

OPINION NO. 90-100**Syllabus:**

The requirement of R.C. 4717.11(A)(2) that a funeral home, establishment, or any other place pertaining to funeral directing or the conducting of funerals shall be operated or established only under the name of the holder of a funeral director's license of this state who owns a substantial financial interest in such business or establishment is satisfied where a licensed funeral director owns the entire fee simple interest in a parcel of real property, the funeral home located on such property, and all other improvements appurtenant thereto, the total value of which exceeds the value of the remaining assets of the funeral home business, and leases such property to another individual or a corporation.

**To: Robert J. Peinert, President, Board of Embalmers and Funeral Directors,
Columbus, Ohio**

By: Anthony J. Celebrezze, Jr., Attorney General, December 31, 1990

Your predecessor has requested my opinion regarding the application of R.C. 4717.11, which imposes certain ownership and supervisory requirements with respect to a funeral director in whose name a funeral home is established or operated. The specific questions are as follows:

1. Under the provision of R.C. 4717.11(A)(2), a funeral home may be operated in Ohio only under the name of [a] licensed funeral director who "owns a substantial financial interest in such business or establishment." Is this requirement satisfied where the interest held by the funeral director is the fee simple title to

the real estate and improvements which are the funeral home, where such real estate and improvements are leased to those operating the funeral home business, and where the value of the real estate and improvements exceeds the value of the remaining assets of the business?

2. Is the determination of whether the financial interest requirement has been satisfied, in circumstances like those described above, affected by facts demonstrating that the funeral director who is the owner of the real estate and improvements is, under the terms of the lease between the director and the funeral home business corporation, a director of that corporation, and will, through the terms of the lease, obtain a greater financial return on the lease depending upon the greater success of the funeral home business, and will continue to be in charge of the day to day operations of the funeral home?

R.C. 4717.11(A) states the following:

A funeral home, establishment, or any other place pertaining to funeral directing or the conducting of funerals shall be operated or established only under the name of the holder of a funeral director's license of this state who:

- (1) Is actually in charge of such business or establishment; and
- (2) Owns a substantial financial interest in such business or establishment.

Each such business location shall be directly supervised by a licensed Ohio funeral director, who shall not supervise more than one such location.

R.C. 4717.11(B) provides that a funeral home established before the effective date of R.C. 4717.11 shall be deemed in compliance with R.C. 4717.11(A), provided that upon the sale or other disposition of a substantial financial interest therein full compliance with R.C. 4717.11(A) shall be required within twenty-four months after such sale or other disposition. R.C. 4717.11(C) further states that when an individual in whose name a funeral business or establishment is operated pursuant to R.C. 4717.11(A) either ceases to own a substantial financial interest in such funeral business or establishment, or ceases to be actually in charge thereof, such funeral business may continue operating under that name if, within twenty-four months thereafter, there is added to such funeral business or establishment the name of the holder of a funeral director's license of this state meeting the requirements of R.C. 4717.11(A). R.C. 4717.11(D) imposes the same requirement in the event of the death of a license holder in whose name a funeral home is operated or established. Finally, R.C. 4717.11(E) states that a substantial financial interest and the other terms used in R.C. 4717.11 shall be as defined by the rules and regulations of the Board of Embalmers and Funeral Directors. Those rules and regulations appear at 6 Ohio Admin. Code Chapter 4717-1. In particular, rule 4717-1-01(Q) defines "[s]ubstantial financial interest" in the following manner:

"Substantial financial interest," as used in section 4717.11 of the Revised Code, means real worth and importance of considerable value, and something more than a mere nominal interest. Such substantial financial interest shall consist of not less than ten per cent of the assets of the funeral home or establishment, or any other place pertaining to funeral directing or the conducting of funerals owned at the time of sale or transfer of ownership as reflected on the balance sheet or financial statement.

Rule 4717-1-01(P) defines "[f]uneral home" as follows:

"Funeral home" means a fixed place, which is to be interpreted to mean a physical structure, having a United States post office street, avenue, or road address, for the care, preparation for burial, or disposition of dead human bodies or the conducting of funerals. Each

business location is a funeral home, regardless of common ownership or management.

See also R.C. 4717.01(C) (as used in R.C. 4717.01-.19, "[f]uneral home" means a "fixed place for the care, preparation for burial, or disposition of dead human bodies or the conducting of funerals. Each business location is a funeral home, regardless of common ownership or management").

Pursuant to R.C. 4717.11(A), therefore, a funeral home, establishment, or any other place pertaining to funeral directing or the conducting of funerals shall be operated or established only under the name of the holder of a funeral director's license of this state who is actually in charge of such business or establishment, R.C. 4717.11(A)(1), and who owns a substantial financial interest in such business or establishment, R.C. 4717.11(A)(2). See R.C. 4717.06(B) (educational and personal qualifications for admission to the examination for a funeral director's license); R.C. 4717.07 (issuance and renewal of funeral director's license). In its first question the Board of Embalmers and Funeral Directors asks whether the substantial financial interest requirement of R.C. 4717.11(A)(2) is satisfied where a licensed funeral director, being the owner of a funeral home and the land upon which it is situated, leases such property to another individual or entity that is to be responsible for operating such funeral home business, and where the value of the funeral home and land exceed the value of the other assets of such funeral home business. In its second question the Board asks whether a determination regarding R.C. 4717.11(A)(2)'s substantial financial interest requirement is affected by facts demonstrating that the financial return to the licensed funeral director will, under the terms of the lease, depend upon the amount of revenues generated by the operation of the funeral home business itself, and that such funeral director will remain in charge of the daily operation of the funeral home and serve as a director of the lessee corporation.

Resolution of the foregoing questions requires that I examine the specific language of R.C. 4717.11(A)(2) and the definition of "substantial financial interest" that appears in 6 Ohio Admin.Code 4717-1-01(Q). R.C. 4717.11(A)(2) states that a funeral home, establishment, or any other place pertaining to funeral directing or the conducting of funerals shall be operated or established only under the name of the holder of a funeral director's license of this state who "[o]wns a substantial financial interest in such business or establishment." The foregoing language indicates that the financial interest owned by the license holder may be an interest in either such "business" or in such "establishment," the antecedents of which are, variously, "funeral home," "establishment," or "any other place pertaining to funeral directing or the conducting of funerals." The General Assembly's use of the separate terms "business" and "establishment" in R.C. 4717.11(A)(2), as well as in the other divisions of R.C. 4717.11, suggests that the ownership interest of the license holder sufficient to satisfy the statutory requirement may, in fact, be of several types. Those two terms, as used in R.C. 4717.11, have not been defined therein, or by any other provision in R.C. Chapter 4717. Thus, in accordance with the rule of construction that appears in R.C. 1.42, they shall be "read in context and construed according to the rules of grammar and common usage." See *State v. Dorso*, 4 Ohio St. 3d 60, 62, 446 N.E.2d 449, 451 (1983) ("any term left undefined by statute is to be accorded its common, everyday meaning"); *Eastman v. State*, 131 Ohio St. 1, 1 N.E.2d 140 (1936) (syllabus, paragraph five) (same). The term "business," in the common, general sense, has been defined as any "[e]mployment, occupation, profession, or commercial activity engaged in for gain or livelihood. Activity or enterprise for gain, benefit, advantage or livelihood." *Black's Law Dictionary* 179 (5th ed. 1979). Among the more specific definitions of the term "business" there is included the following: "[A] commercial or industrial establishment; store, factory, etc." *Webster's New World Dictionary* 192 (2d college ed. 1978). An "establishment" has been variously defined as a "[p]lace of business. Public or private institution. State of being established," *Black's Law Dictionary* at 490, "a thing established, as a business, military organization, household, etc.," *Webster's New World Dictionary* at 479, and "a place of business together with its employees, merchandise, equipment, etc.," *Random House Dictionary of the English Language* 487 (Unabridged ed. 1973).

These definitions demonstrate that the terms "business" and "establishment" can be understood as encompassing the particular activities that are the heart of a commercial enterprise, and for which that enterprise has been formed and organized, as well as the property and assets, whether real or personal, tangible or intangible, that are utilized in conjunction with the performance or furtherance of those activities, or that are the product of such activities. Given the context in which they appear in R.C. 4717.11, I am of the opinion that the terms "business" and "establishment," as used therein, may be understood in any of those several senses. Thus, for example, the requisite ownership interest to which R.C. 4717.11(A)(2) refers may be represented by a right to participate in the profits of a funeral home business, or by actual ownership, in whole or in part, of the property and assets utilized in conducting such funeral home business. There may be other ownership interests that similarly qualify under R.C. 4717.11(A)(2), but for the purpose of this opinion I find it unnecessary to consider and examine in detail each such possible ownership interest.

Under R.C. 4717.11(A)(2) an ownership interest such as that described above must also be a "substantial financial interest." Pursuant to the directive that appears in R.C. 4717.11(E), the Board of Embalmers and Funeral Directors presently defines "[s]ubstantial financial interest" as "real worth and importance of considerable value, and something more than a mere nominal interest." 6 Ohio Admin. Code 4717-1-01(Q). This rule further states that such substantial financial interest "shall consist of not less than ten per cent of the assets of the funeral home or establishment, or any other place pertaining to funeral directing or the conducting of funerals owned at the time of sale or transfer of ownership as reflected on the balance sheet or financial statement." Rule 4717-1-01(Q) thus requires that a licensed funeral director own a minimum of ten per cent of the assets of a funeral home in order to comply with R.C. 4717.11(A)(2).

Turning now to the Board's specific inquiries, I am of the opinion that the requirement of R.C. 4717.11(A)(2) that a licensed funeral director of this state own a substantial financial interest in a funeral home business or establishment that is operated or established under his name is satisfied in the circumstance described in the Board's first question. That question describes a situation in which a licensed funeral director owns the entire fee simple interest in a parcel of real property, the funeral home located on such property, and all other improvements appurtenant thereto. As indicated in the preceding discussion, an ownership interest in the capital assets of a funeral home business comes within the category of interests contemplated by the language of R.C. 4717.11(A)(2). It is also stated that the value of the property thus owned by this funeral director exceeds the value of all the remaining assets of the funeral home business. It is apparent, therefore, that this individual's ownership interest consists of not less than ten per cent of the assets of the funeral home, and that such interest has real worth and considerable value. Accordingly, for purposes of R.C. 4717.11(A)(2), such interest is a "[s]ubstantial financial interest," as defined in 6 Ohio Admin. Code 4717-1-01(Q).

I am aware that the Board of Embalmers and Funeral Directors has expressed a contrary opinion regarding the application of R.C. 4717.11(A)(2)'s substantial financial interest requirement to the factual situation described in its first question. The Board takes the position that the substantial financial interest requirement of R.C. 4717.11(A)(2) is not satisfied in the case of a licensed funeral director who owns the entire fee simple interest in a parcel of real property, the funeral home located on such property, and all other improvements appurtenant thereto, and leases such property to another individual or corporation that thereafter engages in the business of arranging and conducting funerals on such property and receives all the financial earnings and profit that accrue from the operation of such business. The Board's conclusion is premised upon an interpretation of the language of R.C. 4717.11(A)(2) that differs fundamentally from the one I have adopted herein. The Board reads the language of R.C. 4717.11(A)(2) that refers to ownership of a substantial financial interest "in such business or establishment" as requiring ownership of a financial interest in the funeral business itself that is similar to, or in the nature of, a right to share in the earnings or profits of the business, and not just an ownership interest in the real property and the building where such business is conducted. Under such an interpretation there would not be compliance with R.C.

4717.11(A)(2) in the case of the licensed funeral director who is described in the Board's first question as having ownership of only the funeral home structure and the real property it is situated upon. I cannot concur, however, in such an interpretation because it is unduly restrictive of the plain language of the statute. As discussed previously, I view the terms "business" and "establishment," as used in R.C. 4717.11(A)(2), to mean either the particular activities undertaken in conjunction with or that comprise the conducting of funerals, or the property and assets that are used to carry out these activities. Thus, it is my opinion that the requirements of R.C. 4717.11(A)(2) can be satisfied in the case of a licensed funeral director whose substantial financial interest consists solely of the ownership of the funeral home structure and the land where it is located.

The Board's second question asks whether a determination regarding R.C. 4717.11(A)(2)'s substantial financial interest requirement in the situation presented by the first question is affected by facts demonstrating that the financial return to the licensed funeral director under the terms of the lease will depend upon the amount of revenues generated by the funeral home business, and that such funeral director will remain in charge of the daily operation of the funeral home and serve as a director of the lessee corporation. To the extent that tying lease payments to the financial success of the funeral home business may be characterized as participation by the lessor in the profits of such business, such an arrangement would tend to reinforce the finding that this funeral director owns a substantial financial interest in the funeral home business. That he will also remain in charge of the daily operations of the funeral home does not, however, bear upon the determination regarding his ownership of a substantial financial interest because having actual charge of the funeral home business or establishment is a separate requirement specifically imposed by R.C. 4717.11(A)(1). That he will also serve as a director of the lessee corporation also has little bearing upon the determination regarding his ownership of a substantial financial interest in the funeral home business or establishment.

It is, therefore, my opinion, and you are advised that the requirement of R.C. 4717.11(A)(2) that a funeral home, establishment, or any other place pertaining to funeral directing or the conducting of funerals shall be operated or established only under the name of the holder of a funeral director's license of this state who owns a substantial financial interest in such business or establishment is satisfied where a licensed funeral director owns the entire fee simple interest in a parcel of real property, the funeral home located on such property, and all other improvements appurtenant thereto, the total value of which exceeds the value of the remaining assets of the funeral home business, and leases such property to another individual or a corporation.