

1946

EMBALMERS, BOARD OF AND FUNERAL DIRECTORS OF OHIO—MAY NOT DELEGATE AUTHORITY TO OUTSIDE PRIVATE INVESTIGATOR—INVESTIGATIONS AND ARRESTS.

SYLLABUS:

The Board of Embalmers and Funeral Directors of Ohio may not delegate authority to an outside private investigator to make an investigation and arrest.

Columbus, Ohio, June 26, 1950

Mr. C. L. Stout, Secretary-Treasurer
Board of Embalmers and Funeral Directors of Ohio
Columbus, Ohio

Dear Sir:

Your request for my opinion is as follows:

“The Board would like to have an opinion if they have the right to delegate authority to an outside private investigator to make an investigation and arrest.”

If the Board of Embalmers and Funeral Directors has the authority described in your request, such authority must be derived from the statutes creating your board, because of the rule that administrative boards have only such powers as are delegated to them by statute.

Sections 1335-1 to 1344, inclusive, of the General Code, contain the laws governing your board. Section 1335-3, General Code, establishes the office of “Inspector of the Board of Embalmers and Funeral Directors of the State of Ohio.” His duties are likewise described by said section. In part, his duties are:

“* * * to enter the office, premises, establishment or place of business of any embalmer or funeral director in the state of Ohio, or any office, premises, establishment or place of business where embalming or funeral directing is carried on: for the purpose of inspecting said office, premises, establishment or place of business, and for the purpose of inspecting the license and registration of embalmers, funeral directors, and apprentices operating therein, such inspector is further hereby authorized to serve and execute any process issued by any court under the provisions of this act, and to serve and execute any papers or process issued

by the board or any officer or member thereof under authority of this act, and also to perform any other duty or duties prescribed or ordered by the board. * * *

Section 1335-3 also gives the board the power to employ clerical:

“* * * or other help or assistance as may be necessary to carry out the provisions of this act.”

In my opinion the two parts of Section 1335-3 quoted above are in *pari materia*, and must be construed so as to give meaning to both parts.

In Sutherland Statutory Construction, Vol. II, 3rd Edition, Section 2703, the general rule of statutory construction is stated as follows:

“* * * affirmative words which are imperative and therefore mandatory imply a negative of anything contrary or alternative to its requirement.”

Therefore, when the General Assembly established the office of “inspector” and set out the duties of that office it by implication withdrew the power from the board to assign these duties to another.

The situation you present is distinguishable from a case where the statute requires a board or officer to do a certain act but is silent as to the method of performance. In your situation the statute prescribes the tasks and provides the means of performance.

In summary and conclusion it is my opinion that the Board of Embalmers and Funeral Directors of Ohio may not delegate authority to an outside private investigator to make an investigation and arrest.

Respectfully,

HERBERT S. DUFFY,
Attorney General.