting, seconded by Hodges, all in favor. Motion carried.

4. **New Business**

a. Embalmers & Funeral Directors – Establishments Seeking Approval

[A.C.A. §17-29-304 Funeral Establishment – Requirements, §17-29-305 Examinations – Licenses, and §17-29-315 -Transporting human remains-Operating a transport service - Qualifications]

- i. K & G Mortuary Transport Service – Board ID No. 25260.** Requests a **Type D** establishment license and is located at 2407 Maul Road, Camden, Arkansas. Inspector Ezell inspected the Type D Transport establishment owned by Brandy C. Kendrick on **Tuesday, May 5, 2020**. Due to state travel restrictions, Ms. Kendrick brought her vehicle to us. Ms. Kendrick is currently the only listed driver with a valid Arkansas driver’s license and acceptable driving record for the transport service. She received her blood-borne pathogen training on December 17, 2019. All required documentation is pending Board approval.

Ms. Brandy Kendrick was present representing K & G Mortuary Transport Service.

Motion made by Curl to approve the Type D Transport establishment for K & G Mortuary Transport Service, seconded by Whitwell, all in favor. Motion carried.

- ii. Blytheville Wolfe Brothers Funeral Home – Board ID No. 23968.** Requests an establishment name change to **Jarrett Funeral Home**, during the current license year. Routinely establishments can change the name at the end of the license year and receive a new license in the new name for an additional fee of \$20.00. If the request for a name change happens during the current year, then they must meet the requirements of a new establishment. Issachar Jarrett, owner, is requesting a waiver of this requirement and fee.

Issachar Jarrett was present representing Jarrett Funeral Home. Mr. Jarrett explained the reasons for his request. Essentially, it started over a family fall out over money and his father (Gary Wolfe) left the establishment. The Wolfe Brothers have since opened another establishment approximately 2 blocks from this original location. They have had disagreements over bodies and will show up to the same house. One family member will want to use Jarrett and another family member will want to use Wolfe. Mr. Jarrett doesn’t want to put his families through that anymore. He didn’t ask at the beginning of the year, because he wasn’t willing to back down. However, he has now decided it’s in the best interest of his funeral home and the families that he serves to change the name. This will hopefully lessen the confusion in the area. He is requesting a waiver of the fees, because he is having to replaces signs and re-establish the new name in the area.

Mr. Whitwell agreed, that it would seem beneficial to the public and would help with the confusion in the area.

Motion made by Curl, to grant the waiver of the new establishment requirements for inspection and fees, but an inspection shall take place as soon as it is allowed, any issues noted should be corrected within thirty (30) days of inspection, seconded by Perry, all in favor. Motion carried.

5. Hearings

a. In the matter of – Torre Kindle, Applicant for Funeral Director Apprentice, Respondent – Case No. 20-07.

Russ Galbraith, Chief Deputy Insurance Commissioner | Arkansas Insurance Department, served as Hearing Officer;
Amanda Gibson, Board Counsel, represented the Board;
Tiffanie Harrison, Court Reporter;
Torre Kindle, Respondent was present with character witness Dee Dee Sheffield;
Court Reporter swore in witnesses.

Hearing Officer, Russ Galbraith called the hearing on the record at 9:36 am and explained the purpose of the hearing. Mr. Galbraith noted Respondent Kindle was present and had received notice of hearing. Mr. Galbraith explained the hearing would be conducted pursuant to the Arkansas Administrative Procedures Act. The strict rules of introducing evidence do not apply and will be given latitude in presenting testimony and evidence, to promote a fair hearing. This hearing is subject to the Arkansas Freedom of Information Act and therefor all parts of the hearing, including deliberations, are open to the public. The Board will base its decision solely on evidence presented today.

Ms. Gibson stated she had Board's Exhibit Packet 1-4, to introduce into the record. Respondent had no objection and he further had no records to introduce.

Board found and agreed to find allegations of fact 1-11 proven and charges 1-2 as their conclusion of law.

Motion made by Whitwell to grant wavier to Kindle and allow to register as an apprentice funeral director, seconded by Curl, all in favor. Motion carried.

Record closed at 10:03 a.m.

b. In the matter of – Hicks Funeral Home, Inc., Board ID No. 20329 and Gloria McFadden, Board ID No. 21370, Respondents – Case No. 19-26

Russ Galbraith, Chief Deputy Commissioner | Arkansas Insurance Department, served as Hearing Officer;
Amanda Gibson, Board Counsel, represented the Board;
Tiffanie Harrison, Court Reporter;

Gloria McFadden, Respondent was present representing Respondent Hicks Funeral Home; Monica Johnson, witness for Respondents; Brandee Walker, Rosetta Jackson, Toni Cooper, witnesses for the Board; Darriel Ezell, Inspector/Investigator, witness for the Board. Court Reporter swore in witnesses.

Hearing Officer, Russ Galbraith called the hearing on the record at 10:20 am and explained the purpose of the hearing. Mr. Galbraith noted Respondent McFadden was present and had received notice of hearing. Mr. Galbraith explained the hearing would be conducted pursuant to the Arkansas Administrative Procedures Act. The strict rules of introducing evidence do not apply and will be given latitude in presenting testimony and evidence, to promote a fair hearing. This hearing is subject to the Arkansas Freedom of Information Act and therefore all parts of the hearing, including deliberations, are open to the public. The Board will base its decision solely on evidence presented today.

Ms. Gibson stated she had Board's Exhibit Packet 1-5, to introduce into the record. Respondent had no objection. Respondent had exhibits R1-4 to introduce into the record and there were no objections.

Board found the following as factual allegations 1- 9 proven.

1. Respondent McFadden is the manager of Hicks Funeral Home.
2. Respondent McFadden is a licensed funeral director.
3. The complainant in this matter is Brandee Walker, the ex-wife of the deceased.
4. The deceased is Alex Walker, who died on February 15, 2019.
5. The siblings of the deceased made arrangements for the services.
6. Respondents were aware of the existence of the deceased's adult son, David Walker.
7. Respondents, however, made arrangements with the siblings of the deceased.
8. Respondents advised the siblings of the deceased that arterial embalming was not feasible due to the nature of the injuries sustained by the deceased in a vehicle accident.
9. The siblings opted for an immediate burial, which occurred on February 18, 2019.

Motion made by Hodges, to find factual allegations 1-9 with amendment proven, seconded by Curl, all in favor. Motion carried.

Motion made by Curl to find factual allegation 10 not true, seconded by Whitwell, all in favor. Motion carried.

Motion made by Curl to find factual allegation 11 not applicable, seconded by Whitwell, all in favor. Motion carried.

Motion made by Whitwell, to find Charge 1 unsubstantiated and should be dismissed, seconded by Curl, all in favor. Motion carried.

Motion made by Curl, to find Charge 2 not applicable and should be dismissed, seconded by Hodges, all in favor. Motion carried.

c. In the matter of – Timeless Funeral Home, LLC., Board ID No. 20449, Michael McKinzie, Board ID No 21902, and Consuela McKinzie, an unlicensed person, Respondents – Case No. 20-15

Ms. Gibson informed the Board, that this was the funeral home that the Board suspended their licenses on an emergency and temporary basis. We had a special meeting on May 13, 2020 by conference call. Respondents retained counsel and their counsel had contacted Ms. Gibson to request a continuance. Their attorney expressed understanding that their licenses remain suspended, until such a time a hearing is held. The attorney also expressly waived the statutory requirement that the hearing be held within ten (10) days of the temporary suspension.

d. In the matter of – Watson-Northcrest Funeral Home, Board ID No. 20416, Respondent – Case No. 20-08. – Continuance Requested.

Ms. Gibson explained that Respondent did request a continuance and expressed the desire to possibly enter into a consent agreement in lieu of a hearing. To that end, she prepared a draft of the consent agreement, if the board wishes to review, discuss, and approve what an appropriate penalty might be. Then we can take that to the Respondent, to see if they will agree to it.

Motion made by Whitwell, to assess no civil penalty and place establishment license on probation for a term of 18-months, seconded by Curl, all in favor. Motion carried.

6. New Business (Continued)

a. Perpetual Care Cemeteries – To consider Staff’s update.

i. Forest Park Cemetery (License No. 11816) – Fort Smith

ii. Roselawn-Holy Cross Cemetery (License No. 11817) – Fort Smith

Mr. Akers gave the Board a little history about these cemeteries, that around 1999, Tommy Fowler purchased these cemeteries. Robert McKenzie, Jr, from Fort Smith, has been a persistent and consistent consumer, filing complaints, against both properties. He has about 10-15 family members buried collectively in these two cemeteries. The first family member was buried around 2004 and he essentially has been doing battle with the owners for 16 years now. He keeps very meticulous records and since the perpetual care cemeteries came to Arkansas Insurance Department in July 2018, we have received no fewer than 5-10 complaints from McKenzie himself. We do have a handful of few other complainants, other than McKenzie, that have family members there.

Mr. Akers stated that he started interfacing with McKenzie in September of 2019, after we received two back to back complaints. He routinely complains, during the grass mowing season, because they do not keep their grass mowed very well. Mr. Akers first met Mr. McKenzie, September 14, 2019, on a personal trip to Fort Smith. Prior to meeting with Mr.

McKenzie, he had done a tour of both properties and took several notes and pictures. He then spent approximately 3 hours with Mr. McKenzie and his wife, touring both properties. McKenzie had his documentation going back 16-20 years, including envelopes, pictures, and complaints he submitted to the old board. He has submitted 5-6 articles to the local paper since April of last year and 4 of them since April 1st of this year. Mr. Akers further stated that we obviously can't tell him he can't write articles, but he is reporting things that are factually incorrect and running the Board down. He is running staff down, for things he really has no functional knowledge of, or about what we are doing in the background, trying to work on this. Since Akers September visit, he has made three other visits on his personal time, has taken over 160 pictures and drafted a 10-page memorandum. The conditions of the cemeteries are deplorable.

In December 2018, Mr. Fowler came before this Board, stating he wanted to close his office effective January 1st, he wanted to essentially walk away from the cemeteries. The Board would not allow him to walk away from the cemetery. Fowler has not had anyone on staff at Forest Park for several months, so anything that has been done from a maintenance standpoint, had to be done by Mr. Paul Gregory, who has been the thirty (30) year manager of Roselawn Holy Cross. Mr. Gregory works six (6) days a week and spends most of his time, opening/closing graves, mowing grass, and dealing with customers. Since the September visit, we have not been able to get this before the Board. This was our first opportunity to get all this information ready and before the Board. Akers last visit was April 25th and inadvertently enough Mr. McKenzie was there the same day and somehow, they missed each other. Mr. McKenzie published another article on May 13th, that contained 4 or 5 pictures, noting the same conditions Mr. Akers had. It's a bad muddy area, they have a heavy machine that they have to drive to the interior of the cemetery, to do opening and closings and they are completely destroying all the existing graves. They are rutting it up with tracks, it's muddy, and they are laying sheets of plywood over it to cover it up. Cosmetically it looked better on April 25th, but we are not to the heavy mowing season yet. In September of 2019, there was grass waist high and the worse part about Forest Park are the roads. They lack pavement and are just heavily rutted dirt and gravel. Road conditions are impassable in some sections of the cemetery, especially after heavy rain.

After Akers visit, with Mr. McKenzie in September, he didn't advise him of his return trips. A determination was made after his visit with him in September, that he wanted to let him know we were working on this, but we did not want to prejudice the Board or prejudice any public opinion against the owner and operators of the properties, until the Board had a chance to review this information and documents. Mr. Akers has met with Mr. Gregory and Shawn Guard, a Fort Smith Compliance officer, and they have tried to think outside the box to think of ways the city could help with this. There is no doubt, that finances are a huge consideration for this, because essentially the law prohibits tapping into the principal that's paid into the trust. An owner/operator can utilize the interest earned for maintenance and capital improvements. When the bank takes a substantial amount of that interest for maintaining the trust, it doesn't leave much for the cemetery to use.

Mr. McKenzie has his State Representative from that district now taking interest into his concerns and is wanting to get together with us to see what can be done in the next legislative

session to enhance or improve what is currently in the A.C.A. Some of the things we would like to see changed in the rules will first require a law change. The Arkansas Insurance Department has only had control over perpetual care cemeteries for less than two (2) years for something that has been festering for at least sixteen (16) years. At this time, it's recommended we request Mr. Fowler and Mr. Gregory appear before the Board for a face-to-face. There is so much concern about the debris piles, it's an eye sore.

Mr. Booker stated that he was familiar with these cemeteries from his previous experience on the prior board. It's an extremely frustrating situation, not sure if those that envisioned the thought of perpetual care cemeteries, could see far enough into the future to appreciate what could go wrong when there is no longer a commercially viable cemetery. Basically, that is what's driving this problem here, there is no longer enough revenue coming into the cemetery to be able to maintain and care for it. The size of the trust fund doesn't matter, because those that envisioned the concept, never thought that the prevailing interest rates would be so low. Cemeteries have come before the Board and expressed that the fee to maintain the trust exceeds the earnings. Mr. Fowler has asked us before what to do, because he no longer has the funds to maintain the cemetery. Mr. Booker is willing to have them come in, but he's afraid if we push too much, the cemeteries will end up in receivership and the courts will appointment someone as a receiver.

Mr. Akers further stated there is something in the code right now, that allows you to get low risk offenders from the local county or city jail and let them work. Additionally, he said he wants to visit with the State Representative about putting influence on the city. Get the local fire department out to do a controlled burn practice on the debris with the new recruits.

Curl recommended the Board to brainstorm and come up with ideas and solutions to help change the laws.

iii. Update on 2019 Annual Cemetery and Trustee Delinquent Reports

Ms. Vestal updated the Board concerning the status of the 2019 reports. Out of the 202 reports, we are nine (9) reports shy from complete reporting. In addition to Forest Park and Roselawn Holy Cross reports, we also have not received the following other reports:

- Carney Funeral Home & Cemetery, LLC. – Blytheville – Trustee report has not been received.
- Cypress Memorial Garden – Pine Bluff – Mr. Dewitt Hill passed away, the wife was running it and the son stepped in. He did ask for an extension, but since then he has not responded to phone calls, letters, or emails. The Board has some options, to fine him for late filing, but the fact is he hasn't even filed anything. You can ask for him for a hearing, we have done letters of caution in the past. Whitwell inquired if there needed to be a change of control/ownership and Ms. Vestal indicated that was the other issue. They have been notified that needs to occur as well.
- Strickland Memorial Lawns – McGehee – Similar situation to Cypress. Mr. Warren Strickland passed way, his wife who is in her 90's and grandson were trying to do the report, the bank would not release the bank statements to them, because their names were

not on the account. Previous board members will remember, that Mr. Strickland had depleted his trust account a few years ago. An order was issued to reinstate the funds. We have had issues with this cemetery and complaints over the years, concerning the conditions of the cemetery. They also need to do a change of control/ownership.

- Woodland Memorial Park – Fairfield Bay – We recently did a change of control on this one. Mrs. Olmstead passed away and R. Warren Olmstead did the change of ownership. He did acknowledge the report was due and the last conversation he stated his accountant had it and was working on it.

Ms. Gibson stated we could send them a letter to have reports filed by a date certain, include the change of control for those noted and if not completed, schedule them to appear before the Board.

7. Complaints - To consider the complaint(s) on-file with the State Board
[[A.C.A. §23-61-1111 Duties of the State Insurance Department](#)]

Ms. Gibson stated she had several embalmer and funeral director complaints to present to the board. The majority of the complaints to present, staff is recommending they be set for hearing.

Case No. 18-13. Recommend hearing by board staff and counsel.

Case No. 19-29. Recommend hearing by board staff and counsel.

Case No. 19-33. Recommend hearing by board staff and counsel.

Case No. 20-01. Recommend hearing by board staff and counsel.

Case No. 20-02. Recommend hearing by board staff and counsel.

Case No. 20-05. Recommend to close by board staff and counsel.

Case No. 20-04. Recommend hearing by board staff and counsel.

Case No. 20-09. Recommend hearing by board staff and counsel.

Case No. 20-10. Recommend hearing by board staff and counsel.

Case No. 20-13. Recommend hearing by board staff and counsel.

Motion made by Whitwell, to accept staff's recommendation to close Case No. 20-05, seconded by Curl, all in favor. Motion carried

Motion made by Whitwell, to accept staff's recommendation to set all remaining cases for a hearing, seconded by Curl, all in favor. Motion carried.

Ms. Vestal stated there were four (4) cemetery complaints that staff is recommending closed.

Case No. PCC 20-002. Recommend to close by board staff and counsel.

Case No. PCC 20-003. Recommend to close by board staff and counsel.

Case No. PCC 20-010. Recommend to close by board staff and counsel.

Case No. PCC 20-011. Recommend to close by board staff and counsel.

Motion made by Curl, to accept staff's recommendation to close these complaints, seconded by Whitwell, all in favor. Motion carried.

8. Legal Administrative Update

Nothing to update on the appeal in Miller County. We will remove this item until there is something to update.

9. **Potential Next Meeting Date(s)**

- a. **Monday, June 15, 2020 (1:00 p.m.) Rules Sub-Committee**
- b. **Tuesday, June 16, 2020 (9:00 a.m.) Tentatively Hearings Only**

Board agreed with staff recommend meeting dates.

10. **Continuing Education Providers Request**

- a. **Video Conference CE Approval Requirements** – We have received several requests to hold continuing education virtually (attached). Would like the Board’s feedback or any requirements relevant to considering these types of requests.

Board suggested to do some research on what should be required. Mr. Booker indicated he was in favor of webinars sponsored by already previously accredited providers. We are in virtual world these days and he is favorable in allowing these types of programs from recognized providers. We should keep an open mind in determining, if this helps increase the level of the profession. Eventually we must count on people to do the right thing.

11. **Comments and Announcements**

Ms. Gibson stated we think we have currently met our end on the embalmer and funeral director rules, and we have handed out that working draft for you all to review. Please review and prepare to discuss at the July meeting.

The Board did discuss deadlines for different reports and licenses due to COVID-19. Currently there has not been issues with reports or request for extensions for either. Licensees can always request an extension in advance of the due date to file a report.

12. **Adjournment**

Motion made by Curl to adjourn at 2:41 PM, seconded by McClain, all in favor. Motion carried.