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FILE NO. S-974

CEMETERIES:  
Funeral or Burial Funds Act

Honorable George W. Lindberg  
Comptroller  
State of Illinois  
201 State House  
Springfield, Illinois 62786

Dear Comptroller Lindberg:

This responds to your letter wherein you request  
an opinion as to your responsibilities under the Funeral or  
Burial Funds Act. Ill. Rev. Stat. 1973, ch. 111 1/2, pars.  
73.101 et seq.

Sections 1 and 2 of the Funeral or Burial Funds Act  
(Ill. Rev. Stat. 1973, ch. 111 1/2, pars. 73.101 and 73.102)  
provide:

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"§ 1. Any payment of money made to any person, partnership, association or corporation upon any agreement or contract, or any series or combination of agreements or contracts, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of any personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, for future use at a time determinable by the death of the person or persons whose body or bodies are to be so disposed of, shall be held to be trust funds, and the person, partnership, association or corporation receiving said payments is hereby declared to be a trustee thereof."

"§ 2. All such trust funds shall be deposited in the name of the trustee, as trustee, within 30 days after receipt thereof, with either a bank or trust company authorized to do business in the State of Illinois, or a Federal Savings and Loan Association or Illinois Savings and Loan Association where investments are protected by the Federal Savings and Loan Insurance Corporation. The trustee at the time of making deposit shall furnish to the depository the name of each payor, and the amount of payment on each such account for which deposit is being so made."

A particular company has begun marketing a new, light-weight burial vault, which lends itself to easy storage and is, therefore, highly desirable to persons engaged in making pre-need funeral arrangements. In cases where a buyer has completed pre-payments for a funeral or burial and the arrangement includes the

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purchase of such a vault, the buyer receives a negotiable warehouse receipt from a licensed bonded warehouse. The receipt indicates that the vault is being stored for his benefit and is subject to his control. The company contends that the proposed marketing system effectively assures purchasers of the existence and availability of the vaults which they have purchased and thereby complies with the policies of the Funeral or Burial Funds Act.

Your question is whether in transactions of this nature, your office should require the seller to deposit the funds received for the vault in trust until the buyer's death pursuant to the quoted provisions of the Funeral or Burial Funds Act?

The Funeral or Burial Funds Act views the pre-need burial contract as a form of insurance rather than as a sale, and seeks to protect the insured by requiring all funds received by the insurer to be deposited, in the name of the insurer as trustee, with a bank or trust company, or savings

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and loan association where investments are protected by the Federal Savings and Loan Insurance Corporation. The Supreme Court in sustaining the validity of the Act referred to these trust fund provisions in Memorial Gardens Ass'n., et al. v. Smith, 16 Ill. 2d 116, at 129:

"The contracts here involved are analogous to a form of insurance. By payments made during life, the purchasers seek to insure their burial. The net effect is the same as though a life insurance contract were purchased to provide a sufficient sum payable at death to accomplish that result. In the case of insurance, the right of the legislature to require reserves and the deposit of security is unquestioned. The trust fund provisions of the act in question are designed to accomplish the same purpose, that is, to assure the purchasers that the company will be able to complete their contracts when the time for performance arrives. When we consider that contract payments are to be made in a maximum of three years and that the average time until performance of the 'pre-need' contracts is almost 29 years, the justice of the legislation becomes evident. Plaintiffs, themselves, have recognized the need of some protection for the purchaser by including in their form of contract certain vague provisions relative to setting aside a trust fund. These illusory provisions furnish purchaser appeal, but fail to provide the protection which the situation warrants."

The Act is unambiguous and requires no interpretation.

The plain terms of the Act require "any payment of money made

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to any person \* \* \* upon any agreement \* \* \* which has for a purpose the furnishing \* \* \* of funeral services, or the furnishing or delivery of any personal property, merchandise \* \* \* of any nature in connection with final disposition of a dead human body, for future use at a time determinable by the death of the person \* \* \* whose body \* \* \* [is] to be disposed of, shall be held to be trust funds \* \* \*." Such trust funds must be deposited in a bank, trust company, or savings and loan association.

These plain words apply to any funeral director, cemetery, or company. If any one or more of them receive money for a burial vault for future use, it must be so deposited. No matter how safe the warehouse receipt may be the statute does not provide for it. No exceptions are made from the broad and comprehensive language of the Act. Despite the form of the proposed transaction, the merchandise sold and bargained is, nevertheless, intended for and may be employed usefully only for the performance of the purchaser's funeral. The sales agreement, therefore, despite the seller's performance and apparent fungibility of the merchandise in question in substance remains

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one "for future use at a time determinable only by the death of the person or persons whose body or bodies are to be so disposed of," and as such remains within the scope of the trust provisions of the Funeral or Burial Funds Act.

I am of the opinion therefore that your office should require the seller to deposit the funds received for the burial vault in trust until the buyer's death, in accordance with the clear provisions of sections 1 and 2 of the Funeral or Burial Funds Act.

Very truly yours,

A T T O R N E Y   G E N E R A L