F I N A L R E P O R T

FUNERAL DIRECTORS STUDY JOINT SUBCOMMITTEE
OF THE
SENATE COMMITTEE ON STATE GOVERNMENT
AND THE
HOUSE COMMITTEE ON JUDICIARY AND LAW ENFORCEMENT

January, 1981

The Funeral Directors Study Joint Subcommittee was created by the Legislative Council to investigate Iowa law as it relates to the regulation of pre-need sales of personal property and services used in the final disposition of dead human bodies, as requested by Senate Concurrent Resolution 129.

The Legislative Council appointed a ten-member joint subcommittee consisting of members of the Senate Standing Committee on State Government and the House Standing Committee on Judiciary and Law Enforcement. The members appointed to the Subcommittee were as follows: Senator Forrest V. Schwengels, Chairperson, and Representative James O. Anderson, Vice Chairperson, Senators Stephen W. Bisenius, Charles P. Miller, Elizabeth R. Miller and Norman Rodgers, and Representatives Virgil E. Corey, Lee Holt, Joyce Lonergan and Joseph Welsh.

The Legislative Council authorized a total of three meeting days for the work of the Subcommittee. Meetings were held in Des Moines on August 25 and 26, 1980.

This study originated out of the filing of a number of bills and amendments which in one manner or another would modify the present law, chapter 523A of the Code, that regulates "prearranged funeral plans". One of these bills, Senate File 2349, was brought up for consideration in the Senate during the 1980 Session, but indefinitely postponed because of a series of mutually conflicting amendments. The subject matter has been presented in a variety of proposed legislation introduced during the past several years.

The Subcommittee invited a series of speakers to meet with the Subcommittee on August 25 and 26 to present their views of the existing law and of the various proposals for change. These speakers included representatives of the Iowa Board of Mortuary Science Examiners, the Consumer Protection Division of the Office of the Attorney General, the Iowa Funeral Director's Association, and the Iowa Cemetery Association; individuals owning or operating funeral homes or cemeteries; and representatives of corporations that own and operate cemeteries.

The various comments that were presented to the Subcommittee suggest only one premise to which all agree: That the pre-need

sale of funeral services or personal property used in conjunction with a funeral or burial should be permitted, subject to some type of statutory regulation. There is no agreement with respect to the appropriate type or the necessary extent of regulation of pre-need sales.

Much of the controversy over the regulation of pre-need sales is apparently caused in part by the existing law, chapter 523A. That law, enacted in 1953, provides that 80 percent of payments made under pre-need sales agreements must be held as trust funds until the death of the beneficiary of the agreement unless sooner released by mutual consent of the parties. However, the statute does not clearly indicate which types of pre-need sales are and are not regulated. The statute refers in section 523A.1 to "prearranged funeral plans", thus suggesting that only pre-need sales of funeral services and personal property by a funeral director are covered, but other language in the section has caused at least one Iowa district judge to hold that pre-need sales of personal property by a cemetery also are covered by the statute. The grammatical structure of section 523A.1 lends itself to differing interpretations, and thus the state of the existing law is subject to conflicting opinions.

The Subcommittee took preliminary steps toward a review of various alternatives which might be used by the general assembly in adopting a new regulatory scheme. A bill draft was requested, and subsequently prepared, containing a number of variations found in statutes of other states that were referred to by the different speakers. However, it was decided that the Subcommittee should not proceed until an opinion of the attorney general had been issued defining the scope of the existing law. A representative of the attorney general's office presented an outline of what was anticipated to become a formal opinion, but the Subcommittee postponed any further action until receipt of the formal opinion.