

Texas Department of Banking

Randall S. James
Commissioner

November 13, 2000

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OPINION COMM.....

Honorable John Cornyn, Attorney General
Office of the Attorney General of Texas
c/o Susan D. Gusky
Chair, Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for Attorney General Opinion: Whether the Archdiocese of San Antonio must obtain a permit under Chapter 154 of the Texas Finance Code in order to sell prepaid funeral benefits.

Dear General Cornyn:

Chapter 154 of the Texas Finance Code (the "Code"), which is administered by the Texas Department of Banking (the "Department"), governs the sale, funding and provision of prepaid funeral services. Pursuant to §154.101 of the Code, a person must hold a permit issued by the Department to sell prepaid funeral benefits.

By letter dated December 22, 1999, the Department advised the Archdiocese of San Antonio that it must obtain a permit in order to sell prepaid funeral merchandise and services. By letter dated January 26, 2000, the Archdiocese conceded that the Archdiocese Cemeteries had sold prepaid merchandise and services, but asserted that the Catholic Church is not a "person" within the meaning of Chapter 154 and may therefore sell prepaid benefits without a permit. The Archdiocese further suggested that the State of Texas may not require it to obtain a permit because the imposition of such a requirement would impermissibly burden the Church's free exercise of religion. The Department replied that the Texas Legislature intended to include a religious organization such as the Catholic Church within Chapter 154's definition of "person" and to require a church engaging in the sale of prepaid funeral benefits to be licensed. In response to the Archdiocese's "impermissible burden" argument, the Department contended that, even if a court were to decide that the Chapter 154 permit requirement substantially burdened the free exercise of religion, the court would probably find that the requirement furthered a compelling state interest and did so in the least restrictive manner possible.

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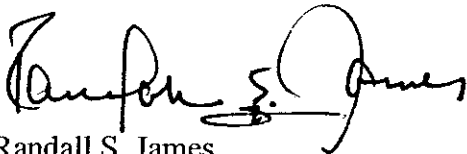
The Archdiocese continues to take issue with our conclusion that it must be licensed under Chapter 154 in order to sell prepaid funeral benefits. Accordingly, we respectfully request an opinion concerning the following:

Must the Archdiocese of San Antonio obtain a permit from the Texas Department of Banking under Chapter 154 of the Texas Finance Code to sell prepaid funeral benefits?

I am enclosing copies of the correspondence between the Department and Mr. Thomas Drought, attorney for the Archdiocese, setting out our respective arguments and authorities. I am also enclosing the addresses of the Archdiocese of Dallas and Service Corporation International, Inc. The Archdiocese of Dallas holds a permit issued by the Department under Chapter 154 to sell prepaid funeral benefits, and its funeral and cemetery operations are managed by SCI, Inc. These parties may be interested in submitting legal briefing.

If you have any questions or would like the Department to provide additional briefing on any issue related to this request, please contact Sarah Shirley, Assistant General Counsel, at 475-1327.

Yours very truly,



Randall S. James
Banking Commissioner

Enclosures

cc: Sarah Shirley, Assistant General Counsel
Thomas Drought, Counsel for the Archdiocese of San Antonio

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