

**OFFICE OF CEMETERY OVERSIGHT
ADVISORY COUNCIL ON CEMETERY OPERATIONS
MINUTES**

DATE: October 28, 2010

TIME: 10:00 a.m. – 1:00 p.m.

PLACE: Department of Labor, Licensing and Regulation, 500 N.
Calvert Street, 2nd Floor Conference Room, Baltimore,
Maryland 21202

CALL TO ORDER

Chairman Goodman called the meeting to order at 10:17 a.m.

MEMBERS PRESENT

David Goodman, Chair
Jay Cherry
F. Thomas Claxton
Richard Cody
Susan Cohen
Erich March
Frank Porter
Sarah Rex
Harriet Suskin
Walter Tegeler
David Zinner

MEMBERS ABSENT

None

STAFF PRESENT

Benjamin Foster, Director
Patricia Tress, Investigator
Leila Whitley, Administrative Aide
Paulette Wirsching, Assistant Attorney General

GUEST SPEAKERS

Harry Loleas, Deputy Commissioner, Department of Labor, Licensing
and Regulation, Occupational and Professional Licensing

GUESTS

David Mason, Mason Government Relations Service
Amy Shimp, Dulaney Valley Memorial Gardens Inc.
Charles Brown, Rest Haven Cemetery Inc.
Eric Brown, Rest Haven Cemetery Inc.

MINUTES

Motion was made by David Zinner and seconded by Frank Porter to accept the April 22, 2010 minutes with corrections.

ANNOUNCEMENTS

Chairman Goodman passed out three articles: 1) "No Ghost Stories, But Plenty of Stories About Montgomery's History Lie at Rockville Cemetery / Graveyard That Dates Back to the 1700s Leads Visitors On a Journey to the Past" by Sean Patrick Norris published on the front page of the October 27, 2010 edition of the Montgomery edition of The Gazette. 2) "When One Funeral Leads to Another" by Keith L. Alexander (The Washington Post) published on the front page of the October 6, 2010 edition of the Washington Examiner and 3) "State's Attorney's Office Says Law Protecting Seniors Yielding Results" by Mimi Liu on page A9 of the September 22, 2010 edition of the Montgomery edition of The Gazette.

Mr. Cherry announced that Ms. Cohen is scheduled to be a guest speaker at the next Funeral Consumer Alliance meeting to be held on Saturday, October 30, 2010.

Ms. Shimp announced the Maryland Cemetery, Funeral and Cremation Association will have its Holiday Dinner at The Rusty Scupper in Baltimore on December 2, 2010.

Chairman Goodman and Director Foster passed out meeting schedule proposals for the coming calendar year. The proposals included holding Advisory Council meetings a total of either six or ten times during the 2011 calendar year. The meeting schedule will be discussed further at the December Advisory Council meeting.

GUEST MR. HARRY LOLEAS

Chairman Goodman introduced Mr. Harry Loleas, Deputy Commissioner of Occupational and Professional Licensing at the Department of Labor, Licensing, and Regulation who returned to continue his Budget & Finance Update for the Office of Cemetery Oversight. Mr. Loleas gave out two hand outs as a guide to his presentation. One entitled "Cemetery Oversight Expenditures / Appropriations" and the other entitled, "Office of Cemetery Oversight Fund Balance: June 30, 2010 - \$255,349."

Mr. Loleas began his discussion by describing state budget guidelines issued by the Governor's Office that specify that a budget cannot be submitted that is beyond the previous year's budget. He also spoke about the goal of getting E-licensing for the OCO to achieve greater speed and efficiency in the licensing of Sales Counselors. He then used the handouts to give an overview of the current budget status of the Office.

Mr. Loleas reviewed Expenditures/Appropriations and looked at FY '10 Actuals, FY '11 Appropriations and FY '12 Requests reviewing in detail the Budget Account Categories (Salaries; Employee Benefits; Tech & Spec. Fees; Postage/Telephone; Travel; Motor Vehicle/Garage Rent; Contractual Services; Office Supplies; Replacement Equipment; Additional Equipment; Fixed Charges (Dues, Rent, Ins.) along with fixed indirect costs). Mr. Claxton raised questions about how salaries for "3.6" employees was calculated and specific questions about the allocation of \$500 for office supplies and where cost of a lap top computer might be noted. Mr. Loleas spoke about the budget having

some small measure of flexibility especially since it is a Special Fund Agency. He went on to say that the general cost of running the OCO in a given year is in the range of \$400 to \$420,000 + indirect costs which are added on to the expenditure side of the budget.

Mr. Loleas then introduced the second hand out which focused on the income side of the ledger and spoke about the need to look at the money coming in and the money going out to see if total costs are being covered. He anticipates a \$255,349 positive balance in starting off the current fiscal year. Total fund balance at the end of June 2010 was equal to \$255,349. Mr. Loleas reviewed the "fat year" / "lean year" cycle of revenue collection that goes back to the early beginnings of the Office in which the fundamental renewal date for each Cemetery is fixed. He is anticipating total FY11 ("lean year") Revenue of approximately \$162,750 which represents proceeds from 4,723 contracts generated by 16 Corp / LLC and 398 contracts generated from 6 "other" cemeteries added to a total of \$93,000 in Licensing Fees.

It is anticipated that in FY12 ("fat year") there will be a total of \$616,450 in collections representing 47,980 contracts generated by 43 Corp/LLC and \$62,650 representing 6,265 contracts generated by 29 "other Licensees" added to an anticipated \$74,000 in Licensing Fees.

Mr. Loleas shared a Cemetery Profile List of Cemeteries arranged by the number of contracts generated. At the top of the list was a single cemetery responsible for generating 4,000+ contracts and at the bottom of the list at least 59 Cemeteries producing less than 500 contracts each.

Mr. Loleas spoke about secondary sources of revenue originating primarily from licensing fees. The larger percentage of sales counselor's licenses expire in the odd year. These monies represent a smaller percentage of the Office's total revenue flow. The larger percentage of income is generated by the (current) \$10 per contract fee multiplied by the total number of contracts, a formula set up by the General Assembly when HB559 was passed. He reflected that the last time the per contract fee was raised was in April 2006 which means the fee has remained unchanged for almost five years.

Mr. Loleas observed that there has been a decline in the number of contracts (a \$50,000 reduction) compared to revenue projections from two years ago. Mr. Zinner suggested this represented a change of

approximately 2.5%. Mr. Loleas introduced the idea that it might be necessary to make up the difference by a per contract fee increase.

Mr. Porter raised several questions related to Office expenditures especially in differences between FY '10 and FY '11. He asked why there was not a line item for purchase of a lap top computer. He also questioned 28% in employee benefits costs. Mr. Loleas spoke about the reality that the budget originates from Annapolis and comes with instructions and restrictions that any budget submitted may not exceed the amount budgeted in the previous year which doesn't automatically mean you can't do or buy.

Mr. Cody asked what legal steps would be needed in order for the Office to be able to receive a gift such as a lap top. Mr. Loleas was not aware. There was some discussion about this representing a conflict of interest and that the Office was not in a position to receive such gifts due to ethical restrictions and potential for conflict of interest. Mr. Cody then asked Mr. Loleas if it would be helpful to the Office and the budget process if an unofficial poll from the Association were to be conducted regarding anticipated / projected number of contracts for the coming year. Mr. Loleas responded that he would be open to receiving useful information and that it would be helpful to the budget process.

Ms. Rex commented on the budget numbers shared by Mr. Loleas and the difference in account balance from the "lean" to "fat" years. Mr. Loleas responded that the Office's budget is a continuous and non lapsing fund and that ending with a large fund balance is problematic in that the funds could be subject to seizure. He gave an example of another DLLR agency which lost \$300,000 in this way. Ms. Rex commented on the balancing act involved in maintaining the Office's budget. Mr. Loleas referred to the complexity of the budget process and mentioned the Budget Reconciliation and Financing Act (BRFA) – 90+ pages that drive state fund transfers. Director Foster reflected on his experience in Arizona with a similar complex budget process and spoke about the need to find a balance between funds running to low or too high.

Chairman Goodman asked Mr. Loleas if there was any insight / understanding available about the underlying causes of the decline in contracts over the past two years and questioned whether this trend could be attributed to the deteriorating economy or the growing trend of consumers choosing cremation over more traditional burial options. Mr. Loleas responded that at this time he has no choice but to assume

that there will be a continuing decline and that the economy and cremation could be playing a part in what we are seeing. Ms. Cohen commented that certain religious groups have become more open to and accepting of cremation. Mr. Zinner supported Mr. Cody's offer to have the industry conduct a survey on projected contracts.

Ms. Rex asked Mr. Loleas (putting electronic licensing aside) if he was seeking the Council's opinion on the idea of a fee increase. Mr. Loleas indicated that he had heard from the industry a desire to move ahead with electronic licensing. He then mentioned that the next Sunset Review of the Office may come as early as next summer. He stated the Office's finances need to be reasonably secure. In the last fee increase which occurred five years ago there was a doubling of the fee from \$5.00 per contract to the current \$10.00 per contract. He is not talking about that kind of increase now; it would probably be more in the range of a \$2.00 to \$3.00 increase. Ms. Rex referred to the Cemetery Inventory List completed by Ms. Tress and Ms. Wirsching and suggested that there were a lot of cemeteries out there not captured. Mr. Loleas responded that even if we were to capture those cemeteries, they are not big producers of contracts and that most do not engage in preneed sales. Mr. Loleas then spoke about the option of increasing fees. There are approximately 1,012 sales counselors. If you increased the fee by 25% you will only generate another \$25,000.

Mr. March said that the licensing of Sales Counselors represents a significant loss to Cemeteries in terms of fees associated with Sales Counselors, with such high turnover with only about 30% remaining employed. Mr. Brown (from the audience) asked about going after other cemeteries. Mr. Loleas said that even if you registered and additional 500 it might only generate another \$25,000. Mr. Zinner asked if it would be possible to do a onetime assessment to cover the costs of electronic licensing. Mr. Loleas said, not by existing law. Ms. Rex raised several questions and concerns about electronic licensing related to the need of integrating the software into the larger DLLR data processing system. She had been told by different sources the older DLLR system was already difficult to maintain and not always reliable. She expressed concern that electronic licensing might not speed up the licensing process by much. Mr. March asked if the Office would own or share the electronic licensing system. Mr. Loleas indicated it would be a shared system.

Mr. Loleas concluded his presentation by saying that the bottom line is that in terms of the decline in contracts that he is secure in believing that there is a need to do a little something to get a little more

revenue coming in to the Office in order to maintain a small positive balance. Any fee change would require a regulatory process that takes at least 180 days to complete. He won't know with certainty what amount will be needed until the FY '11 revenue comes in.

Chairman Goodman invited Mr. Loleas back to the December Advisory Council meeting and Mr. Loleas was agreeable to the idea of returning to continue the discussion about the budget, the cost of implementing electronic licensing and the possibility of a per contract fee increase.

CREMATION REGULATION UPDATE

Ms. Wirsching reviewed the progress of developing regulations for cremation from her most recent meeting with Ms. Robin Bailey, Executive Director, Maryland Board of Morticians and Funeral Directors (BFMD). She described efforts to date as a slow moving process, but one where they are moving ahead. They are working on regulations for inspection of holding facilities and how that process should occur. She commented that BMFD regulations will not perfectly mirror the OCO regulations. For instance, there would be differences in disciplinary process. With the BMFD, these issues would be reviewed by the Board and with the OCO such issues would be reviewed by the Director and / or via an Administrative Hearing process. Focus is on how parallel the regulations can be. She reported that the regulations for cremation have to be in place by October 1, 2011. The proposed regulations also have to be published 180 days before the regulations are to start.

2011 Calendar

Director Foster stated that we have to justify the Advisory Council meetings and stated his opinion that he feels it is not necessary for the Council to hold ten meeting per year. He expressed a belief that six meetings and maybe five would be sufficient. Ms. Rex asked for clarification. Director Foster said things aren't great, that there were things the staff could be doing right now such as addressing backed up files, needing to get the business of the Office done, licensing issues, etc. and that any time staff is doing something else, the work of the office is not getting done. Ms. Suskin stated the preparation time for the meetings should not be long and the meetings are only three hours. That is not much time away from the Office work. Director Foster responded that it was more than three hours and referred to

preparation before and after each meeting including preparation of the agenda and minutes. Ms. Suskin said the purpose of the Advisory Council was to advise, be proactive. That the meetings were educational and that everyone gained by it. She expressed concern that we would lose the "thread" by meeting less often. Mr. Zinner expressed a belief that the Advisory Council members could be used for subcommittees. Ms. Wirsching commented on public meeting laws and stated that there could be problems if subcommittees met.

Chairman Goodman focused on a comment offered by Ms. Rex about looking at the overall mission, purpose and goals of the Advisory Council as a prerequisite to determining the 2011 calendar. He stated his intention to set aside time on the December agenda for this discussion.

DIRECTOR'S REPORT

Director Foster spoke about a need to get things caught up. He wants to get things where they should be. He gave as examples things are not where he wants them to be in terms of processing permits or in over all "office process" of people getting call backs in a timely manner. He spoke about a lot of his time being spent with discussing things with people on the phone and that his overall goal is to "improve what we do". He mentioned that the Office has a lot of things going on and that they are addressing a couple of significant cases over the past couple of months. He said that the emphasis he is placing is on getting aspects up to where they should be and that they are making incremental steps.

Mr. Zinner asked the Director for information on the trust fund balances. Director Foster said he would make himself a note and bring that information to the next meeting.

Mr. March inquired how much time is actually spent on non-profit and religious cemeteries so when the Sunset Review comes back around there can be a case made. Ms. Tress stated very minimal time is spent on that issue.

INVESTIGATOR'S REPORT

Ms. Tress stated she attended the North American Death Care Regulators Association Conference in Alabama in August. The round

table discussion was the most beneficial part of the conference. Attendees signed a confidentiality agreement which allowed for a free and open discussion and sharing of "failures" and "successes". There were a lot of attorneys present. There was discussion about abandoned cemeteries and placing them into receivership as a last resort.

Commissioner Botts, Director Foster, and Ms. Tress met in reference to visiting cemeteries and arrived at an understanding that she will visit cemeteries as time allows. She spoke about complaints being time consuming and often leading into broader investigations.

Ms. Cohen inquired about which type of complaints the Office usually receives. Ms. Tress stated that maintenance and contract terms are the main complaints the Office receives. Ms. Cohen asked if anything was being done to make the Office better known. Ms. Tress responded that the Office's access and visibility via the internet was already making a huge difference and a possible factor in the increase in complaints coming in to the Office.

Mr. Foster stated the Office of Cemetery Oversight (OCO) would have control over about five crematories or less.

Mr. Porter raised questions and concerns about conditions at Mt Carmel Cemetery and asked Ms. Tress if she was aware of the problems at that Cemetery. Ms. Tress spoke briefly about Mt. Carmel Cemetery. A new owner purchased the cemetery when the cemetery had weeds so high no one could see the tombstones. Ms. Tress thinks the current owner is doing in good faith what has to be done to improve the condition of the Cemetery, but the challenges are significant. Ms. Tress indicated that Office will continue to monitor progress and efforts at the Cemetery

Mr. March expressed concerns about Crematories. Where would someone go to complain while regulations are being developed? Ms. Wirsching commented that if a Crematory did something it was not supposed to do one would need to go to the Attorney General's Office. Director Foster remarked that the OCO will ultimately regulate five or less Crematories when the regulations are completed and in place.

NEW BUSINESS

Chairman Goodman announced the next Advisory Council meeting is be December 2, 2010. The December meeting will take place at the Department of Labor, Licensing, and Regulation.

Chairman Goodman announced Harry Loleas will be a guest speaker for the December meeting.

ADJOURNMENT

A motion to adjourn the meeting made by Mr. Porter and seconded by Mr. Cherry. The meeting adjourned at 1:15 p.m.

Corrections approved January 19, 2011