

Doug Shropshire

From: Doug Shropshire
Sent: Thursday, February 05, 2009 10:16 AM
To: Aldon Asher; Chris McMurray; Diana Chapman; Dianna Patterson; Gladys Hennen; Jessica Cordero; Jessica Morse; Jim Deason Jr.; Karen Duehring; Kurt Schuller; Marc Adel; Robert Ditolla; Thurman Lowe; Tina Williams; Anthony Miller; Christine Lynn; Crystal Grant; James Gellepis; Jasmin Richardson; Karen Duehring; Lashonda Morris; LaTonya Bryant; Thurman Lowe; Timothy Wheaton
Cc: (Buddy.Bevis@fsitrust.com); Allison. Dudley; Bill Swain; Bill Wms; Cheryl Lankford ; Corinne Olvey ; Deborah Loucks ; Don Ray; Georgia McKeown ; Jan Scheff; Jim Smith; Jim Stephens; John Rudolph; John Williams ; Juhan Mixon; Keenan Knopke ; Kelli Hoover; Leighann Bradley; Les Klein; Lyons Coney, Lisa; 'Michele Hood'; Philip Coleman; Ross McVoy; Steve Roddenberry; Wendy Wiener
Subject: Advertising before a license is issued

Advertising before a license is issued

FCCS Division staff are asked from time to time, by people who have applied for a license under ch. 497, or who plan to apply for a license, whether they can advertise before they are issued the license applied for.

These advertisements takes many forms. We often refer to them as “Coming soon...” advertisements, although they may not use that specific language.

The ads might be on a sign in front of the site of a proposed funeral home, in a newspaper or church bulletin, in the phone book, etc.

Regarding preneed sales, it is clearly absolutely prohibited to advertise in any way, concerning preneed sales, before the preneed license is actually issued. Any mention of preneed business in an ad, before the preneed license is issued, is a violation of statute. See 497.452(1)(b), Florida Statutes.

But for other types of licenses, most typically funeral homes and direct disposal establishments, our legal advisors tell us that whether a pre-licensure ad is ok depends on:

- 1) the specific wording of the ad, and
- 2) consideration of all the facts related to the context of the ad and the activity of the applicant in relation to the ad.

Pre-licensure ads for funeral homes, direct disposal establishments, etc., can in some instances be ok, but often are found to be deceptive or misleading. Ads that include a phone number are often particularly questionable, because of the issue of what happens if and when consumers call the number before a license is actually issued. Ads posted in front of a building already occupied by the applicant, are likewise especially troublesome, for the same reason.

Phone book listings are a special case. There are deadlines to get into the next edition of phone book, so the applicant may feel compelled to ask for a listing even though not licensed. The safest thing for the applicant to do in such a case, would be to have the phone number answered by a recording that does not refer callers to someone else or provide some other phone number, and just says, for example, something like “*Sorry, Acme Funeral Home is not open for business yet. We expect to be open soon. Thank you for calling.*”

The bottom line for FCCS Division staff is this:

- Preneed. You should tell any person asking that it is strictly prohibited to advertise preneed business in

any way, before actual issuance of a license.

- All other types of pre-licensure ads. You should tell the person inquiring that FCCS Division recommends against any such ads, because the propriety of such ads depends on evaluation of so many different facts as the ad actually runs. No matter how hard they may press you for an opinion on their proposed ad, you must not formally or informally advise that a particular ad would be ok.
- If the person asking you presses you for a more definitive response on their proposed ad, tell them to give you a written, signed request for evaluation of whether their ad would be ok, setting out the specific language of the ad, and stating in detail all contextual facts (when, where, and how the ad will be exposed), and stating in detail what the activity of the applicant will be while the ad is posted but a license not yet issued. Tell the inquirer that you will forward the written request through channels to the FCCS Division office. We in the FCCS Division office will then consult with our legal advisors concerning the matter and respond. But even then we may not be able to give them a definitive response in some cases.

Thanks.

Doug Shropshire
Division Director
Funeral, Cemetery and Consumer Services Division