

**BEFORE THE TENNESSEE STATE BOARD OF FUNERAL DIRECTORS AND
EMBALMERS**

PETITION FOR DECLARATORY ORDER

NOTICE OF HEARING

1. Petitioner's Name: Cole & Garrett Funeral Home and
Cremation Services
2. Petitioner's Attorney: Rachel C. Nelley
Address: P.O. Box 150731
Nashville, TN 37215
Telephone Number: (615) 274-4839
3. Agency rule, order, or statutory provision on which declaratory order is sought: Tenn. Comp. R. & Regs. 0660-06-.02
4. Date of Hearing: April 13, 2010, 10:00 a.m.
Place of Hearing: 710 James Robertson Parkway
2nd Floor Conference Room
Nashville, TN 37243
5. Docket Number: 12.21-104857A

RECEIVED
2009 OCT 14 PM 1:15
SECRETARY OF STATE
PUBLICATIONS

The Petitioner is a funeral establishment owned by Stewart Enterprises, Inc. ("STEI"). The Petitioner requests that the Tennessee State Board of Funeral Directors and Embalmers (the "board") convene a contested case proceeding to declare Tenn. Comp. R. & Regs. 0660-06-.02 invalid. Specifically, the Petitioner asserts that this rule, which prohibits funeral directors, embalmers, and establishments from engaging in unfair or deceptive acts or practices, exceeds the board's statutory authority.

Rule 0660-06-.02 reads as follows:

- (1) No funeral director, embalmer, or funeral establishment shall:
 - (a) engage in any unfair or deceptive acts or practices defined in Title 16, *Code of Federal Regulations*, Part 453; or
 - (b) fail to comply with any preventive requirements specified in Title 16, *Code of Federal Regulations*, Part 453.

Rule 0660-06-.02 was promulgated by the board and became effective March 22, 1985 pursuant to the board's rulemaking authority granted by Tenn. Code Ann. § 62-5-203 which reads, in pertinent part, as follows:

The board has the power to select from its members a president, and to adopt, promulgate and enforce such rules and regulations for the transaction of its business and the management of its affairs, the standards of service and practice to be followed in the profession of funeral directing...

On October 13, 2009 the board granted the Petitioner's request to convene a contested case proceeding to determine the validity of Rule 0660-06-.02. The hearing will be conducted on **APRIL 13, 2010 AT 10:00 A.M.** in the 2nd Floor conference room of the Andrew Jackson Building, 710 James Robertson Parkway, Nashville, Tennessee 37243.

If you are interested in intervening or participating in this case in any way or think that you may be affected by the possible outcome of this case, you must file a Petition to Intervene pursuant to Tenn. Code Ann. § 4-5-310 and Tenn. Comp. R. & Regs. 1360-04-01-.12., stating your specific interest(s) in the case and your legal position/argument regarding those interests. The Petition must be submitted in writing to:

Administrative Procedures Division
Office of Secretary of State
312 Rosa L. Parks Avenue
8th Floor, William R. Snodgrass Bldg.
Nashville, TN 37243
(615) 741-2078

A copy of the Petition must be mailed to:

Adrian Chick, Asst. Gen. Counsel
Department of Commerce and Insurance
Office of Legal Counsel
500 James Robertson Pkwy, 12th Floor
Nashville, TN 37243
(615) 741-3072

CERTIFICATE OF SERVICE

A true and exact copy of this Notice is being mailed via First Class mail to the following persons in compliance with Tenn. Code Ann. § 4-5-224:

Rachel C. Nelly, Esq.
P.O. Box 150731
Nashville, TN 37215

National Funeral Directors Association
13625 Bishop's Drive
Brookfield, WI 53005

Office of the Attorney General and
Reporter
P.O. Box 20207
Nashville, TN 37202-0207

Tennessee Funeral Directors Association
1616 Church Street, Suite A
Nashville, TN 37203

Stewart Enterprises, Inc.
1333 S. Clearview Parkway
Jefferson, LA 70121

National Funeral Directors and
Morticians Association, Inc.
3951 Snapfinger Pkwy
Suite 570
Decatur, GA 30035

AARP
Consumer Protection
601 E Street N.W.
Washington, DC 20049

Funeral Ethics Association
215 S. Grand Avenue West
Springfield, IL 62704

Funeral Consumers Alliance
33 Patchen Road
South Burlington, VT 05403

Tennessee Funeral Directors &
Morticians Association
1616 Church Street, Suite B
Nashville, TN 37203

Selected Independent Funeral Homes
500 Lake Cook Road, Suite 205,
Deerfield, Illinois 60015

Bluff City Funeral Directors and
Morticians Association
P.O. Box 80003
Memphis, TN 38108

Upper Cumberland Funeral Directors
Association
199 Slatton Lane
Gordonsville, TN 38563

FCGS Administrative Offices
P.O. Box 91
New Albany, IN 47151

The original is being filed with the Administrative Procedures Division, 312 Rosa L. Parks Avenue, 8th Floor, William R. Snodgrass Bldg. Nashville, TN 37243 this 14th day of October, 2010.

Adrian Chick, BPR# 20010