

Professional Misconduct – Offering a prepaid contract when not licensed as a salesperson – “offer”

Relevant legislation: Sections 3(3) and 43 of *The Funeral & Cremation Services Act*

Council File # 2005-14

A funeral director who was not licensed as a salesperson had contacted a consumer and made this person aware of savings to be realized for prepaid funeral services if payment was made before a certain date.

During a second meeting with the consumer, the funeral director prepared a funeral planning document and also completed handwritten calculations for professional services, a specific casket, a liner and the regulatory fee. He also calculated a final price and signed and dated the quote. The funeral director informed the consumer that if he wanted to accept this offer the file would be turned over to another employee of the funeral home.

On the matter of an “offer” the Investigation Committee that dealt with this matter had concluded:

“Simply stated a contract arises when one party makes an offer to another party and that other party accepts it. Contracts can be oral, or in writing. In many cases the law requires that certain contracts be in writing. This has nothing to do with formation of a contract. The writing is merely evidence of the contract. As indicated the conduct of (*the funeral director*) was an “offer for sale” ... The fact that (*the funeral director*) wanted payment to be made to someone else at a later date is irrelevant. A contract cannot come into existence until an offer has been made. Once, or if accepted, the offer is replaced by a contract.”

At a hearing, the Discipline Committee was presented with an agreed statement of facts and an agreed sanction. The Committee reprimanded the funeral director and notwithstanding the joint submission, ordered a fine of \$1,000 and costs of \$3,000.