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Opinion No. 98-15

A prepaid funeral funds trustee may hire and compensate a prepaid funeral permit holder for marketing and other services rendered to the trustee.

July 27, 1998

Everette D. Jobe, General Counsel

By letter dated March 12, 1998, you inquired whether a trustee of prepaid funeral funds may hire and compensate a prepaid funeral permit holder for marketing and other services “rendered to the trustee.” You represent *** Association (“Association”), a 501(c)(6) trade association, and its for-profit subsidiary, *** Services, Inc. (“Services”). Services proposes to be licensed to sell trust-funded, prepaid funeral benefits and to allow qualifying members of the Association to sell prepaid funeral contracts under its “master” permit. The proposed structure of the arrangements between Services and the funeral establishments utilizing its permit are the subject of the Services permit application and are not addressed in this letter.

Services has tentatively arranged for a national bank to serve as trustee of the trust it establishes as a permit holder. Services proposes that the trustee will contract with Services and others to provide various marketing and other services to the trustee, including various administrative and recordkeeping services. The permissibility of the proposed compensation arrangements is the primary subject of your inquiry.

Facts

Services proposes to withdraw, out of the earnings of the trust, an annualized amount equal to 1.25% of the trust estate for the purpose of paying the trustee’s fee, an amount you assert is both “reasonable and necessary” as required by Finance Code §[154.261\(a\)\(1\)](#). The trustee proposes to subcontract part of the services “traditionally provided by a trustee” to the permit holder (investment direction and marketing), paying for these services with “its own funds and not with trust funds” at the annualized rate of 0.55% of the trust fund. The trustee also proposes to subcontract with ***, Inc. (“Provider”), at the annualized rate of 0.55% of the trust fund to perform administrative and recordkeeping duties. Alternatively, the trustee will annually pay Services 1.10% for marketing, administrative, and recordkeeping services, and Services will subcontract out a portion of the work to Provider for 0.55%. Over time, as the relative responsibilities of the parties change or as the size of the trust increases, the amounts received by Provider and Services may change, with Services receiving a larger percentage as it takes over more of the recordkeeping requirements. Services is not receiving additional funds from the trust in its capacity as a permit holder, but is instead receiving the funds from the trustee (and not from the trust) as a service provider to the trustee.

In addition, Services proposes to retain responsibility for directing investments, and has tentatively arranged for *** Fund to serve as investment advisor. *** Fund will pay Services 0.25% for marketing services. This payment constitutes part of *** Fund’s 12b-1 fee.[1](#)

Analysis

A reasonable and necessary trustee’s fee may be withdrawn from a prepaid funeral benefit trust, Finance Code §[154.261\(a\)\(1\)](#). We agree that the proposed trustee’s fee of 1.25% annually is reasonable in amount in comparison to trustee fees for other prepaid funeral benefits trusts in this state.