

Members

Rep. Trent Van Haften, Chairperson
Rep. Jeb Bardon
Rep. Ralph Foley
Sen. Joseph Zakas
Sen. Brent Steele
Sen. John Broden
Chris Colpaert
Joseph H. Davis
Kris Fruehwald
Thomas Hardin
Judge Thomas Lowe
James Martin
David Pendergast
Dan Reeves
Timothy Sendak
Jerry Withered



PROBATE CODE STUDY COMMISSION

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MEETING MINUTES¹

Meeting Date: September 17, 2008
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St., Room 404
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Rep. Trent Van Haften, Chairperson; Rep. Ralph Foley; Sen. Joseph Zakas; Sen. Brent Steele; Joseph H. Davis; Kris Fruehwald; Judge Thomas Lowe; James Martin; David Pendergast; Dan Reeves; Timothy Sendak; Jerry Withered.

Members Absent: Rep. Jeb Bardon; Sen. John Broden; Chris Colpaert; Thomas Hardin.

Rep. Van Haften called the meeting to order at approximately 10:10 a.m. As directed by the Legislative Council and H.E.A. 1026-2008, the Commission met to study the laws governing preneed funeral trusts and contracts and cemetery perpetual care funds.

Mr. Matt Light, Legislative Liaison for the Office of the Attorney General, briefed the Commission on the controversies and pending criminal cases that lead to the passage of H.E.A. 1026. Mr. Light described H.E.A. 1026 as a great step forward for the state's ability

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

to regulate and monitor cemeteries and funeral homes. Mr. Light compared the act favorably to the statutes of a number of other states. Mr. Light recommended:

- (1) imposing stiffer criminal penalties for violations of the preneed contracts law (IC 30-2-13) as the General Assembly has already done with respect to prepaid funeral trusts (IC 30-2-9 and IC 30-2-10); and
- (2) addressing other inconsistencies within the relevant Indiana statutes.

Mr. Light presented a booklet describing the recommendations and containing a substantial amount of background material (Exhibit A).

Mr. Dave McComb is a funeral director and a member of the State Board of Funeral and Cemetery Service (SBFCS). Mr. McComb characterized the issues surrounding the passage of H.E.A. 1026 as cemetery issues. Mr. McComb attributed reduced cemetery usage to the growing popularity of cremation. Mr. McComb asserted that the reduced usage has pressured some cemetery owners to ignore their obligations to deposit funds in trust or escrow when selling preneed merchandise and services or to charge exorbitant fees. Mr. McComb urged the General Assembly to permit monument companies and other vendors to compete with cemetery owners for the provision of burial services.

Rep. Van Haaften asked Mr. McComb whether it was practical to consolidate the cemetery and funeral laws. Mr. McComb replied that similar methodologies could be used.

Mr. Ray Sabol, Indiana Cemetery Association, testified that Indiana needs inspectors and more oversight rather than additional statutes. Mr. Sabol reviewed the history of the General Assembly's efforts to require sufficient funds for the maintenance of cemeteries. The legislative effort began when endowment care funds were first required in 1939 and culminated in 2007 with the imposition of a 1% maintenance fee for deposit in the consumer protection fund for cemetery maintenance. Mr. Sabol noted that the maintenance fee will be suspended when the balance of the fund reaches \$250,000. He then proposed making the fee permanent and redirecting the fees to the SBFCS for hiring inspectors and auditors.

Mr. Curtis Rostad, Indiana Funeral Directors Association (IFDA), submitted a copy of the remarks that he had prepared for the meeting (Exhibit B). Mr. Rostad assured the Commission of his belief that Indiana has a strong preneed law, citing its unique provisions, strong protections, and sufficient state oversight. He also asked the Commission to separate its consideration of funeral trusts from the cemetery issues. Mr. Rostad noted that the preneed law permits three methods of funding funeral services in advance of need: (1) trusts; (2) insurance; and (3) escrow accounts. Mr. Rostad stated that the IFDA has no objection removing the escrow account method.

Rep. Van Haaften asked whether the current structure of the Indiana laws caused funeral directors any trouble in running their businesses. Mr. Rostad downplayed the issue, citing the various federal laws that also apply to his business. He said that he knows where he has to look and prefers to keep the law as it is aside from his recommendation to remove the escrow account method for funding funeral services in advance of need.

Mr. Steve Johnson, Indiana Prosecuting Attorneys Council, described some of the challenges facing prosecutors in the pending cases that lead to the passage of H.E.A. 1026. Mr. Johnson noted that neither the Racketeer Influenced Corrupt Organization (RICO) act nor a civil forfeiture action is available to prosecutors at this time. Mr. Johnson recommended passing legislation to make these tools available to prosecutors.

Rep. Van Haften previewed the scheduled October 15 meeting of the Commission. The agenda for the Commission's second meeting will include consideration of legislative proposals relating to:

- (1) the funeral and cemetery issues heard on September 17; and
- (2) the Probate Code.

Rep. Van Haften noted that he is reviewing the legislative proposals of the Indiana State Bar Association's Probate, Trust, and Real Property Section. He urged the members to forward any additional proposals to the staff at the Legislative Services Agency.

Rep. Van Haften adjourned the meeting at approximately 11:45 a.m.