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ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

May 12, 1976

FILE NO. S-1084

**CONSUMER PROTECTION:**  
**Funeral or Burial**  
**Funds Act**

Honorable George W. Lindberg  
Comptroller  
State of Illinois  
Springfield, Illinois 62706

Dear Mr. Lindberg:

This is in response to your letter concerning your responsibilities under the Funeral or Burial Funds Act.

(Ill. Rev. Stat. 1975, ch. 111 1/2, pars. 73.101 et seq.)

Your inquiry arises from the efforts of a certain burial vault manufacturer to market a newly developed, lightweight burial vault in Illinois. You refer to my opinion No. S-974, issued to you on September 24, 1975.

In opinion No. S-974 I considered the same manufacturer's proposed arrangement for the sale of these new burial vaults

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in advance of their actual use. I concluded that the proposed sales contract came under the provisions of sections 1 and 2 of the Funeral or Burial Funds Act. (Ill. Rev. Stat. 1975, ch. 111 1/2, pars. 73.101 and 73.102.) As a consequence it would be your responsibility to require any vendor of such a burial vault to deposit the funds paid for the vault in trust with a suitable depository in accordance with the Funeral or Burial Funds Act. The particular sales scheme considered in opinion No. S-974 provided that, where a buyer completed pre-payments for a funeral or burial and the arrangement included the purchase of this new type of vault, the buyer would receive a negotiable warehouse receipt and a certificate of title for the vault.

This same company has proposed an alternative "pre-need" sales arrangement for marketing these burial vaults in Illinois, and your question is, again, whether purchase funds received by vault sellers (i.e., a funeral director, cemetery, or the manufacturer) under this new agreement must be kept in trust by virtue of the Funeral or Burial Funds Act.

Under this new plan, a person who is arranging his own funeral could purchase one of these vaults from a funeral

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director or cemetery. The buyer may take immediate delivery of the vault, whereby he is free to make his own storage arrangements. Alternatively, for an extra charge, the manufacturer of the vaults will arrange for the storage of the vault until it is needed at the buyer's death. As under the first plan, the buyer will receive a certificate of title and warehouse receipt from a bonded and licensed warehouse in Illinois. In short, this "new" arrangement is the same as the former plan except that now the buyer has the option of taking immediate delivery of his burial vault.

In cases where the buyer opts to take immediate delivery of the burial vault, there is no occasion for the application of the trust provisions of the Funeral or Burial Funds Act. In Memorial Gardens Ass'n. v. Smith, 16 Ill. 2d 116, at 129, the court stated that the purpose of the trust fund provisions of the Act is to assure the purchaser that the company will be able to perform its contract when the time for performance arises. Under this "new" plan, when the purchaser takes immediate delivery of his burial vault, the vendor's performance is completed and there is no necessity in requiring security for performance. Additionally, a contract for immediate

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delivery of a burial vault is not a contract for delivery of merchandise "for future use at a time determinable by the death of the person" as contemplated within section 1 of the Funeral or Burial Funds Act. (Ill. Rev. Stat. 1975, ch. 111 1/2, par. 73.101.) Therefore, a contract for immediate delivery to the purchaser does not fall within the scope of the Funeral or Burial Funds Act and you need not require that purchase funds be deposited in trust for the benefit of the buyer.

In the event that a purchaser chooses the alternative arrangement whereby for an additional charge the burial vault manufacturer will arrange for storage of the vault, the trust provisions of the Act will apply. Section 1 of the Act states in broad and comprehensive terms:

"§ 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." (emphasis added.)

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This contractual arrangement is virtually identical to that which is considered in opinion No. S-974 except for the fact that the contract for storage occurs subsequent to the contract of sale. Nevertheless, the entire transaction falls within the scope of the Act for it is a "series or combination of agreements or contracts, which has for a purpose the \* \* \* furnishing or delivery of any personal property [or] merchandise \* \* \* 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 disposed of \* \* \* ". The broad and comprehensive language of section 1 underscores the fact that the purpose and not the mere form of the transaction determines the applicability of the Act.

I am of the opinion, therefore, that where the contract is one for immediate delivery of the burial vault, you need not require the seller to deposit the funds received in trust for the benefit of the buyer until his death. However, where the purchaser exercises his option under the proposed plan to have the manufacturer store the burial vault until the purchaser's death, your office should require the seller

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**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**