

sions of a statute providing for and requiring such action by the board, such action, when the same is taken by it in compliance with the terms of the statute, is conclusive.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

3484.

LICENSED FUNERAL DIRECTOR—SECTION 1335-6a G. C. NOT  
CONSTRUED TO REQUIRE "FULL TIME" SUPERVISION  
—FUNERAL HOMES, ESTABLISHMENTS OR BRANCHES  
—SUPERVISION, MANAGEMENT, OPERATION — DIS-  
CHARGE OF DUTIES.

*SYLLABUS:*

1. *The provisions of Section 1335-6a, General Code, can not be construed as requiring funeral homes or establishments or branches thereof to be under the "full time" supervision of licensed funeral directors.*

2. *The provisions of Section 1335-6a, General Code, require that funeral directors shall, in supervising funeral homes or establishments, as well as branches thereof, expend only that amount of time necessary to fully and efficiently discharge the duties connected with or incident to the management or operation of such homes or establishments.*

COLUMBUS, OHIO, January 3, 1939.

*The Board of Embalmers and Funeral Directors of Ohio, Wyandotte Building, Columbus, Ohio.*

GENTLEMEN: I am in receipt of your recent communication wherein you request my opinion on the following:

"As Secretary of The Board of Embalmers and Funeral Directors of Ohio I have been instructed to ask that you furnish an opinion as to the construction of Section 1335-6a of the General Code of Ohio. This section reads, in part, as follows:

'\* \* \* At least one licensed funeral director shall directly supervise each main establishment and at least one licensed funeral director shall directly supervise each branch establishment.'

We wish to determine whether the above quoted section re-

quires the licensed funeral director to devote his full time to the establishment or if he must merely take full charge and supervision of each case as the same arises.”

Section 1335-6a of the General Code, provides as follows:

“On or after the passage date of this amendment no funeral home or establishment or any other place pertaining to funeral directing or the conducting of funerals shall be established in the state of Ohio under any name other than that of the licensed holder of an Ohio funeral directors’ license or the license holders of Ohio funeral directors’ licenses under whose direction such establishment is operated; provided that every establishment shall display in all advertising the name of the licensed funeral director who is actually in charge of the establishment. All branch establishments must display the name of the funeral director who is actually in charge. At least one licensed funeral director shall directly supervise each main establishment and at least one licensed funeral director shall directly supervise each branch establishment.”

The above quoted section, enacted by the 92nd General Assembly, became effective May 2, 1938.

The question which you have presented arises by reason of the provision contained in Section 1335-6a, supra, to the effect that “at least one licensed funeral director shall directly supervise each main establishment and at least one licensed funeral director shall directly supervise each branch establishment.” As stated in your communication, it is your desire to know whether or not this provision requires the full time supervision of a licensed funeral director in each and every funeral home or establishment operating within the State of Ohio.

It may be said at the outset that unquestionably Section 1335-6a, supra, was primarily enacted as a measure designed to prohibit the chain method operation of funeral homes or establishments under one licensed funeral director as was formerly the practice in Ohio prior to its enactment. By virtue of the provisions of this section, it is now definitely established that each funeral home or establishment operating in this state, whether it be a main establishment or a branch thereof, shall be under the direct supervision of a licensed funeral director. The provisions of the section in this respect are so clear and free from doubt that any further comment concerning the same seems unnecessary.

Considering now the exact question which you have presented, it seems quite clear that the Legislature, in the enactment of Section 1335-6a, supra, never intended to impose on the funeral directors of Ohio a duty almost impossible of accomplishment. That such would be the situation

if the provisions thereof were to be construed as requiring funeral homes or establishments to be under the "full time" supervision of licensed funeral directors seems to be beyond question. Not only an obligation almost impossible of accomplishment would be imposed, but likewise a tremendous burden would be placed upon the funeral directors of Ohio which would ultimately result either in requiring funeral directors to be constantly in charge of their respective funeral homes or employing other funeral directors to take charge during their absence. This, of course, would eventually result in the retirement of hundreds of funeral directors from their chosen field of endeavor at a great financial loss. It is contended that the Legislature never intended to create such a situation by the enactment of Section 1335-6a, *supra*.

This contention is not without basis in authority for the courts of this state have repeatedly held that any ambiguity existing concerning the provisions of a statute should and must be resolved in favor of a just and fair interpretation. In the case of *Hill vs. Micham*, 116 O. S. 549, the Supreme Court, in adhering to this well established rule, stated on page 553 of the opinion as follows:

"It has also been held that it is the duty of courts, in the interpretation of statutes, unless restrained by the letter, to adopt that view which will avoid absurd consequences, injustice, or great inconvenience, as none of these can be presumed to have been within the legislative intent. *Moore vs. Given*, 39 O. S. 661."

If the provisions of Section 1335-6a, *supra*, were to be construed as requiring funeral homes or establishments to be under the full time supervision of a licensed funeral director, it is quite obvious, in my opinion, that a great injustice would be perpetrated on the funeral directing business of Ohio. It is further quite apparent that such a construction would be directly adverse to the decision of the court rendered in the *Micham* case *supra* and, therefore, would be of no force or effect.

As heretofore stated, it is quite apparent from a consideration of Section 1335-6a, *supra*, that the Legislature, by the use of the language "one licensed funeral director shall directly supervise," fully intended that each funeral home or establishment, as well as branch establishments operating in the State of Ohio must be under the direct supervision of a licensed funeral director. However, it can not be contended that this language requires the "full time" supervision of such funeral homes or establishments. If funeral directors of Ohio, in operating their respective funeral homes or establishments, personally direct, supervise and discharge all of the duties connected with or incident to the operation of

the funeral home or establishment committed to their care or under their management, it is quite clear to my mind that the requirements imposed by Section 1335-6a, General Code, have been met.

In other words, it is my opinion that Section 1335-6a of the General Code only requires that funeral directors in managing or operating funeral homes or establishments in the State of Ohio shall expend, in the supervision of such homes or establishments, only that amount of time necessary to fully and efficiently discharge all of the duties connected with such employment.

Respectfully,  
 HERBERT S. DUFFY,  
*Attorney General.*

3485.

TEXTBOOKS—SUPERINTENDENT COUNTY SCHOOL DISTRICT OR CITY SCHOOL DISTRICT—WHERE PUBLISHING COMPANY FORWARDS NEW TEXTBOOK—SALE—BOOK COMPANY—NO VIOLATION OF SECTION 7718 OR 12876 G. C. FOR SCHOOL OFFICIALS TO RETAIN MONEY RECEIVED FROM SALE.

*SYLLABUS:*

*Where a textbook publishing company forwards a new textbook to a superintendent of a particular county school district or a particular city school district and such superintendent sells the textbook to a company that makes a business of collecting textbooks, and retains the money received for the same, such superintendent is not violating either the provisions of Section 7718 or Section 12876, General Code.*

COLUMBUS, OHIO, January 3, 1939.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN: This will acknowledge receipt of your communication, which reads as follows:

“We are informed it is the practice of various text book publishing companies to send to the various county and city school superintendents copies of new textbooks when same are published. In numerous instances such books are sold by the