

March 30, 2017

Jon W. Rettig, Sr., President
Board of Embalmers and Funeral Directors
77 South High Street, 16th Floor
Columbus, Ohio 43215

SYLLABUS:

2017-011

1. The name of a funeral home that appears on a license to operate a funeral home issued pursuant to R.C. 4717.06 may include words other than the name or names of funeral directors who are or were actually in charge of and ultimately responsible for a funeral home, provided those words are not directional or geographical references.
2. Under R.C. 4717.11(B) and 11A Ohio Admin. Code 4717-7-03(D), the name of a funeral home that appears on a license to operate a funeral home shall change to reflect the addition of the name of the new funeral director actually in charge of and ultimately responsible for the funeral home within twenty-four months following the change of the funeral director actually in charge of and ultimately responsible for the funeral home.
3. Because 11A Ohio Admin. Code 4717-7-03(D) implementing R.C. 4717.11(B) requires the name of a funeral home that appears on a license to operate a funeral home issued pursuant to R.C. 4717.06 to change within twenty-four months after the funeral director actually in charge of and ultimately responsible for the funeral home changes, the name used by the funeral home in its advertising shall change at the same time.
4. If the funeral director actually in charge of a funeral home changes after the effective date of R.C. 4717.11(B) and the funeral home does not want to follow the general rule under R.C. 4717.06(B)(3), the funeral home shall follow the prescriptions of the R.C. 4717.11(B) requiring the name of the new funeral director actually in charge of and ultimately responsible be added to the name of the funeral home that appears on the license to operate a funeral home issued pursuant to R.C. 4717.06.



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Opinions Section
Office 614-752-6417
Fax 614-466-0013

30 East Broad Street, 15th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

March 30, 2017

OPINION NO. 2017-011

Jon W. Rettig, Sr., President
Board of Embalmers and Funeral Directors
77 South High Street, 16th Floor
Columbus, Ohio 43215

Dear President Rettig:

You have requested an opinion about how the name of a funeral home (1) shall appear on a license to operate a funeral home issued pursuant to R.C. 4717.06, and (2) may be used in the funeral home's advertising. The Board of Embalmers and Funeral Directors (the "Board") has asked:

1. Under R.C. 4717.11(B), does the name of a funeral home that appears on the license to operate the funeral home have to change when the funeral director actually in charge of the funeral home changes?
2. If the answer to the first question is yes, in its advertising, may the funeral home use the old name that appeared on its license before its funeral director actually in charge changed or must it use the new name appearing on its license?
3. If the name on the license of a funeral home was the name on the license prior to the effective date of R.C. 4717.11(B), and the funeral director actually in charge of the funeral home changes, does the name of the funeral home appearing on the license to operate the funeral home have to change?
4. May the licensed name of a funeral home include words other than the names of funeral directors who are or were actually in charge of the funeral home?¹

R.C. Chapter 4717 governs the licensing and operation of embalmers, embalming facilities, funeral directors, funeral homes, crematory facility operators, and crematories, and establishes the

¹ Your original questions have been rephrased with the Board's approval. The Board also has asked us to consider an additional question.

Board of Embalmers and Funeral Directors to administer and enforce R.C. Chapter 4717's requirements. *See* R.C. 4717.04(A), R.C. 4717.06(B)(3), R.C. 4717.11(B), and 11A Ohio Admin. Code 4717-7-03(D) address the requirements for naming funeral homes. R.C. 4717.06(B)(3) sets forth the general rule that a funeral home shall be "established and operated only under the name of a holder of a funeral director's license ... who is actually in charge of and ultimately responsible for the funeral home." Further, a license to operate a funeral home shall not "include directional or geographical references in the name of the funeral home." *Id.* R.C. 4717.11(B) provides an exception to R.C. 4717.06(B)(3)'s requirements when the funeral director licensed to operate a funeral home and actually in charge of and ultimately responsible for the funeral home changes, and rule 4717-7-03(D) implements the exception under R.C. 4717.11(B).²

The Name of a Funeral Home on a License to Operate a Funeral Home

The Board's first and fourth questions relate to the name of a funeral home that shall appear on a license to operate a funeral home issued pursuant to R.C. 4717.06. For ease of organization, we begin by answering the fourth question, which asks whether the name of a funeral home that shall appear on a license to operate a funeral home may include words other than the names of funeral directors who are or were actually in charge of and ultimately responsible for a funeral home. R.C. 4717.06(B)(3) provides, in pertinent part:

Except as provided in division (B) of section 4717.11 of the Revised Code, a funeral home shall be established and operated *only under the name of a holder of a funeral director's license* issued by the board *who is actually in charge of and ultimately responsible for the funeral home*, and a funeral home license shall not include directional or geographical references in the name of the funeral home. (Emphasis added).

The first two clauses of the foregoing sentence declare that, "[e]xcept as provided in division (B) of section 4717.11 of the Revised Code, a funeral home shall be established and operated *only under the name of a holder of a funeral director's license ... who is actually in charge of and ultimately responsible for the funeral home.*" *Id.* (emphasis added). *Black's Law Dictionary* 1089 (6th ed. 1990) defines "only" as "[s]olely; merely; ... of or by itself; without anything more; exclusive; nothing else or more." *See also Webster's New World College Dictionary* 1022 (5th ed. 2014) (defining "only" as "alone of its or their kind; by itself or by themselves; sole"). Given this definition, at first blush, R.C. 4717.06(B)(3) reasonably could be read to mean that a funeral home shall be established and operated under the name of a licensed funeral director who is actually in

² On March 23, 2017, House Bill 157 was introduced in the General Assembly. In its current form, the bill proposes to amend provisions in R.C. Chapter 4717 in ways that may alter the analyses in this opinion. We do not know whether House Bill 157 will become law. Therefore, we offer no opinion on the manner in which this legislation may change the law that is the subject of the Board's questions.

charge of and ultimately responsible for the funeral home to the exclusion of all other words or terms, except as provided in R.C. 4717.11(B).³

However, the first sentence of R.C. 4717.06(B)(3) concludes with the phrase, “and a funeral home license shall not include directional or geographical references in the name of the funeral home.” If we read the word “only” in the second clause to mean that a funeral home must be established and operated under the name of a licensed funeral director who is actually in charge of and ultimately responsible for the funeral home to the exclusion of all other words or terms, the final clause of the sentence either is redundant or meaningless, because directional or geographical references are other words. This cannot be, because, “[i]n enacting a statute, it is presumed that: ... [t]he entire statute is intended to be effective.” R.C. 1.47(B); *see also Perrysburg Twp. v. City Rossford*, 103 Ohio St. 3d 79, 2004-Ohio-4362, 814 N.E.2d 44, at ¶ 7 (“[i]n interpreting statutes, ‘it is the duty of this court to give effect to the words used, not to delete words used or insert words not used.’” (quoting *Cleveland Elec. Illum. Co. v. City of Cleveland*, 37 Ohio St. 3d 50, 524 N.E.2d 441 (1988) (syllabus, paragraph three))); *see also East Ohio Gas Co. v. P.U.C.O.*, 39 Ohio St. 3d 295, 299, 530 N.E.2d 875 (1988) (“words in statutes should not be construed to be redundant, nor should any words be ignored”). Therefore, the meaning of the word “only” must be more limited.

An appellate court decision interpreting a prior and similar version of the law, and amendments enacted by the General Assembly subsequent to the appellate court decision, provide clarity regarding the meaning of the word “only” as used in R.C. 4717.06(B)(3) and the statute’s declaration that a funeral home license “shall not include directional or geographical references in the name of the funeral home.” In 1993, the Board denied an application for a funeral home license because the proposed name of the funeral home included words that were not “names of a holder of a funeral director’s license” and the words came before the name of the funeral director actually in charge of the funeral home. The Summit County Court of Common Pleas affirmed the Board’s action and the license applicant appealed the decision to the Ninth District Court of Appeals and asked the court to decide whether the Board’s denial was proper under R.C. 4717.11(A), the predecessor to R.C. 4717.06(B)(3). *Rose Hill Chapel-Ciriello Funeral Home v. Ohio Bd. of Embalmers & Funeral Directors*, 105 Ohio App. 3d 213, 663 N.E.2d 978 (Summit County 1995).

At the time of the decision, R.C. 4717.11(A) provided that a funeral home “shall be operated or established *only* under the name of the holder of a funeral director’s license of this state who: (1) [i]s actually in charge of such business or establishment; and (2) [o]wns a substantial financial interest in such business or establishment.” 1973 Ohio Laws, Part I, 524 (Am. S.B. 168, eff. Sept. 24, 1973) (emphasis added); *see also Rose Hill Chapel*, 105 Ohio App. 3d at 218. Under R.C.

³ A funeral director is “actually in charge” of a funeral home if she “has decision-making authority over the funeral home, including, but not limited to, hiring employees, disciplining employees, and making managerial decisions regarding daily operations.” 11A Ohio Admin. Code 4717-1-01(A). She is “ultimately responsible” if the funeral home license is held in her name and she has signed the funeral home license application. Rule 4717-1-01(V).

4717.11(A), the Board required that a funeral home name include the name of the funeral director actually in charge and who also had a substantial interest in the business, but permitted the inclusion of other terms and words so long as the name of the licensed funeral director actually in charge “predominated” or came first in the funeral home name. *Rose Hill Chapel*, 105 Ohio App. 3d at 216-219. The Board had approved funeral home names that included “location or directional designations to differentiate between funeral homes operated by the same funeral director,” but denied the license application at issue in the *Rose Hill Chapel*, because the name proposed for the funeral home placed the “locational or directional designation” before the funeral director’s name. *Id.* at 219. The Ninth District Court of Appeals affirmed the Board’s decision to deny the *Rose Hill Chapel* license and approved the Board’s reading of R.C. 4717.11(A). *Id.* The court explained that “[a]n administrative agency’s construction of a statute that the agency is empowered to enforce must be accorded due deference” and requiring the name of the funeral director to predominate complied with R.C. 4717.11’s requirement that the home be operated “only” under the name of the owner or licensed funeral director. *Id.* at 218-219 (“[b]y requiring that the name of the licensed owner predominate in the name by placing it first, the board is complying with the requirement ... that the home be operated ‘only’ under the owner/licensed director’s name”).

Two years later, the General Assembly amended, renumbered, and reenacted the provisions of R.C. Chapter 4717. 1997-1998 Ohio Laws, Part IV, 7698, 7740-7790 (Am. S.B. 117, eff. Aug. 5, 1998). The language of R.C. 4717.11(A) interpreted in *Rose Hill Chapel* was moved to R.C. 4717.06(B)(3). *Id.* at 7754. In R.C. 4717.06(B)(3), the General Assembly retained the language of former R.C. 4717.11(A) requiring that a funeral home be established and operated “only under the name of a holder of a funeral director’s license ... who is actually in charge of ... the funeral home.” *Id.* The General Assembly replaced the requirement that the funeral director also own a substantial interest in the business with the requirement that the funeral director be “ultimately responsible for the funeral home.” This amendment changed the qualifications that had to be possessed by the funeral director under whose name the funeral home was to be established and operated. However, the General Assembly also added language to R.C. 4717.06(B)(3) prohibiting “directional or geographical references in the name of the funeral home” as the name appeared on the funeral home license. *Id.*

We must presume the General Assembly was aware of the decision in *Rose Hill Chapel* and had it in mind when it enacted these amendments. *See State ex rel. Cty. Bd. of Educ. of Huron Cty. v. Howard*, 167 Ohio St. 93, 96, 146 N.E.2d 604 (1957) (“a legislative body in enacting amendments is presumed to have in mind prior judicial constructions of the section.”). Therefore, in amending the statute to expressly prohibit the inclusion of directional or geographical references in the name of the funeral home as it appears on the license to operate, the General Assembly rejected the portion of the *Rose Hill Chapel* decision that approved the inclusion of “directional or locational” references in the name of the funeral home. However, the General Assembly retained the requirement that a funeral home be established and operated only under the name of a funeral director who is in charge of the funeral home, without adding a definition of the word “only,” or clearly stating that no other words may be included in the name of the funeral home as it appears on the license to operate other than the name of the funeral director actually in charge of and ultimately responsible for the funeral home. This means that the General Assembly approved the court’s interpretation of the word “only”

in *Rose Hill Chapel* to mean that the name of the funeral director actually in charge must be included in the name of the funeral home as that name appears on the license to operate the funeral home and must predominate or come first in the name of the funeral home. *See Symmes Twp. Bd. of Trustees v. Smyth*, 87 Ohio St. 3d 549, 557, 721 N.E.2d 1057 (2000) (“[t]he General Assembly’s choice not to change or define [a] phrase during the amendment process, in the face of [judicial] interpretations, supports the interpretation of the language advanced by [the judiciary]”).

This means that, under R.C. 4717.06(B)(3), except as provided in R.C. 4717.11(B), the name of the funeral home that appears on the license to operate shall include the name of the funeral director actually in charge of and ultimately responsible for the funeral home. The name of the funeral home may include other words, so long as those other words are not directional or geographical references. In addition, the name of the funeral director actually in charge of and ultimately responsible for the funeral home shall appear before any other words in the name of the funeral home. This interpretation gives meaning and effect to all the words in the first sentence of R.C. 4717.06(B)(3).

We now turn to the Board’s first question, which asks whether under R.C. 4717.11(B) the name of a funeral home that appears on the license to operate the funeral home has to change when the funeral director actually in charge of the funeral home changes. R.C. 4717.11(B) provides:

When the funeral director who is licensed to operate a funeral home ceases to operate the home because of death, resignation, employment termination, sale of the funeral home, or any other reason, the funeral home may continue to operate under that person’s name, provided that the name of the new person licensed to operate the funeral home is added to the license within twenty-four months after the previous license holder dies or otherwise ceases to operate the funeral home. The new licensee shall meet the requirements of section 4717.06 of the Revised Code.

As explained above, R.C. 4717.06(B)(3) requires that the name under which a funeral home operates include the name of the funeral director actually in charge of and ultimately responsible for the funeral home. R.C. 4717.11(B) permits a funeral home to “continue to operate” under the name of a previous funeral director, provided the name of the “new person licensed to operate the funeral home” is “added to the license” within twenty-four months. Therefore, when the funeral director actually in charge of and ultimately responsible for the funeral home ceases to operate a funeral home, the funeral home may continue to operate under a name that includes the name of the previous funeral director actually in charge of and ultimately responsible for the funeral home without including the name of the new funeral director actually in charge of and ultimately responsible for

the funeral home, provided the name of the new funeral director actually in charge of and ultimately responsible for the funeral home is added to the license within twenty-four months.⁴

R.C. 4717.11(B) does not specify how the name of the new funeral director actually in charge of and ultimately responsible for the funeral home is to be added to the license. The Board is charged with adopting rules governing the “[r]equirements for the licensing and operation of funeral homes.” R.C. 4717.04(A)(7). Rule 4717-7-03(D), adopted by the Board pursuant to this authority, amplifies R.C. 4717.11(B) and provides:

When an individual or individuals in whose name the funeral home was licensed to operated [*sic*], dies or otherwise ceases to be actually in charge of or ultimately responsible for the funeral home, the funeral home may continue to operate under the person or person’s name, or any combination of the current licensed name, provided that the name of the new funeral director actually in charge of an [*sic*] ultimately responsible for the funeral home is added to the *licensed name* within twenty-four months. (Emphasis added).

Rule 4717-7-03(D) requires that the name of the new funeral director be added to the “licensed name” within twenty-four months. R.C. 4717.06(B)(3), R.C. 4717.11(B), and rule 4717-7-03(D)

⁴ R.C. 4717.11(B) does not use the phrase “funeral director actually in charge of and ultimately responsible” to describe the persons under whose name the funeral home may continue to operate nor the person whose name must be “added to the license.” However, the other terms used within R.C. 4717.11(B) to describe them make clear that these persons must be funeral directors who were, are, or will be actually in charge of and ultimately responsible for the funeral home. R.C. 4717.11(B) refers to the funeral director under whose name the funeral home may continue to operate as the “previous license holder.” The second sentence of R.C. 4717.06(B)(3) requires that the holder of a funeral home license be a licensed funeral director “who is actually in charge of and ultimately responsible for the funeral home.” *Crosby-Edwards v. Ohio Bd. of Embalmers & Funeral Dir.*, 175 Ohio App. 3d 213, 2008-Ohio-762, 886 N.E.2d 251, at ¶ 22 (“[a]lthough a funeral home may be issued a license, only its funeral director holds its license. Stated another way, the funeral home’s license is statutorily dependent upon the funeral director”).

R.C. 4717.11(B) also refers to the “new person licensed to operate the funeral home” who is the “new licensee.” Again, pursuant to the second sentence of R.C. 4717.06(B)(3), the holder of a funeral home license shall be a funeral director actually in charge of and ultimately responsible for the funeral home. Therefore, the “new person licensed to operate the funeral home” who is the “new licensee” shall be a funeral director who is or will be “actually in charge of and ultimately responsible for the funeral home.”

address the naming and licensing of funeral homes; the “licensed name” is the name of the funeral home as it appears on the license to operate the funeral home.

This is consistent with the format of and information included on the licenses to operate that the Board issues to funeral homes. The license to operate a funeral home (also referred to as the funeral home license) includes space in the upper left hand corner for the license number for the funeral home, one line at the center of the document where the name of the funeral home is printed, two signature lines for the President and Secretary-Treasurer of the Board in the lower right hand corner, and a blank area in the lower left hand corner of the license to attach the license renewal card. The information included on the license renewal card includes the audit number for the funeral home, expiration date of the license, and the name of the funeral home accompanied by a statement that the named funeral home is entitled to operate in Ohio until the above-referenced expiration date. The only name appearing on the funeral home license is the name of the funeral home. Thus, the “licensed name” is the name of the funeral home.

As discussed above, under rule 4717-7-03(D), the name of the new funeral director shall be added to the licensed name within twenty-four months of the change in the funeral director actually in charge of and ultimately responsible for the funeral home. If the name of the new funeral director actually in charge of and ultimately responsible for the funeral home must be added to the licensed name, the licensed name must change. For example, if the licensed name is the Smith Funeral Home, and Mr. Smith ceases to operate the funeral home, and thereafter, Mr. Davis becomes the funeral director actually in charge of and ultimately responsible for the funeral home, under rule 4717-7-03(D) the licensed name, Smith Funeral Home, must change in some way to include the name Davis. Therefore, under rule 4717-7-03(D) the name of a funeral home that appears on the license to operate must change prior to the end of the twenty-four month period following the cessation of the previous funeral director’s operation of the funeral home.

The General Assembly has granted the Board the authority and responsibility to administer and enforce R.C. Chapter 4717. R.C. 4717.04; *see generally State ex rel. Curtis v. DeCorps*, 134 Ohio St. 295, 298, 16 N.E.2d 459, 461 (1938) (“[i]t is not conceivably possible for the Legislature to prescribe the entire host of details incident to administration. Of necessity, many of these must be left to the administrative bodies charged with putting the policy into effect”); *Carroll v. Department of Admin. Services*, 10 Ohio App. 3d 108, 110, 460 N.E.2d 704 (Franklin County 1983) (“[t]he purpose of administrative rulemaking is to facilitate the administrative agency’s placing into effect the policy declared by the General Assembly in the statutes to be administered by the agency”). Absent a conflict with the express terms of a statute, an administrative rule adopted and promulgated by the Board that bears a reasonable relationship to the legislative purpose evidenced by the statutory scheme under which the rule is adopted has the same force and effect as a legislative enactment. *Rose Hill Chapel*, 105 Ohio App. 3d at 218 (“[u]nless the construction of a statute is unreasonable or impermissible, the construction given to it by the agency should be followed by reviewing courts”; *see also, e.g., Doyle v. Ohio Bureau of Motor Vehicles*, 51 Ohio St. 3d 46, 554 N.E.2d 97 (1990) (syllabus, paragraph one) (“[a]dministrative rules enacted pursuant to a specific grant of legislative authority are to be given the force and effect of law”); 1994 Op. Att’y Gen. No. 94-084, at 2-417 (“[w]ith respect to matters where the statutes provide no express guidance, the administrative agency

may exercise its discretion and choose among various reasonable interpretations to facilitate a practical and effective application of the law”).

Rule 4717-7-03(D) does not conflict with the express terms of any statute. R.C. 4717.11(B) requires that the name of the new funeral director actually in charge of and ultimately responsible for the funeral home be added to the license to operate the funeral home. Adding the name of the new funeral director actually in charge of and ultimately responsible for the funeral home to the name of the funeral home appearing on the license is a reasonable method for facilitating “a practical and effective application of the law” and “bears a reasonable relationship to the legislative purpose” evidenced by R.C. Chapter 4717. 1994 Op. Att’y Gen. No. 94-084, at 2-417.

R.C. 4717.06(B)(3) reflects the General Assembly’s intent that the name of a funeral director who is actually in charge of and ultimately responsible for the funeral home is included in the name of the funeral home. The policy behind this general rule is that it assists consumers in identifying the person responsible for the services provided at a funeral home. *Rose Hill Chapel*, 105 Ohio App. 3d at 219. Requiring that the name of the new funeral director actually in charge of and ultimately responsible for the funeral home be added to the licensed name of the funeral home within twenty-four months after the prior funeral director ceases to operate the funeral home, balances this policy with the countervailing goal of enabling funeral homes to preserve the goodwill and name recognition established by the previous funeral director’s operation of the funeral home. Requiring that the name of the new funeral director actually in charge of and ultimately responsible for the funeral home be added to the funeral home name within twenty-four months of the previous funeral director actually in charge of and ultimately responsible of the funeral home ceasing to operate the funeral home permits the funeral home to continue operations under the original licensed name and the goodwill established thereunder for twenty-four months. At the end of the twenty-four months, the name of the new funeral director actually in charge of and ultimately responsible for the funeral home must be added to the licensed name. At this point, the public will be able to more easily identify the funeral director actually in charge of and ultimately responsible for the funeral home because his name is included in the name of the funeral home.⁵

⁵ This is not to say that this is the only possible interpretation and application of R.C. 4717.11(B). For example, rather than requiring that the name of the new funeral director be added to the “licensed name” of the funeral home, the Board could read the language requiring the name of the new funeral director be “added to the license” under R.C. 4717.11(B) to merely mean that the name of the funeral director must be displayed somewhere on the license. If the Board reads R.C. 4717.11(B) in this way, the Board will need to amend rule 4717-7-03(D) so that it no longer requires that the name of the new funeral director be added to the “licensed name” of the funeral home and change the format and information included on the license to operate a funeral home so that it provides separate spaces to list the name of the funeral home and the name of the funeral director actually in charge of and ultimately responsible for the funeral home. Assuming this is done, the name of the new funeral director would be “added to the license” by replacing the name of the old

Therefore, the licensed name of a funeral home may include words other than the name or names of funeral directors who are or were actually in charge of and ultimately responsible for a funeral home, provided those words are not directional or geographical references. In addition, under R.C. 4717.11(B) and rule 4717-7-03(D), the name of a funeral home that appears on a license to operate a funeral home shall change to reflect the addition of the name of the new funeral director actually in charge of and ultimately responsible for the funeral home within twenty-four months following a change of the funeral director actually in charge of and ultimately responsible for the funeral home.

Name of a Funeral Home Used in Advertising

The Board's second question asks, if the answer to the first question is "yes," in its advertising, may the funeral home use the old name that appeared on its license before its funeral director actually in charge changed, or must it use in its advertising the new name appearing on its license under R.C. 4717.11(B)? When you refer to advertising, we assume you mean communications that tell the general public about the funeral home's services. *Webster's New World College Dictionary* 21 (defining "advertising" as "printed or broadcast matter that advertises;" and "advertise" as "to tell about or praise (a product, service, etc.) publicly, as through newspapers, handbills, radio, television, etc., so as to make people want to buy it").

R.C. 4717.06(B)(3), R.C. 4717.11(B), and rule 4717-7-03 govern the name under which a funeral home "operates." "Operate" means "to put or keep in action; work ... to conduct or direct the affairs of (a business, etc.); manage." *Webster's New World College Dictionary* 1025. "Affairs" are defined as "matters of business or concern." *Id.* at 23. Insofar as advertising is a matter or concern of a business, the operation of a funeral home includes the act of "advertising." Accordingly, even as we have determined that the phrases "operated only under the name of" in R.C. 4717.06(B)(3) and "operate under that person's name" in 4717.11(B) prescribe the name of a funeral home that shall appear on the license to operate a funeral home, those statutes determine the name a funeral home shall use in its advertising.

funeral director in charge of and ultimately responsible for the funeral home with her name, while leaving the name of the funeral home intact.

Ultimately, R.C. 4717.11(B) does not include any explicit requirements regarding how the name of the funeral director actually in charge of and ultimately responsible for the funeral home is "added to the license." By enacting rule 4717-7-03(D), the Board has determined that that the name of the new funeral director actually in charge and ultimately responsible for the funeral home must be added to the licensed name, and as discussed above, this interpretation and application of the law are reasonable.

The name used by a funeral home in its communications that tell about the funeral home's services should correspond to the name of the funeral home that appears on the license to operate.⁶ One goal of these licensing statutes is to protect and inform consumers of funeral home services. *Rose Hill Chapel*, 105 Ohio App. 3d at 219 (the policy behind the general rule requiring funeral homes to be established, operated, and licensed under the name of a funeral director who is actually in charge ensures consumers can identify the person responsible for the services provided at a funeral home as well as verify that the particular location is licensed).

A funeral home is required to display its license so that the public can see it. R.C. 4717.06(B)(1) (“[t]he funeral home license ... shall be displayed in a conspicuous place within the funeral home”). Placing the license in a conspicuous place allows the public to easily verify that the funeral home with which they are working is licensed. If the name on the license does not match the name used by the funeral home in its advertising that tells about the funeral home's services, placing the license in a conspicuous place does little to inform or protect the public as the public will not be able to confirm that the funeral home with which they are working is in fact licensed without additional research or investigation.

Thus, because R.C. 4717.11(B) and rule 4717-7-03(D) require the licensed name of a funeral home to include the name of the funeral director actually in charge of and ultimately responsible within twenty-four months after the funeral director actually in charge of and ultimately responsible for the funeral home changes, the name used in advertising by the funeral home should change accordingly.

Funeral Home Named Prior to the Effective Date of R.C. 4717.11(B)

The Board's third question asks, if the name on the license of a funeral home was the name on the license prior to the effective date of R.C. 4717.11(B), and the funeral home changes its funeral director actually in charge, does R.C. 4717.11(B) govern the naming of that funeral home following a change of the funeral director actually in charge? R.C. 4717.11(B) does not exclude from its application funeral homes licensed or named prior to its effective date. Application of R.C. 4717.11(B) depends upon the time in which the change of the funeral director actually in charge of and ultimately responsible for the funeral home occurs, not the time at which the name on the original license to operate was adopted. If the funeral director actually in charge of and ultimately responsible for a funeral home changes after R.C. 4717.11(B) became effective, and the funeral

⁶ While R.C. 4717.06(B)(3) permits a funeral home to include “directional or geographical references in promotional or advertising materials identifying the location of the funeral home,” this does not mean that directional or geographical references may be incorporated as part of the funeral home's name or that the name of the funeral home used in its advertising may be different from the name that appears on the license to operate. It means, instead, that a directional or geographical reference may be included among the information the funeral home provides in its promotional or advertising materials.

home wishes to act in accordance with the terms of R.C. 4717.11(B), the funeral home must follow the prescriptions of the statute. We would note, however, that R.C. 4717.11(B) is, in part, permissive in operation. Under R.C. 4717.11(B), a funeral home *may* continue to operate under the name of the prior funeral director actually in charge of and ultimately responsible for the funeral home provided the name of the new funeral director is added to the licensed name within twenty-four months after the prior funeral director ceases to operate the funeral home. A funeral home is free to proceed under the general rule of R.C. 4717.06(B)(3) whereby the funeral home is operated under the new funeral director's name immediately.

Conclusions

It is our opinion, therefore, and you are hereby advised that:

1. The name of a funeral home that appears on a license to operate a funeral home issued pursuant to R.C. 4717.06 may include words other than the name or names of funeral directors who are or were actually in charge of and ultimately responsible for a funeral home, provided those words are not directional or geographical references.
2. Under R.C. 4717.11(B) and 11A Ohio Admin. Code 4717-7-03(D), the name of a funeral home that appears on a license to operate a funeral home shall change to reflect the addition of the name of the new funeral director actually in charge of and ultimately responsible for the funeral home within twenty-four months following the change of the funeral director actually in charge of and ultimately responsible for the funeral home.
3. Because 11A Ohio Admin. Code 4717-7-03(D) implementing R.C. 4717.11(B) requires the name of a funeral home that appears on a license to operate a funeral home issued pursuant to R.C. 4717.06 to change within twenty-four months after the funeral director actually in charge of and ultimately responsible for the funeral home changes, the name used by the funeral home in its advertising shall change at the same time.

4. If the funeral director actually in charge of a funeral home changes after the effective date of R.C. 4717.11(B) and the funeral home does not want to follow the general rule under R.C. 4717.06(B)(3), the funeral home shall follow the prescriptions of the R.C. 4717.11(B) requiring the name of the new funeral director actually in charge of and ultimately responsible be added to the name of the funeral home that appears on the license to operate a funeral home issued pursuant to R.C. 4717.06.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General