



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Division of
Marketing Practices

Mary S. Feinstein
Attorney

Direct Dial:
(202) 326-3064

March 6, 1995

Lavelle S. Jesse
Assistant Vice President
Federated Funeral Directors of America
P.O. Box 19244
Springfield, IL 62794-9244

Re: Opinion Letter

Dear Mr. Jesse:

This letter is in response to your inquiry dated February 24, 1995 about pre-need funeral pricing. For the sake of clarity, I will address your questions in the order in which they were posed.

In the factual scenarios you described, three funeral homes agree to have one general price list (hereafter described as "consolidated GPL"). Under Scenario 1, these homes would offer to consumers funeral goods and services on a pre-need basis where the prices for those goods and services would not be fixed at the time of the execution of the pre-need contract. Under scenario 2, the same three funeral homes would offer consumers funeral goods and services on a pre-need basis, but the prices for these items would be fixed at the time of execution of the pre-need contract.

Question 1 -- Would this agreement between these homes violate any antitrust laws?

As I mentioned to you in our previous telephone conversation on this topic, you should direct this question to the FTC's Bureau of Competition staff.

Question 2 -- Would the consolidated GPL used by the three funeral homes violate the Funeral Rule?

No. The Funeral Rule requires that a funeral provider give to inquiring persons, for retention, a GPL describing the funeral goods and services offered by the funeral provider. The Rule

Mr. Lavelle S. Jesse -- Page 2
March 6, 1995

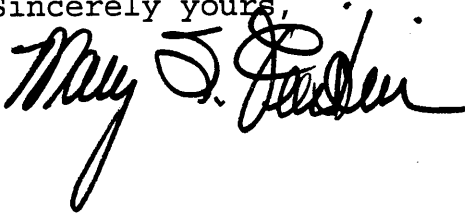
requires that the GPL have an effective date on it. 16 C.F.R. § 453.2(b)(4). I would only caution that if this GPL's prices are not "fixed" on the pre-need contract, the pre-need contract must be explicitly clear on this point. The consumer should be on notice if the pre-need contract's prices are not fixed at the time of execution of the pre-need contract. Any deception concerning whether or not the prices on the pre-need contract are fixed may be a violation of Section 5 of the FTC Act, even though it may not be a violation of the Funeral Rule, per se.

Question 3 -- May there be a variance between the prices delineated on each individual funeral home's GPL and the consolidated GPL?

Yes. The Funeral Rule only requires that a funeral provider gives a GPL with price information on it for certain items, if offered for sale. The Rule does not address what price can be charged. Again, this issue should also be addressed by our Competition Bureau staff.

I hope that this information is helpful to you. Please be advised that the views expressed here are those of FTC staff. They have not been reviewed, approved or adopted by the Commission, and they are not binding upon the Commission. However, they do reflect the opinion of those staff charged with enforcement of the Funeral Rule.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "May J. Fisher". The signature is written in dark ink and is positioned below the typed name "May J. Fisher".