

STATE BOARD OF MORTICIANS

Staff Report
to the
Sunset Advisory Commission
February 20, 1978

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INTRODUCTION

This report is submitted pursuant to Section 1.06, Subsection (3) of the Texas Sunset Act and contains a review of the operations of the State Board of Morticians. Termination of the State Board of Morticians has been scheduled for September 1, 1979, unless it is continued by law.

The material contained in the report is divided into three major sections: **Background, Review of Operations and Conclusions.** The Background section contains a brief history of legislative intent and a discussion of the original need for the State Board of Morticians. The Review of Operations section contains a review of the operation of the agency, and uses the self-evaluation report submitted by the agency as the basis of review unless noted. The information contained in the self-evaluation report was verified and additional data were obtained through interviews and review of agency files and other data sources. The Conclusions section summarizes the import of material developed in the individual criteria from the standpoint of whether or not Sunset criteria are being met, and develops approaches relative to these findings.

This report is designed to provide an objective view of agency operations, based on the evaluation techniques utilized to date. Together with pertinent information obtained from public hearings, a factual base for the final recommendations to the Legislature will be provided.

BACKGROUND

Historical Development

Family and community members were integral to the performing of funerals in early America. People from the deceased person's family or church would clean and lay out the body in a coffin built by a cabinetmaker or a relative. Prefuneral mourning and viewing of the body generally took place in the home.

As towns and cities grew, tradesmen started to take over some tasks previously handled by the family and community. Cabinetmakers and furniture manufacturers began producing coffins for sale. People who were particularly talented at laying out corpses worked in that trade for a living. Funeral establishments, as such, began to appear in significant numbers shortly after the Civil War, especially in growing urban areas. Provision by undertakers of a more "total" funeral, including livery, coffins, flowers and chairs became more common. The growth in numbers of funeral establishments gave rise to the establishment of a trade association. The Texas Funeral Directors' Association reports that its organization began in 1886.

In 1903, the enactment of Senate Bill 76 by the Twenty-eighth Legislature established Texas' State Board of Embalming. This law was enacted at a time when states all across the nation were licensing professions that had an impact on public health. The first occupations to be licensed in Texas were attorneys (1845), physicians (1873) and dentists (1889). Licensure of teachers, pharmacists and registered nurses followed embalmers in 1905, 1907 and 1909, respectively. Missouri was the first state to license embalmers and did so in 1895; Texas was the seventh in 1903.

The dramatic increase in licensure of medically-related occupations near the turn of the century indicates that safeguarding the public health was the major focus for this type of regulation. The original law in Texas provided that all

licensed embalmers be proficient in disinfecting dwellings, bedding and dead bodies, as well as possess a knowledge of the circulatory system and bodily organs.

The original five-member Board, composed of "practical embalmers" having experience in the "business and the care and the disposition of dead human bodies," was appointed by the State Health Officer. Not all aspects of funeral practice were addressed in this original legislation. The original statute declares that the Act shall not apply to "any person simply engaged in the furnishing of burial receptacles for the dead." It was an act designed to regulate only those funeral functions that, improperly performed, could adversely affect community health.

During the years between 1903 and 1978, changing perceptions and advancements in the field of public health affected the focus and operation of the State Board of Morticians, formerly the State Board of Embalming. Medical advances in the prevention of contagious disease did much to accomplish the objectives of the Board in the area of public health protection. These accomplishments may account for the Board's shift in emphasis from public health protection to controlling the quality of persons involved in funeral practice. A large part of the current law concerns itself with ensuring the "quality", morality and social acceptability of persons entering the occupation. Protecting citizens from uncouth or insensitive embalmers or funeral directors who improperly solicit business, mislead the public, use profane or obscene language within earshot of a corpse or a bereaved family, or otherwise offend the public, appears to have become the primary focus of Board activities. The licensing of morticians and disciplining of violators are the tools used by the agency to perform these functions.

The evolution of the Board's duties and activities to its current concern with the quality of the occupation took place in revisions of the law in 1915, 1921, 1931, 1935, 1939, 1953, 1963, 1969, 1971 and 1977.

The 1915 amendment (Senate Bill 279) gave the Board the right and power to employ "capable and efficient lecturers and demonstrators in the science of embalming." These lecturers were to meet not more than once each year "with annual sessions of the Texas Funeral Directors' and Embalmers' Association." This provision apparently was intended to be a means for ensuring that licensees had the opportunity to remain familiar with developments in the embalming trade. Because the legislation was permissive, and not mandatory, however, a uniformly high standard of embalming expertise by licensees was not ensured. Still, this marked the start of the development of occupational standards as distinguished from legal requirements.

In 1935, the category of licensed funeral directors was legally created. A funeral director was defined to be "a person engaged in or conducting the business of, a) preparing other than by embalming, for the burial or disposal, and directing and supervising the burial or disposal of dead human bodies, b) providing for or maintaining a place for the preparation, for the disposition, or for the care of dead human bodies, or c) who shall, in connection with his name or business, use the words 'Funeral Director,' 'Undertaker,' 'Mortician,' or any other title implying that he is engaged in the business here described." The law created an immediate demand for the license when it declared that "any partnership or corporation engaging in the business of funeral directing. . . must have at least one partner or officer, active in the business, who is a licensed funeral director."

This newly created category of license was unrelated to health aspects of funeral practice and as a result represented a major departure from the Board's role in protecting public health. By legal definition, funeral directors could not be licensed according to their ability to embalm and thereby reduce health hazards.

The 1935 law also allowed "that a licensed embalmer in good standing with

the State Board of Embalming shall be exempt from the \$5.00 fee, all others appearing and applying for a license shall be charged the annual fee of \$5.00." The law does not make clear whether "good standing" **was** to be determined by competence in embalming as much by less readily measurable standards of personal quality or manner of conduct.

A further shift in emphasis away from the field of health came in 1939 when the Governor replaced the State Health Officer as the official responsible for appointing Board members. Numerous modifications were made to the law in 1953, the year the agency's name changed to the State Board of Morticians. More formalized requirements for licensure, including high school graduation, apprenticeships, Board examinations and mortuary school graduation, were prescribed at that time. The Board was granted the power to inspect the premises of funeral establishments, though formal licensing of these businesses did not come until 1963.

The 1963 law set out general provisions for building specifications **and required** facilities of funeral establishments. The law provided for a **general standard** of cleanliness, access to rolling stock, a display room containing at **least five** caskets and sufficient licensed personnel to handle the establishments **volume of business**.

More detailed requirements for apprentices were mandated in 1963. **In addition**, funeral directors' educational requirements were increased to **require tions** do not appear to be the major reason for development of these **stricter** requirements nor for passage of the 1963 regulation permitting only licensed funeral directors or people under their personal supervision, to pick up dead bodies on first call.

Commercial embalming establishments, businesses that provide embalming services to licensed funeral homes, were included in the statute for the first time

in 1971. Amendments to the statute in 1971 further emphasized the Board's increasing attention to morality and propriety in the funeral industry and decreasing emphasis and involvement in the area of public health protection.

The current law sets out the following duties and responsibilities for the State Board of Morticians:

1. to make an annual report covering work of the Board for the preceding fiscal year, including an itemized financial report and the names of all licensed individuals and establishments;
2. to keep a record of its proceedings;
3. to keep a permanent record of all applications for licenses and action thereon;
4. to prescribe and maintain a standard of proficiency, character and qualifications of those engaged in or who may engage in the practice of a funeral director and embalmer, to determine qualifications necessary for licensure, and to examine all applicants for licensure;
5. to approve a course of instruction to be given by mortuary science schools and to examine and supervise the activities of these schools to ensure compliance with Board requirements;
6. to prescribe and supervise the course of instruction for apprentices;
7. to make arrangements for reciprocal licenses;
8. to hold hearings to revoke, suspend, or place on probation licenses of violators, to fine licensees, or refuse to admit to examinations persons who violate any of some 19 Board regulations;
9. to license funeral establishments and to inspect each establishment in the State at least once annually.

Annual fees, as currently prescribed by law, for examinations, licenses, and other renewals are \$10.00 for both funeral directors and embalmers, with the exception of fees for applications (examination), reciprocal licenses, new establishment licenses, establishment renewals, and establishment penalty which are \$50, \$100, \$250, \$50 and \$50 respectively.

COMPARATIVE ANALYSIS

To determine the pattern of regulation of the occupation of morticians within the United States, a survey of the 50 states was conducted to determine how this has been addressed in other states.

The need to regulate the occupation of morticians is currently expressed through licensing requirements imposed by 50 of the 50 states surveyed. From the standpoint of organizational patterns, 23 states, including Texas, meet this expressed need through an independent board or commission whose members are appointed by the chief executive. In 24 states, the function is carried out through a governmental department charged with the regulation of multiple occupations.

In those states which utilize independent boards and commissions, 18 require that appointees be confirmed by the legislature; and membership in 28 states is limited to persons who are licensed members of the occupation. In Texas, appointees are confirmed by the legislature and membership is limited to persons who are licensed members of the occupation. Fifty-four percent of the states, as does Texas, utilize independent governing bodies limiting the responsibilities of the membership to that of policy-making as distinguished from the role of full-time administrators.

A majority of the states, including Texas, indicate that the revenue sources of the regulatory body, regardless of organizational form, were derived from fees collected. Only 23 of 50 states indicated that these bodies were not solely supported by fees and charges of the agency.

Thirty-one of the states regulating the occupation of morticians, administer national examinations. The other states develop and administer their own exam.

Texas does not use a national examination. Enforcement activities in 47 states, including Texas, involve some limited investigation of complaints from consumers and others engaged in the occupation of morticians. Hearings are conducted inside the regulating agency in 35 states. In Texas, hearings are conducted by the Board.

States which regulate the occupation of morticians indicated the necessity of performing the basic functions of administration, testing, license issuance, and enforcement. These basic functions also constitute the primary elements of the operations of the State Board of Morticians and are examined in light of specific criteria required in the Texas Sunset Act in the material which follows.

REVIEW OF OPERATIONS

Criterion 1

The efficiency with which the agency or advisory committee operates.

The review under this criterion centered on financial data and other records of the agency. This information was analyzed to determine if funds available to the agency had been utilized in a reasonable manner to achieve the purposes for which the agency was created and to determine if areas existed in which greater efficiency of operation could be achieved.

Activities

The State Board of Morticians is a self-supporting agency operating on fees generated under its enabling legislation. No funds are appropriated for its use by the legislature, and the agency does not come under the provisions of the General Appropriations Act, although comparisons will be drawn from time to time with agencies included in the General Appropriations Act.

Financial Position

A detailed presentation of various Board expenses, as a percentage of total expenditures for fiscal year 1977, is provided next.

EXHIBIT I-1

Board Expenditures
For the Fiscal Year Ending June 30, 1977

	Amount	Adjusted ¹ Expenditures	Percent	Adjusted ¹ Percent
Personnel Costs				
Salaries	\$ 63,972.48		33.8	38.5
Retirement	4,756.25		2.5	2.9
Social Security	4,560.36		2.4	2.7
Employees Group Insurance	1,212.72		0.6	0.7
Total	<u>\$ 74,501.81</u>		<u>39.3</u>	<u>44.8</u>
Operating Costs				
Equipment	2,600.05		1.4	1.6
Office Rent	28,500.00*	5,700	15.1	3.4
Postage	3,673.60		1.9	2.2
Stationery and Printing	10,578.40		5.6	6.4
Telephone	5,163.59		2.7	3.1
Examination Expenses	3,473.57		1.8	2.1
Miscellaneous	1,850.38		1.0	1.1
Conference Dues	300.00		0.2	0.2
Bond Renewal	20.00		0.0	0.0
Workmen's Comp. Insurance	517.00		0.3	0.3
Maintenance Agreements	484.00		0.3	0.3
Employee Car Allowance	1,200.00		0.6	0.7
Audit	2,003.45		1.1	1.2
Travel	23,711.25		12.5	14.3
Consultants	7,266.64		3.8	4.4
Total	<u>\$ 91,341.93</u>	<u>\$68,541.93</u>	<u>48.3</u>	<u>41.2</u>
Board Expenses				
Per Diem	8,175.00		4.3	4.9
Travel	15,061.36		8.0	9.1
Total	<u>\$ 23,236.36</u>		<u>12.3</u>	<u>14.0</u>
GRAND TOTAL	<u><u>\$189,080.10</u></u>	<u><u>\$166,280.10</u></u>	<u><u>99.9</u></u>	<u><u>100.00</u></u>

* Includes prepayment of rent for five years.

¹Figured using one year's pro rata share of pre-paid rent.

As with most agencies of this type and size, the largest component of costs is in personnel.

Summaries and projections of revenues and expenditures of the State Board of Morticians, based on State Auditor's Reports and the financial statement of the Board for fiscal 1976, are presented for fiscal years 1969 to 1982 in the following exhibit.

EXHIBIT I-2

Summaries and Projections of Revenues and Expenditures
1969 through 1982

Fiscal Year	License Rev.Fees	Estab. Lic.Fees	Other Rev.	Total Rev.	Operating Expenses	Surplus/ Deficit*	Cash Avail.
1969	\$ 36,102	\$25,125	\$ 17,657	\$ 78,884	\$ 80,140	\$ 1,256*	
1970	36,312	25,575	18,421	80,308	84,797	4,489*	
1971	37,140	27,625	16,782	81,547	89,168	7,621*	
1972	49,822	49,070	19,710	118,602	99,694	18,908	
1973	50,783	63,340	22,893	137,016	106,420	30,596	
1974	64,703	62,700	22,329	149,732	125,966	23,766	
1975	66,956	61,950	25,463	154,369	139,668	14,701	\$127,293 ¹
1976	68,744	53,500	31,147	153,391	152,479	912	128,205
1977	70,806	60,353	31,151	162,310	189,080	26,770*	101,435
1978	72,930	61,100	33,695	167,725	192,622 ²	24,897*	76,538
1979	75,118	61,847	36,239	173,204	192,672	19,468*	57,070
1980	77,371	62,594	38,783	178,748	206,553	27,805*	29,265
1981	79,692	63,341	41,327	184,360	220,434	36,074*	6,809 *
1982	82,083	64,088	43,871	190,042	234,315	44,273*	51,082*

(1) as determined from the State Auditor's Report for fiscal years 1974-1975.

(2) Effective 9/1/77, the fiscal year was changed from 7/1-6/30 to 9/1-8/31 to conform to the state's fiscal year. The 1977-78 fiscal year will include the time from July 1, 1978 to September 1, 1978.

Since the Board is currently operating at the maximum statutory fee limit authorized by the Legislature, this schedule would indicate the necessity of increasing these limits by 1980, if no economies of operation are effected.

Cost of Regulation per License

The total number of licenses issued by the Board in recent years has fluctuated, but the trend is to increase at a rate approximating two percent. The cost of operating the agency has increased at a substantially higher rate. Based on data as of June 30, 1977, the following number of licenses were valid:

EXHIBIT I-3

Valid Licenses, 1977

Funeral establishments	1,062
Licensed embalmers	3,065
Licensed funeral directors	<u>4,000</u>
Total	<u>8,127</u>

As previously illustrated, agency cost of operations for the fiscal year ending June 30, 1977 was \$189,080.10. A review of the costs of regulation and the number of licenses of several similar agencies in the schedule below suggests that there are economies of scale involved in regulatory agencies.

EXHIBIT I-4

Costs of Administration of Occupational Regulation per License
Fiscal Year 1977

<u>Agency</u>	<u>Number Regulated</u>	<u>Total Expenditures *</u>	<u>Cost Per License</u>
Board of Registration of Professional Engineers	31,181	\$ 450,688.00*	\$ 14.45
Board of Architectural Examiners	5,039	137,345.00*	27.26

Board of Registration For Public Surveyors	1,328	41,744.00*	31.43
Board of Registration for Landscape Architects	960	50,622.00*	52.73
Board of Morticians	8,127	189,080.10 166,280.10**	23.27 20.46

* From Comptroller's 1977 Annual Report

**Adjusted for rent

Cash Management

The agency's funds are kept outside the State Treasury in checking accounts and certificates of deposit (C.D.s). The non-interest bearing checking accounts in the Austin National Bank are used to pay expenses and refunds and to deposit revenues on a day-to-day basis. The certificates of deposit are interest bearing instruments purchased from two banks, Austin National Bank and Capital National Bank.

The State Auditor, in a management letter of March 1976, noted that the agency was not effectively managing its working capital and interest-bearing accounts. At least \$5,250 increased interest could have been earned from July 1974 to June 1975. The auditor also determined that a more active program of short-term investments based on careful forecasting of cash requirements would give the Board the potential to more than double its return on its funds.

Although improvement in cash management procedures has occurred since March 1976, more improvement could be effected. The average monthly checking account balance has been maintained significantly above the average monthly amount of checks paid. However, at the same time, the agency has overdrawn by as much as \$8,535.98. The following exhibit presents additional information on checking account activities.

EXHIBIT 1-5

Checking Account Activity

	Average Monthly Beginning Balance	Lowest Balance	Highest Balance	Average Monthly Amount of Checks Paid
7/75-6/76	\$71,358.90	\$28,987.89	\$108,463.07	\$12,537.94
7/76-6/77	28,273.58	(8,535.98)	77,385.42	15,416.93
7/77-12/77	42,248.24	18,624.33	68,054.52	15,634.20

Directly related to high checking account balances are the agency's short-term investment procedures. Currently, investments of excess funds are made only for six or twelve months. In October 1977, the agency had \$48,201.08 in C.D.s. Of this amount, \$26,766.68 was held in a six-month C.D. at a 5.5 percent annual rate, and the remainder was held at a 6.6 percent annual rate.

Savings accounts without notification of withdrawal, currently earning 5.25 percent annually, could be used to increase earnings significantly and require no special expertise in money management. For the period July 1977 through December 1977, if the agency had invested its excess balances of demand deposits in a regular savings account using the conservatively estimated minimum monthly balance, \$895.55 could have been earned. Since earnings from agency C.D.s during the same period were \$1,163.77, the conservative approach of an investment of excess checking account funds in a regular savings account would have increased earnings from investments by 77 percent in the six-month period. If other investment instruments, such as 60 or 90-day notes, were utilized the investment return would have been greater.

Operating Budget

Another mechanism to increase investment return would be to manage cash flow so as to maximize funds available to be invested. Prior to 1977, no formally

approved written budget was used. At the auditor's insistence, an annual budget has now been adopted. Based on discussions with agency staff, no systematic use of the budget is made, and planning of timing of expenditures is casual. While a system to **better plan** the timing of expenditures would complicate the present procedures, a monthly operating budget could be used to free additional funds for investment purposes.

Inventory Control

The staff currently inventories consumable supplies. However, there is no evidence of an annual inventory of fixed assets. This deficiency was pointed out in **an** auditor's management letter **in** 1976. Little effort should be required to correct this situation.

Office Rent and Lease

The Board signed a five-year lease, negotiated apart from the Board of **Control**, with the Texas Funeral Directors' and Embalmers' Foundation, Inc., **in April** 1976. The cost was \$6,000 per year for 375 square feet of office space **and access** to a total of 2,800 square feet of conference room, kitchen facilities, **reception** room, storage space and restrooms in the building. Based on the **latter area**, the rent is slightly under 18 cents per square foot. The rent was prepaid **for five** years in 1976 at a total cost of \$28,500. It may be noted that this type **of long-term** lease and pre-payment is not available to agencies which are in the **State Treasury** or which receive funding through the General Appropriations Act. (For **a further** description of the lease, please refer to Criterion 9).

Office Supplies and Stationery Purchases

Invoices from private supply companies form the bulk of the vouchers for office supplies and stationery purchases. The Board of Control central supply store

is used only occasionally. In fiscal year 1976, the State Board of Morticians spent \$75.03 at the central supply store in four visits, and fiscal year 1977 purchases from four visits totaled \$49.71. (The stationery and printing expenditures for the State Board for those years were \$10,379.98 and \$10,578.40, respectively.) The Board of Control reports no use of its open market purchasing or annual contract systems in fiscal years 1975, 1976 or 1977 by the State Board, although these economy of scale purchasing devices were available during this period.

Sick and Vacation Leave Records

The office secretary keeps records of sick and vacation leave. Tallies are kept on the number of days and hours taken in each category for office staff, based on her notes. The information for field representatives is determined from weekly field reports. However, checks of office and field notes revealed discrepancies that could not be resolved in a desk audit. The use of a standardized state form signed by the employee indicating total hours accrued and taken, and any overtime worked on each day of the month would help eliminate some of the current ambiguity. The use of forms, such as those required of agencies receiving funds from the State Treasury, stating the reason for taking sick days would also help standardize this procedure. The State Auditor's management letters since 1972 have made these suggestions.

Employee Health Insurance

The amount of health insurance paid by the Board varies by employee. The monthly rates in 1977 ranged as follows:

Office staff	- full time	\$16.35
	full time	27.26
	full time	20.52
	part time	-0-

Field staff	- full time	54.15
	full time	35.41

The Board employees are covered under the Texas Funeral Directors' Association group plan. To be eligible for health insurance, life insurance must be purchased from the provider (private) insurance company. This arrangement may be contrasted with state employees of other agencies who receive identical contributions from the state toward the selected level of coverage. Such arrangements ensure minimum and standardized coverage of all employees.

Board Travel and Expense

On Board members' travel vouchers, a meal "allowance" from \$12 to \$15 for in-state business and of \$25 for out-of-state is authorized. Instances have occurred where meals are included on hotel bills, and are then not calculated according to the allowable rate.

Another area where Board members may be treated generously is in mileage. Board members estimate mileage traveled instead of charging for actual miles traveled.

Expense and Travel Vouchers

A travel and expense voucher system advocated by the State Auditor is used by the agency to account for expenditures. However, numerous forms were filed and paid even though incomplete and lacking two authorizing signatures.

Employees are reimbursed for out-of-town automobile expenses at the rate of 20 cents a mile. This may be contrasted to other state employees who currently receive 18 cents a mile.

Car Allowance

A monthly fee of \$50 has been paid since September and November 1975 to two office personnel, the executive secretary and the office secretary. This fee is

designed to cover staff expenses of running errands in personal automobiles. The extent of the expense is unknown since records are not kept of mileage or business performed. Prior to implementing present procedures, the State Auditor recommended the itemization of mileage and the purposes for which it was used in a management letter in February 1974. Although the present situation is different from conditions at that time, the recommendation has not been addressed in any manner.

Records

A significant portion of the Board's administrative functions relate to record keeping. Records are maintained on applicants, apprentices, licensees, establishments, persons who failed Board examinations or did not complete apprenticeships and activities at Board meetings.

From an organizational standpoint, the system developed for record keeping is constructed in a logical manner and is adequate for the needs of an agency of this size. Procedures for a consistent and thorough review of the content of the materials contained in the files have not been developed either from the standpoint of the Board or the administrative staff. A review of the files indicates that record keeping involves collection and retention of material whose value is questionable. For example, apprentice files contain questionnaire sheets which are extremely detailed and require information on color or race, relatives in the funeral business, wife's occupation and employment, father's occupation and church affiliation. Other materials contained in the apprentice files concern documentation of performance. Each apprentice is required to file 100 case reports on funeral tasks performed. Within 10 days of performing the task, a

notarized form has to be sent to the Board. Other states have worked out methods of combining all reports or requiring reports to be submitted at the time of examination, thus eliminating costs to the apprentice and reducing workload of the administrative staff of the licensing agency.

Periodic review of records retained or destroyed is not formalized and the use of the archival storage space has not been pursued. Processes required of state agencies in general, to determine the appropriateness of destruction of records, are not required to be followed by the Board, as it is outside the **State Treasury**.

Licensing

Procedures set up to process licenses work well and there are no ongoing backlogs which would point to deficiencies in the process. However, several procedures currently used by the Board could be made more efficient by following techniques used by other agencies in the area of licensing. One involves the Board's process of sending two licenses to an individual holding both an embalmer's and funeral director's license. Time and expense have been saved by other agencies in this regard by sending one license form with two numbers and the Board states that it is in the process of implementing this technique.

Another technique, not employed by the Board, has proved useful to another licensing agency and involves the mailing of licenses and renewal applications on one form, rather than the separate mailing of each of these documents. Under the single form, the licensee removes the application for renewal and returns it along with the required fee.

Annual Report

A great deal of staff time is devoted to the preparation of the annual report which currently is about 160 pages in length. The agency's enabling statute states:

"The Board shall make an annual report covering the work of the Board for the preceding fiscal year, and such report shall include:

1. An itemized account of money received and expended and the purpose therefor which has been duly certified by the State Auditor or a Certified Public Accountant;
2. The names of all duly licensed funeral directors, embalmers, and funeral establishments. A copy of this report shall be furnished each licensed funeral director and embalmer in this state."

Under current procedures, materials not required under statute are included while the requirement for audited figures is not observed. Savings in staff time and printing costs, and improved public accountability would result if the annual report were limited to statutory requirements.

Summary

Increased attention by agency personnel to the task of improving agency processes and procedures could result in considerable gains in the area of efficiency. Those procedures suggested by the State Auditor that have been implemented by the agency have resulted in increased efficiency and accountability. Improvements in the efficiency of some procedures have, on occasion, resulted from suggestions made by agency staff. However, the implementation of a broad policy for periodic procedural review could effect changes in all facets of agency activities, from streamlined filing and documentation policies to augmented agency financial resources by more attentive cash management. Given the Board's finite sources of funds from licensees and strict legal requirements that govern most aspects of its operations, the agency should expeditiously develop more economical and efficient ways of performing all tasks if the agency's viability is to be maintained.

Criterion 2

An identification of the objectives intended for the agency or advisory committee and the problem or need which the agency or advisory committee was intended to address, the extent to which the objectives have been achieved and any activities of the agency in addition to those granted by statute and the authority for these activities.

The review under this criterion centered on an identification of the agency's statutory objectives as they related to the perceived need and the extent to which agency methods used could reasonably be expected to achieve those objectives. Statutes were reviewed to determine if objectives described in the self-evaluation report presented an accurate reflection of statutory duties. Agency viewpoints were sought to provide additional clarification; and appropriate files, such as Board minutes, complaint files, and examination records, were reviewed to collect and verify selected data presented under this criterion.

The predecessor to the State Board of Morticians, the State Board of Embalming, was created in 1903. The original legislation was introduced by a member of the Senate Committee on Public Health. While records are sketchy, apparently one of the original aims was to protect the public health.

The original focus on public health may be compared with the present Board and its objectives, as set out in its self-evaluation report. Those objectives include:

- 1) To prescribe and maintain a standard of proficiency, character and qualifications of those who engage and may engage in the practice of funeral director or embalmer;
- 2) To determine the qualifications necessary to enable any person to lawfully practice as a funeral director, to embalm dead human bodies, and to collect fees therefor;

- 3) To examine all applicants for funeral directors' and embalmers' licenses and for apprenticeship licenses (registrations);
- 4) To issue the proper licenses to all persons qualified who meet requirements;
- 5) To conduct hearings, to revoke, suspend or place on probation any licensed funeral director, embalmer or apprentice who may be found guilty of any violation of provisions of the enabling legislation.

These objectives are carried out through the functions of administration, examination, licensing, and enforcement. These areas of operation present the framework for review of the objectives of the agency.

Administration

Two objectives relate to the administrative area of operations. These objectives are to prescribe and maintain a standard of proficiency, and to determine the qualifications necessary for a person to lawfully practice as a funeral director or embalmer. A survey of the program and activity measures of the agency indicated four measures that might be expected to help contribute to these objectives. These measures include number of apprentices, reciprocal permits, annual reports mailed and Board meetings. The objective of maintaining standards is peripherally addressed by reciprocal licensing and mailing annual reports. However, as mentioned in Criterion 1, some problems exist with the annual reports. Although not required, these reports reproduce the Board's statutes but do not include audited financial data which is required by said statutes. No measures exist regarding prescribing standards of proficiency, indicating a gap in current operations of the Board.

Examination

In the examination area of operation, the Board's objective is to examine all

applicants for funeral directors' and embalmers' licenses. The applicable measures are number of applicants for embalming licensing, number of funeral director applicants, and number of applicants' oral and practical examinations. The Board methods used in this area appear reasonable.

Even if methods are reasonable, they may not be effective. One test of the effectiveness or appropriateness of the exams given by an agency is the success rate, which would be expected to be neither too high nor too low. The success rates over the last three years of these Board examinations are as follows:

Funeral Directors:	99.9%
Embalmers:	89.5%
Oral and Practical:	99.5%

The above rates of success indicate that the funeral director **written examination** and both oral examinations and embalmer's practical examinations **do not** appear to be an effective mechanism to screen applicants. These results **are not** surprising, given the extensive apprenticeship program and the lack of **clearly defined** responsibilities of funeral directors. It would appear that the **funeral director examination**, both oral examinations, and the practical embalming **examination** could be eliminated, given successful completion of other **requirements**. Another possibility is the shortening of apprenticeship programs.

Licensing

In the licensing area of operation, the Board's **objective is to issue** the proper licenses to all qualified persons who meet **statutory and Board requirements**. The appropriate measures include number of embalmers, funeral directors, and establishments licensed; and the number of duplicate licenses issued. As noted in Criterion 1, operations in this area are good, although a few procedural changes might reduce costs in this area.

Enforcement

In the enforcement area of operation, the Board's objective is to conduct hearings, to revoke, suspend, or place on probation any licensed funeral director, embalmer or apprentice who may be found guilty of any violation of Section 3H of the enabling statute. Appropriate measures include: number of funeral home inspections, complaints received, investigations concerning complaints, formal hearings, licenses suspended or revoked, and licenses placed on probation.

Enforcement is extensively discussed in Criterion 6. From that discussion, it would appear that: 1) enforcement may not be effective from the consumer viewpoint and 2) Board policies and procedures in this area may require extensive modification.

Summary

A number of concerns, in addition to those discussed immediately above, exist in the area of effectiveness. Standards of proficiency are not a measurable part of Board activities. The written examinations for funeral directors, the oral examinations for funeral directors and embalmers and the practical examinations for embalmers do not appear to be effective methods to screen applicants.

Criterion 3

An assessment of less restrictive or other alternative methods of performing any regulation that the agency performs which could adequately protect the public.

The review under this criterion centered on analyses of the agency's regulatory functions in terms of: 1) changes over time in the restrictive nature of agency functions, as seen in the agency's statutory history; 2) significant effects of this regulation on the public and the industry; and 3) alternative methods of performing the agency's regulatory tasks. These analyses were obtained through the agency's self-evaluation report, literature concerning occupational licensing, and surveys of similar licensing functions in other states.

Since the legislative history of the Board began in 1903, a simple listing of legislative changes would be very voluminous. The legislative changes have been summarized and grouped into categories, as shown in Exhibit III-1. These categories: 1) entry into the occupation, 2) fees, 3) restrictions on practices of licensees, and 4) rules affecting Board practices, will also be used as the structure for the following analysis. Materials summarizing both legislative changes and less restrictive methods are included in exhibits presented on the following pages.

Entry into the Occupation

A number of restrictions on entry into the occupation exist (licensing would be expected to have this effect), although Texas is seldom located in an extreme position. Patterns and alternatives will be discussed below regarding reciprocity, apprenticeships, commercial establishments, etc.

EXHIBIT III-I
Summary of Legislative Changes

	<u>Licenses, Qualifications</u>	<u>Fees</u>	<u>Board Duties, Composition</u>	<u>Disciplinary Action Possible</u>
1903	Embalmer's license established. Examination on character, location of body organs, embalming, sanitation, disinfection of bodies and apartments. Written application.	\$5 embalmer license \$2 embalmer annual renewal.	<u>State Board of Embalming</u> 5 members, "practical embalmers", appointed by State Health Officer for 2-year terms; to prescribe standard of proficiency for licensees.	Revoke license for good and sufficient cause. Embalming without license punished by fines of \$50-\$100. Money to public school fund.
1915			Board required to publish annual report including roster, to be sent to all licensees. Lecturers and demonstrators could be hired to meet at TFDΛ conventions.	
1921		\$10 embalmer license \$ 5 embalmer renewal.		
1935	Funeral director's license established. Examination on moral character, knowledge of sanitation and disinfection of bodies and apartments. Written application.	\$5 funeral directors license \$5 funeral director's renewal -persons in good standing with Board exempted from fee.	Rotating Board with six members.	Revoke funeral director's licenses for good cause. Fines of \$25 to \$200 or 30-90 days imprisonment.
1939			Board appointed by Governor.	
1953	Funeral director's license requirements made more specific: H.S. diploma, 1 yr. apprenticeship, 75% score on written and oral examinations on disinfection, hygiene, professional law, business ethics, mortuary management, vital statistics laws. Embalmers license requirements: H.S. Diploma; 2 yr. apprenticeship: oral, written and practical examination on anatomy, chemistry, pathology, embalming, bacteriology, etc.	\$50 application (examination) fee for each type of license. \$7.50 renewal fees for each license.	Name to <u>State Board of Morticians</u> ; Board members required to have 10 years of experience; Board authorized to inspect establishments; Board receives per diem and travel expenses; all funeral homes required to be open at all times.	Revoke, suspend, probate, refuse to issue, refuse to renew license for unspecified violations.

EXHIBIT III-I
(Cont.)

<u>Year</u>	<u>Licenses, Qualifications</u>	<u>Fees</u>	<u>Board Duties, Composition</u>	<u>Disciplinary Action Possible</u>
1963	<p><u>Funeral director</u> license examination requirements expanded to include art of funeral directing, manner of determining death, etc.</p> <p><u>Embalmer</u> license examination requirements expanded to cover restorative art, special types of embalming, etc.</p> <p><u>Apprentice Embalmer</u> requirements established - 19 yrs old, 24 mos. apprenticeship. Embalm and report on 100 bodies</p> <p><u>Apprentice funeral director</u> requirements - 19 yrs. old, 12 mos. apprenticeship, 100 bodies prepared other than by embalming</p> <p><u>Reciprocal license requirements</u> 3 yrs. experience in state with equal requirements, certification from other state, temporary permit.</p> <p><u>Establishment licenses</u> requirements for facilities, rolling stock, personnel set out.</p>	<p>\$10 maximum apprentice registration fee established</p> <p>\$10 apprentice renewal</p> <p>\$10 duplicate license fee</p> <p>\$100 reciprocal license</p> <p>\$25 establishment renewal</p> <p>\$100 establishment license</p> <p>\$10 penalty fees - licensees plus delinquent fees</p> <p>\$10 penalty fees - apprentices, plus delinquent fees</p> <p>\$100 license renewal fee.</p>		<p>16 violations set out for which disciplinary action may be taken. Fines from \$50-\$500. Imprisonment for up to 30 days.</p>
1969	<p>Required test scores reduced to 70% from 75%.</p>			
1971	<p>Embalmer apprentice age lowered to 18.</p>	<p>\$250 Maximum establishment fee.</p> <p>\$50 maximum establishment renewal.</p>		<p>4 additional violations added for licensees. 5 violations for establishment stated.</p>
1977				<p>Fines of \$200 - \$1,000 to be ordered by Board and deposited in General Revenue Fund.</p>

Among all types of licensing, requirements for reciprocal licensing vary most in the 50 states. In Texas, the State Board will consider applications only from persons who have been licensed for at least three years in another state that maintains licensing requirements equal to or greater than Texas. The process of applying for reciprocal licenses in Texas is costly and complex. An individual seeking reciprocity must appear before the Board, located in Austin. If the Board is satisfied with the applicant's previous licensure, a temporary one-year permit is granted. While holding this permit, the individual must send monthly reports to the Board, listing the funeral services performed. At the end of the one-year period, the person again appears and, at the Board's discretion, a full Texas license may be granted on payment of a \$100 fee for each category of licensure.

Applicants for reciprocity from states which do not issue funeral director licenses, issue them to funeral home owners only, or issue one license to cover both occupations, will face greater difficulty in dealing with reciprocity provisions in Texas.

Unlike the majority of states, Texas does not recognize the Conference of Funeral Service Examining Boards' national examination as proof of competence of licensure. Neither does it allow, as do other states, for familiarity with state law to be demonstrated by a short quiz on the subject. However, for students in Texas who will be practicing out of state, the national examination is given by mortuary colleges as an aid to reciprocity.

Texas is among the majority of states requiring 12 months of mortuary schooling. If the assumption is granted that the mandated subjects are necessary to learn the techniques of embalming, the time required appears reasonable.

The apprenticeship requirements in Texas may hinder labor mobility into the occupation. Most states require only one year of apprenticeship to supplement mortuary education, and many have apprenticeships that combine funeral directing and embalming. Texas, however, requires a two-year apprenticeship for embalming and has two separate apprenticeships.

Furthermore, Texas has imposed strict requirements that embalming apprenticeships be served in either two periods of 12 consecutive months, or a single 24-month period. If the apprenticeship is broken for other than a medical or other compelling reason, it is resumed from the beginning. Texas does not allow for part-time apprenticeships providing only 20 hours of work per week, as permitted elsewhere. On the apprentice interviews, attending any school is viewed as a "detraction", and the apprentice may not attend mortuary science classes during the apprenticeship.

Texas is outside the norm in another area in the reporting of services during the apprenticeship. A majority of states require reports on 25 bodies to be prepared during the apprenticeship. The reports may be presented at the time of the examination as a condition to being tested. In Texas, 100 bodies are reported upon, in notarized statements, within 10 days of performing services.

The pattern has been toward less restrictive regulations in commercial embalming. There are 11 such establishments in Texas . They are exempted from displaying five caskets and maintaining a chapel on the premises, services that other funeral homes must provide. However, there has been no effort to remove the converse type of requirements that embalming facilities in Texas be present in every chapel, which could lower the costs of entry into and operation of the funeral

industry.

Fees

Because of the number and type of licensees, comparisons of fees rapidly become very complex. The reader may refer to Exhibit III-2 to the Embalmers' Section, numbers 10 and 11, and Funeral Directors' Section, numbers 2 and 3. Comparatively, Texas has higher examination license fees and lower renewal fees than most states which license embalmers. For funeral directors, Texas again has higher examination fees and lower renewal fees than most. In these areas no undue restrictions appear to exist. The establishment fee of \$250 and the reciprocity fee of \$100 may or may not be comparable to other states. Data in these areas are less extensive than for funeral directors and embalmers. No judgment is made.

In summary, a number of regulations in Texas appear more restrictive to entry into the occupation than those in other states.

EXHIBIT III-2

Funeral Directors' and Embalmers' Licensing Rules and Regulations

This information is taken from data supplied by the Southern Funeral Director, 1977. An asterisk (*) indicates that Texas is included in the total given. Figures given show total number of states with the indicated requirements. The District of Columbia is also included.

Embalmers

1. Minimum Age for Licensure

$\frac{18}{25}$

$\frac{19}{1}$

$\frac{21}{23^*}$

$\frac{\text{None}}{2}$

2. Requirement for diploma from Accredited School for Licensure

$\frac{\text{No}}{5}$

$\frac{\text{Yes}}{46^*}$

3. Length of Embalming Course Required

$\frac{9 \text{ Mos.}}{10}$

$\frac{12 \text{ Mos}}{38^*}$

$\frac{\text{NA}}{1}$

Other: Florida - requires one year apprenticeship with mortuary college degree, three-year apprenticeship with only one year embalming college.

Hawaii - licensure requires one of the following: a) five-years practical experience, b) two-years practical experience and completion of high school, c) one-year practical experience and graduation from a recognized school of embalming.

4. Pre-embalming School Educational Requirements

<u>High School Completion</u> 22*	<u>30 hrs. College</u> 1	<u>60 hrs. College</u> 1
<u>1 yr. College</u> 4	<u>2 Yr. College</u> 19	<u>None Specified</u> 2

5. Required Apprenticeship

<u>3/4 Yr.</u> 1	<u>1 Yr.</u> 28	<u>2 Yrs.</u> 19*	<u>3 Yrs.</u> 1
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Others: New Jersey: - three-years with one-year mortuary college.

Tennessee: - one-year apprenticeship with nine-months course work; or nine months apprenticeship with one-year course work.

6. Location in which Apprenticeship Must be Served

<u>May be Out-of-State</u> 6	<u>In-State</u> 44*
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Others: Five require that apprenticeship be served under a licensee of the state or district that will be issuing the license.

7. Apprentice Must Register With State Board

<u>No</u> 0	<u>Yes</u> 51*
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8. Number of Bodies Required to be Embalmed Before License Issued

20	25	30	50	60	75	100	NA
1	26	1	10	1	1	3*	7

Note: Texas is the extreme of the continuum.

9. Number of Times Examinations Given Per Year

$\frac{\text{Optional}}{1}$	$\frac{4}{5}$	$\frac{3}{1}$	$\frac{2}{36^*}$	$\frac{1}{6}$	$\frac{\text{NA}}{2}$
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10. Fee for License Examination

$\frac{\$10}{3}$	$\frac{\$11}{1}$	$\frac{\$20}{2}$	$\frac{\$25}{13^*}$	$\frac{\$30}{2}$	$\frac{\$32.50}{1}$	$\frac{\$35}{1}$	$\frac{\$40}{3}$
$\frac{\$50}{15}$	$\frac{\$70}{1}$	$\frac{\$75}{2}$	$\frac{\$100}{1}$				

Note: Texas has since raised its fees to \$50 per examination.

11. Embalmers' License Renewal Fee

$\frac{\$5}{8}$	$\frac{\$6}{2^*}$	$\frac{\$7.50}{2}$	$\frac{\$10}{14}$	$\frac{\$15}{6}$	$\frac{\$18}{1}$	$\frac{\$20}{4}$	$\frac{\$25}{7}$
$\frac{\$30}{1}$	$\frac{\$35}{1}$	$\frac{\$50}{1}$					

Note: Texas has now raised its fee to \$10.

12. Acceptance of Conference National Board Examination

$\frac{\text{Yes}}{32}$	$\frac{\text{No}}{18^*}$	$\frac{\text{NA}}{1}$
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13. Residency of Apprentice

$\frac{\text{Not Required to be State Resident}}{14}$	$\frac{\text{Must be Resident}}{36^*}$	$\frac{\text{NA}}{1}$
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Funeral Directors

1. License Required

$\frac{\text{No}}{5}$	$\frac{\text{Yes}}{46^*}$
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Note: Five of the states listed under "yes" indicated that they have a single combination license covering both embalming and funeral directing.

2. Examination Fees are the same as for embalmers with the following exceptions:

<u>State</u>	<u>Funeral Director</u>	<u>Embalmer</u>
Alaska	NA	NA
Connecticut	150	40
Delaware	0	75
Washington D.C.	0	10
Hawaii	NA	25
Indiana: Persons now licensed as funeral directors may continue to practice, but no new licenses issued.		
Minnesota	25	50
Mississippi	NA	50
Montana	NA	50
New Mexico	50	25
North Dakota	NA	NA
Ohio	25	50
S. Dakota	NA	25
Vermont	25	25
Virginia	35	20

3. Renewal fees are the same as for embalmers' licenses with the following exceptions:

<u>State</u>	<u>Funeral Director</u>	<u>Embalmer</u>
Alaska	\$ NA	\$ NA
Arizona	25	5
California	150	50
Connecticut	100	10
Florida	35	25
Hawaii	NA	10
Iowa	5	10
Kansas	35	20
Massachusetts	20	10
Mississippi	0	5
Montana	10	15
New Mexico	50	20
New York	15	7.50
North Dakota	10	25
Oklahoma	10	7.50
Pennsylvania	20	0
Rhode Island	20	10

Note: In some states only funeral home owners are eligible to have funeral director licenses. This may account for the higher fees for this category of license in some states.

4. Minimum Age for Licensure

$\frac{17}{1}$ (Apprentice)	$\frac{18}{21}$	$\frac{20}{1}$	$\frac{21}{22^*}$	$\frac{NA}{6}$
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5. Residency of Apprentice

<u>May be Out-of-State</u> 12	<u>Must be Resident</u> 30*	$\frac{NA}{9}$
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6. Licensure of Funeral Establishments

$\frac{No}{10}$	$\frac{Yes}{40^*}$	$\frac{NA}{7}$
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7. Reciprocal Arrangements

<u>Will Reciprocate with States with Similar or Equal Requirements</u> 28*	<u>Specific Conditions Apply</u> 4	<u>No Arrangements</u> 7
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Others: "Courtesy card" arrangements with adjacent states are used by three states and D.C.

- Six states reciprocate only with specified other states.

- Two states reciprocate only with states that reciprocate back.

Restrictions on Practices of Licensees

As illustrated previously, a number of barriers to entry have been applied to the occupations of embalmers and funeral directors. Few requirements have been established regarding the actual delivery of services or prices charged for them.

The Board's enabling statute does include a number of prohibitions. **Non-licensed** personnel may not pick up bodies on first call. Soliciting business is **prohibited** for any person connected with a funeral home, except in connection with a **pre-need** permit issued by the State Banking Department. Licensees are **not permitted** to mislead the public or behave in a manner that offends popular **mores**. **Other**, more trivial practices, such as swearing in the presence of a body, are **also prohibited**.

The tasks performed by funeral directors are especially difficult to regulate. Funeral directors are required only to supervise final disposition, and may, like

embalmers, pick up bodies on first call and sign certificates of death. Therefore, the actual making of funeral arrangements and much of the non-embalming preparation may legally be done by non-licensed personnel.

No periodic review or proof of skills is required of licensees. In fact, once licensed, individuals may theoretically never practice their trades, or may practice after long periods of inactivity. Preliminary calculations of results of the staff's random survey of some 600 licensees currently residing in Texas show that nearly one-third of those responding are not actively practicing their licensed occupations. This situation is encouraged by strict Board requirements and financial penalties for reentry into the occupation after a lapse in licensure. To reenter the profession requires a payment equal to double that which would have been paid if the license had been maintained. (Apparently, the authority is a provision of the act which states: "When a licensee under this act shall fail to pay his annual registration fee, it shall be the duty of the Board to notify such licensee at his last known address that his annual registration fee is due and unpaid and that a penalty equal to the amount of the registration fee has been added.") One recent example required \$180 in fees, exclusive of any examination fees to be paid for relicensing. Additionally, an oral examination for funeral directors, and an oral and practical examination for embalmers must be passed if the license has been lapsed more than five years.

While they are not a part of the Agency's statutes, regulations concerning the disposition of dead human bodies currently restrict the actions of licensees and limit choices open to the families of deceased persons. These laws require embalming or refrigeration within 24 hours of death, prohibit the transportation of unembalmed dead bodies and of bodies not properly encased, and do not allow cremation until 48 hours after death except in special circumstances. All of these

are Health Department laws or rules except the last, which is a part of the Code of Criminal Procedure.

There is some question regarding the need for a law requiring embalming. Officials in the Health Department, Bureau of Communicable Disease Services, after consultation with the national Center for Disease Control, report that:

Within the United States embalming has no public health significance. There is no known contemporary record of disease being transmitted in this country by unembalmed human remains. Embalming with formalin solutions would destroy most bacteriologic and some viral agents. However, embalming would not alter the communicability of smallpox or some other viral agents present on or in the cadaver. Certain viral diseases as well as smallpox might be transmitted by human remains, but the danger to embalmers would be of much greater public concern than any other consideration. Happily, such diseases are not prevalent in this country.

In other states such laws are not as strict as in Texas. Embalming is required in the case of communicable or pestilential diseases in several states. In at least one state, a body kept in "a sound shipping case" is considered to be embalmed for purposes of the law. In another state, embalming or encasing of the body in a hermetically sealed casket is required for transportation by common carrier only if death was caused by certain stated communicable diseases. In nine states, embalming is apparently not required by state law under any circumstances. Transportation out of state is elsewhere governed solely by laws in effect in states through which the body will be transported.

Regulations for funeral establishments, once they are licensed, are **not as restrictive** as for individuals. Inspections are made by Board field representatives **on a** schedule approximating once a year. Checking the cleanliness of **the preparation room**, ensuring five caskets are on display, and verifying existence of **a chapel** comprises most of the objective inspection. Operational procedures, **prices, etc.**, are outside the jurisdiction of the Board.

Rules Affecting Board Procedures

Most restrictions on the Board involve posting of notice, holding open meetings, and publishing annual reports, plus the other requirements incumbent upon all boards. These restrictions generally are designed to help ensure public accountability, but they do serve to restrict Board operations.

As a general summary, most restrictions exist in the area of entry into the occupation. While the other areas have restrictions, they are less severe and less numerous.

Since a laboratory setting is not available, the impact of the restrictions is not clear. However, one concise theoretical statement of occupational licensing as stated by Sidney L. Carroll and Robert J. Gaston in Occupational Licenses is cited below:

Analytically, each restrictive device has the effect of reducing the supply of trained labor. The initial impact of the reduced labor supply is to put upward pressure on the cost to consumers of employing licensed labor and at the same time to reduce the amount of such labor that is available in the market. Secondary effects include: An income redistribution from consumers to those possessing a license, smaller quantity of services received by consumers from those possessing a license, an excess supply of persons who would like to enter the occupation, encouragement of illegal markets and unequal returns between practitioners depending upon their pre- or post-restrictiveness entry into the occupation.

Another unique economic fact of the funeral industry is that demand for the services it produces is inelastic in terms of price. That means that price of funerals has little impact on the demand for funerals. Only a fixed number of persons will die each year, and given current mores, most will receive funerals, regardless of cost considerations.

This provides an interesting paradox for the person in the industry. If price competition is vigorously pursued, more products can be sold. However, the decrease in price will not be offset by a greater increase in quality: total revenue

will drop. Moreover, in the long run, advertising cannot be expected to provide more clients because the demand in the market area cannot be increased. Therefore the reduction in immediate revenue cannot be offset at a later date.

A logical producer in the funeral industry would soon be expected to come to the realization that price competition in the industry is not in the producer's self interest. Before price competition could be eliminated, three requirements would logically follow: 1) effective barriers to entry into the market would have to be erected; 2) some mechanism would have to be set in place to ensure that division of market shares would remain relatively stable; and 3) competition could occur in areas other than price.

Thus the present practices in the funeral industry and of the Board may be put in a theoretical perspective. Technological advances have made the need for embalming questionable. Even if the need is accepted, because of other technological advances the number of funeral homes currently operating is far in excess of the number required for efficient operation. Yet the industry remains profitable. This theoretical argument may be persuasive for explaining restrictions.

Summary

Restrictions on the actual practice of funeral personnel and establishments following licensure are not extensive. Most restrictions come from Health Department regulations concerning the disposition and transportation of corpses, although the need for embalming laws to protect the public health is not clear.

Criterion 4

The extent to which the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies and the extent to which the programs administered by the agency can be consolidated with the programs of other state agencies.

The review of this criterion was directed at evaluation of the agency's definition of its target population. The existence of other similar populations was explored and the extent of any overlap and duplication of services offered was analyzed. When it was applicable, the review also dealt with any efforts to establish coordinative relationships between agencies serving similar target groups and to minimize any duplication of services. This information was collected in discussions with agency personnel, review of statutes and rules and the identification of other agencies with the potential ability to offer these services.

The most significant of those agencies with overlapping regulatory influence with the Board of Morticians are the Department of Banking, Attorney General's Office and the Health Department. A review of the extent and nature of this overlap should help delineate any areas where Board activities are unique.

The Department of Banking regulates perpetual care cemeteries and prepaid funeral contracts. Included in Department activities are audit examinations, handling of complaints dealing with financial management, and monitoring of financial accountability. Approximately 450 funeral homes in Texas currently hold permits to sell prepaid funeral contracts and there are approximately 200 perpetual care cemeteries in Texas.

The Consumer Complaint Division of the Attorney General's Office receives complaint referrals submitted to the division by the State Board of Morticians on matters outside the Board's jurisdiction. Generally, complaints which the Board's present enabling statute do not address include the topics of prices of services and quality of embalming and other services received. The Board reports that it refers four to five such cases each year to this agency.

While the Department of Banking regulates some limited financial aspects of some funeral homes, and the Attorney General performs a limited amount of complaint handling, the Department of Health regulates other areas that are of concern to the entire funeral industry. According to Rule 38a, Art. 4477, V.A.C.S., "the State Department of Health shall regulate the disposal, transportation, interment, and disinterment of dead bodies to such extent as may be reasonable and necessary for the protection of the public health and safety." Regulations promulgated by the Department concerning Rule 38a are contained in the Texas Vital Statistics Manual for Funeral Homes. Under these regulations all licensed funeral home directors and embalmers are required to register with the local registrar in the vital statistics districts in which they practice, and to file reports on cases handled with the local registrar.

These reports include a "Report of Death" which must be filed with the local registrar within 24 hours of death. Within five days of death, a more detailed "Certificate of Death" must be filed. Additionally, a "Burial-Transit Permit" must be obtained from the local registrar if the body is to be transported out of state, moved by common carrier or cremated.

Transportation, disposition (including embalming), and cremation of bodies are also treated in detail in Health Department regulations.

The Health Department's Rule 38a does not directly address individual qualification for licensure; however, Health Department standards for performance of specific functions by funeral directors and embalmers are comprehensive enough to affect that performance.

While the Department of Health generally regulates performance after licensing, the Board of Morticians is charged with the responsibility of assessing individual qualifications for licensure. Specifically, this includes the areas of licensing, examination, and enforcement. The Board, by law composed of licensed funeral directors and embalmers, should provide any special expertise needed in regulation of the funeral industry. A detailed analysis of those areas requiring some special expertise or knowledge should give some indication of the feasibility of allowing the Department of Health to assume specific functions of the Board.

Licensing

In the area of licensing there are three functions which may require the special expertise of a funeral director or embalmer. These functions are: developing standards of proficiency, supervision of apprentices, and approval of college courses of instruction.

Standards of proficiency have been specified by statute and little or no Board attention is focused there; it would appear that further major developments by the Board may be unnecessary. Thus, the need for special expertise in this function would appear to be minimal.

The second function which might require special expertise, that of supervision of apprentices, theoretically could become quite involved. Section 3D of Art. 4582b, V.A.C.S., states, "it shall be the duty of the Board to prescribe and supervise

the courses of instruction received by an apprentice while serving his or her apprenticeship. . . ." To date the Board has not prescribed a course of instruction for completion of an apprenticeship. The Board, however, does perform a desk audit to ensure that each apprentice has submitted necessary reports indicating he or she has assisted in the preparation of 100 bodies as required for completion of the apprenticeship. No special expertise is required to perform this function.

The third function that might require special expertise is the approval of college courses of instruction on mortuary science. In the past the Board has delegated this function to national college accrediting organizations. Currently, the Board reports that it is in the process of adopting standards of accreditation for mortuary science colleges. This effort would appear to be duplicative and unnecessary since all state mortuary colleges are currently nationally accredited. National accreditation has the additional benefit of facilitating reciprocity. It would seem that national accreditation standards could be used, without a great deal of modification, by any state agency regulating the funeral industry without any special knowledge required.

Examination

In the area of examinations, some special expertise might be required to administer and grade the Board's written, oral, and practical examinations. Embalmers and funeral directors receive different examinations. A written and oral examination is required for funeral directors after they complete mortuary college requirements. Written, oral and practical examinations are required for embalmers. In the past, tests relating to embalming have been purchased from the National Board of Funeral Service Education and the State Board has developed its own funeral director's examination. The Board is currently developing its own embalming examination, although students interested in out-of-state practice may

choose to take the national examination that is offered at mortuary colleges to more easily comply with reciprocity requirements in other states.

Development of the embalmer's written examination, particularly specific technical portions, requires some special expertise. A national examination may be purchased which spans these technical areas and also assists the person taking the examination to comply with reciprocity requirements of other states. If a determination is made that a locally prepared embalmer's examination or a state supplement to the national examination is better suited to Texas' needs, special expertise would be required, but it could be obtained through contract for services.

The funeral director's examination is required by statute to cover topics including detection of signs of death, sanitation, and hygiene. The Health Department can reasonably be expected to possess any necessary expertise in these areas. Thus the Board's special expertise is not required for a large part of the funeral director's written examination.

The oral examinations appear to be used to determine motivation and suitability for embalming or funeral directing. If either area were susceptible to objective analysis, written examinations would likely be used to make such determinations. Efforts to evaluate the need for special expertise are likewise hampered by the subjective nature of motivation and suitability, and no judgment is made here. However, it may be pointed out that the oral examination is only 10 percent of the final grade for both funeral directors and embalmers and over 99 percent of those taking the exam pass it. Oral examinations might be deleted as only marginally important in the present grading system.

The practical examination, given only to embalmers, counts as 10 percent of the entire grade for that group's examination. While the examination is designed to

test practical embalming skills, perhaps a more thorough approach would be to evaluate performance of these skills during the training period. Currently, during the two-year apprenticeship 100 bodies must be embalmed, including 10 without assistance.

The final area in which specific expertise might be required is in the Board's investigation and enforcement activities. A readily apparent example of a case in which specific expertise might be required is investigating and hearing complaints about quality of embalming. However, as currently administered, the present statute usually does not allow the agency to act on these complaints. Complaints about quality of service or pricing activities are considered inappropriate for formal action by the Board. A small number of such complaints are currently referred to the Attorney General's office. Should the Board be combined into the Health Department, that process could continue. Complaints most likely to result in Board action relate to solicitation. The definition of this term may be so vague in the law as to require special expertise to interpret it. However, a better alternative is to modify the law so that it is clearly understandable to all licensees and consumers.

The Health Department currently operates a Bureau of Licensing and Certification which provides the services of licensing, examination, and inspection. Should the Board's present functions be transferred to the Health Department, persons currently on the Department's staff could perform the general functions performed by the Board. To assist transition, the current Board staff could be placed on consultant contracts with the Health Department for a one-year period. Then, if the personnel were required, and if mutually agreeable, the Health Department could exercise an option to hire Board staff.

In summary, an analysis and review of Board activities and functions indicate that the Board regulates a group of persons also regulated by the Health Department. The general functions of licensing, administration, examination, and enforcement which are performed by the Board are also performed by the Health Department. Alternative methods to acquire special expertise currently provided by the Board are probably available.

Criterion 5

Whether the agency has recommended to the legislature statutory changes calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates.

The review under this criterion centered on statutory changes which affect the operations of the agency. In the period covering the last two legislative sessions, the review focused on both proposed and adopted changes in the law; prior to that period, the staff review was limited to only adopted changes. In analyzing these changes, the approach was taken that a statutory modification must be of clear benefit to the state's citizens to be considered to be in the interest of the public.

Board Position in Relation to Legislative Involvement

In response to a question related to Board-initiated legislation, the following has been submitted:

The Board has not taken a position in the last two legislative sessions in proposed legislation that would affect the Board's operations because we do not feel it is proper to participate in the passage of legislation that the Board would enforce. The Board has not actually participated in the drafting of bills that would affect their operations but has informed the industry of what it considers to be a weakness in the law, such as the lack of fines. The State Board of Morticians has not sought input from outside source (sic) in regard to taking a stand on proposed legislation for the reason stated in the first part of this question. The Board considers its statutory authority to be administrative, not legislative.

It is difficult to determine the Board's compliance with the above statement. Clear examination of the Board's involvement is hampered by the fact that the Board's attorney also represents a trade association, the Texas Funeral Director's

Association (TFDA). The attorney is a registered lobbyist for TFDA and represents that trade association at legislative hearings. In addition, a 1977 spring edition of the Texas Director, TFDA's magazine, reported that "TFDA and the State Board of Morticians appeared in support of the bill (H.B. 899)." A review of legislative changes since the Board's inception (1903) may help resolve this matter.

History of Beneficial Changes

Consumer Aids. In 1903, notices of all Board meetings were required to be printed in newspapers in at least three different cities of the state. In 1963, all records of the agency were declared to be open to the public during regular office hours. Legislation in 1971 barred from licensure any person convicted of fraud or other similar deception of the public. Benefits to many citizens may be possible through legislation passed in 1977. This action allows embalmers in addition to licensed or supervised medical personnel to enucleate eyes of deceased persons for use by the blind.

License revocation powers were expanded in 1963 to benefit the public. Licenses can be revoked for refusing to "promptly surrender a dead human body upon the express order of a person in lawful authority therefor ..." (Article 4582b, Section 3, H. 11).

General Revenue Additions

An amendment made in 1977 has an indirect impact on citizens of the state. Fines levied by the Board against licensees are deposited in the General Revenue Fund rather than to the Board's fund outside the State Treasury.

Actions During Sixty-fourth and Sixty-fifth Legislative Sessions

The proposed and adopted legislation directly affecting the funeral industry during the Sixty-fourth and Sixty-fifth sessions are presented below. Positions taken by TFDA, as determined from their publications and from interviews with

their executive director, are presented in parentheses.

- H.B. 1325 - Sixty-fourth Legislative Session. Passed
Amended the Code of Criminal Procedure to prohibit cremation until 48 hours after death, except in special cases.
(TFDA in support).
- H.B. 2033 - Sixty-fifth Legislative Session. Failed of Enactment
Related to mandatory disclosure of certain funeral service and merchandise costs, both at-need and pre-need.
(TFDA in opposition).
- H.B. 899 - Sixty-fifth Legislative Session. Passed
Imposes monetary fines on funeral homes, funeral directors and embalmers for unlawful practices.
(TFDA in support).

Summary

Several pieces of legislation beneficial to the public in relation to the funeral industry have passed since 1903. The Board maintains their function is "administrative, not legislative", therefore they make no efforts to help or hinder legislative actions. The Board's involvement cannot be determined. The close ties between the Board and TFDA do raise other issues which need to be addressed.

Criterion 6

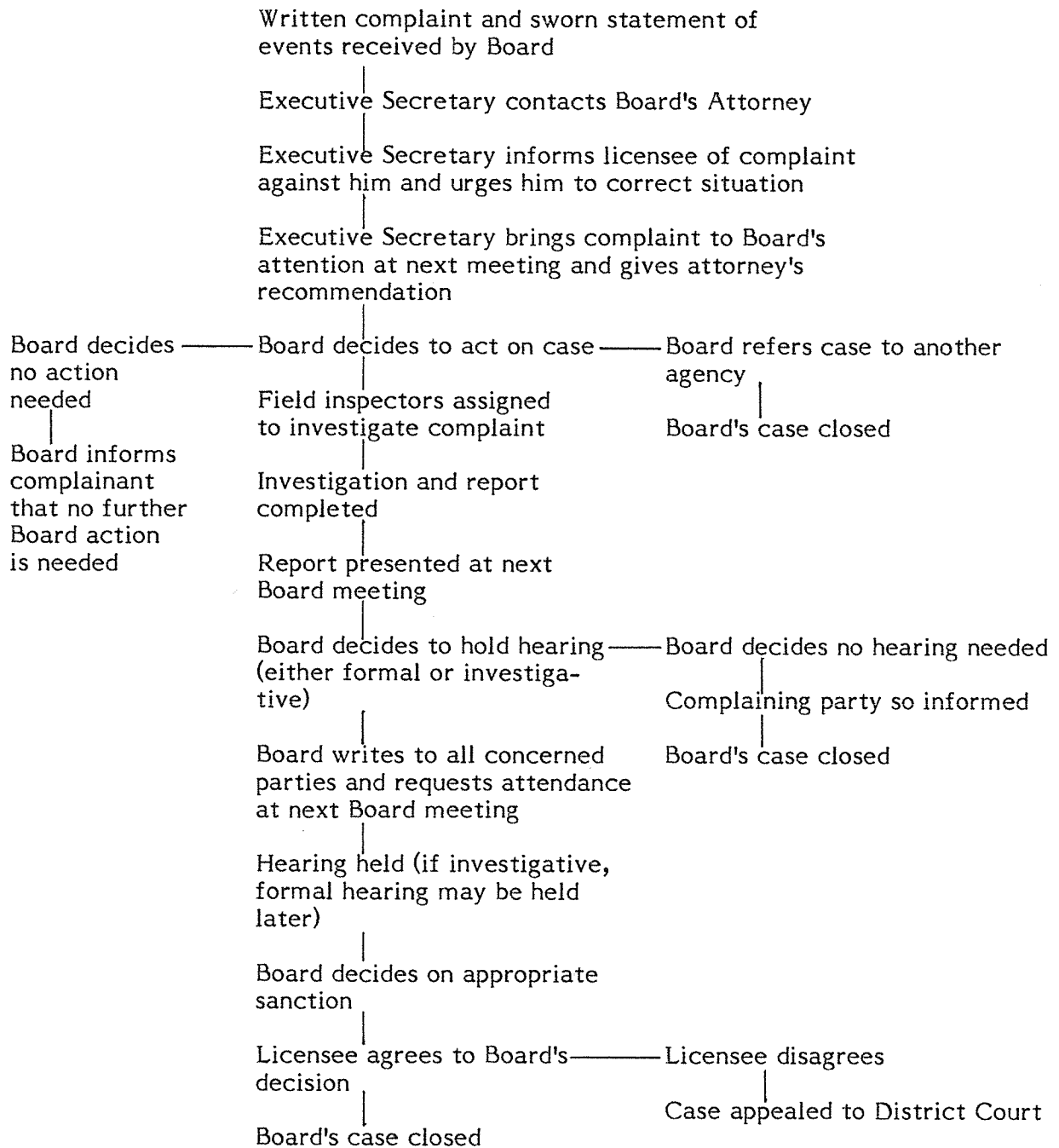
The promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The review under this criterion centered on: 1) an identification of the type and frequency of complaints received by the agency, 2) the adequacy of administrative procedures used to process these complaints, and 3) the appropriateness and patterns of actions taken to address the complaints. Information for the review was obtained by interviewing agency staff, examining complaint files and information supplied by the agency on complaints, and analyzing data presented in the agency's Self-Evaluation Report. For clarity of explanation, the administrative procedures are described first and are followed by an analysis of types and patterns of complaints and actions on complaints.

Procedures for Handling Complaints

The procedure for handling complaints received by the Board is diagrammed in Exhibit VI-1.

EXHIBIT VI-1



Personnel and Their Functions

As shown in this chart, the coordinator of complaint investigations is the Executive Secretary. The Executive Secretary maintains all files on complaints, presents both oral and written information to Board members at several steps in the process, is responsible for all correspondence relative to complaints, and oversees investigations of complaints. Because the agency has developed no written procedural requirements for investigating and documenting evidence, the Executive Secretary's constant attention is needed to ensure thorough and objective investigations, proper documentation and maintenance of complaint files.

The performance of the last task has not been accomplished in a consistently vigilant manner. One reason for conflicting figures on the number of complaints received, as shown in Exhibit VI-2, appears to be the absence of an effective and consistent filing procedure. Many files are incomplete. In many instances it is difficult or impossible to determine from documents maintained whether the Board has corresponded with the complainant or the complaining party, whether an investigation has been started or completed, or whether the Board has taken final action on a case. Complete working files on complaints would be useful to the agency head as a management tool in setting performance goals and developing time schedules. These files could also assist the Board in developing a consistent procedure for processing complaints and dealing with violators.

A second person crucial to proper handling of complaints and hearings is the Board attorney. Members of the Board and the Executive Secretary rely heavily on the attorney for advice on all facets of the complaint process. Board minutes reflect an active participation by legal counsel in discussions of complaints and sanctions. The attorney also occasionally takes part in correspondence with complaining parties. Records in Board minutes show that on several occasions the

Board's counsel took an active role in suggesting the degree of sanction that should be imposed by the Board.

The Board's current attorney also acts as a lobbyist for the industry's largest trade association. It would appear somewhat difficult to maintain an objective perspective while he fills the role of legal advisor in resolution of disputes brought before the Board and acts as a lobbyist for the trade association.

The third important category of personnel activity is performed by the field representatives. The two individuals holding this position investigate complaints with minimal supervision. This function is occasionally performed by the Executive Secretary.

While procedures understandably vary from case to case, some similarities in investigative procedure are evident. Generally, the first step in an investigation is to obtain a copy of the deceased person's death certificate. Field investigators then interview the complaining party and the party complained against and obtain sworn statements on the facts in the case from all concerned if statements are not already on file in the Board's office. As various avenues of investigation appear useful, investigators follow them until they are sufficiently satisfied with the material to prepare a written report for the Board.

Reports vary in length from 1-5 pages. In addition to an account of the facts involved and a recitation of discussions with parties to the complaints, the reports frequently contain material on the nature of relationships among funeral directors in the area, character judgments, opinions, and recommendations for future action by the Board. Use of character judgments, opinions, and recommendations is questionable and becomes more questionable since there is a marked difference in disposition of complaints from consumers and from the industry.

Types and Frequency of Complaints Received By the Agency

Several sources of information were available on the number of complaints received annually. These sources were agency files, responses to two separate criteria in the Board's self-evaluation report, data provided to the staff in a letter to answer specific questions on complaints, and data contained in Board minutes. A review of Exhibit VI-2 reveals sharp discrepancies in figures drawn from formal sources for the past three years.

EXHIBIT VI-2
Number of Complaints Received Annually

	<u>Reported in Self-Evaluation Criterion 2</u>	<u>Reported in Self-Evaluation Criterion 6</u>	<u>Reported in** Letter to SAC Staff</u>	<u>Reported in** Board Minutes</u>
1975	15	20	12	20
1976	22	22	14	30
1977	25	31	28	40

Provided in more detail in **Exhibit VI-3.

The absence of standardized reporting and the amount of documentation not located in complaint files probably accounts for the discrepancies in these figures.

The incomplete nature of material maintained in agency complaint files makes a complete, thorough analysis of specific complaints impossible. The bulk of the analysis of the material presented in this section stems from material provided to the staff in the letter from the Board (See Column 3 of Exhibit VI-3).

Many complaints described in the Board's letter to commission staff were on solicitation. (As described by the Board, this offense involves solicitation of business from a bereaved family at or near the time of death and does not embrace "normal" business advertising.) One-third of complaints received in 1975 concerned this violation. In 1976, solicitation or operating with a felony conviction on the

EXHIBIT VI-3

Type of Complaint	1975		1976		1977	
	From Agency Letter to Staff	From Board Minutes & Letter	From Agency Letter to Staff	From Board Minutes & Letter	From Agency Letter to Staff	From Board Minutes & Letter
Solicitation	4	6	3	4	5	5
Mishandling, misunderstanding over money	0	0	1	1	6	7
Conviction of felony or misdemeanor involving moral turpitude	0	1	3	5	3	3
Fraud	2	2	1	1	0	0
False advertising	1	2	0	0	1	4
Misconduct/unethical conduct	1	2	0	0	1	1
Funeral directing without a license	0	0	1	2	3	4
Body shipped without embalming	1	0	0	0	0	0
Establishment violations	1	1	0	0	2	3
Dissatisfaction with services	1	1	1	1	3	3
Negligence	0	0	1	1	0	0
Refusal to release body and property	0	0	2	2	1	1
Failure to file proper documents	0	0	0	1	1	1
Falsifying documents	0	0	1	1	1	1
Failure to release information	0	0	0	0	1	1
Violator not accepting Board decision	1	1	0	1	0	0
Unclear from records	0	4	0	10	0	6
TOTAL	12	20	14	30	28	40

licensees' record (the penalty is license revocation) formed the bulk of complaints. Opening of complaints in the latter category was usually by the State Board. In 1977, complaints fell into one of two major areas -- either solicitation or mishandling of, or misunderstandings on, the use of money.

Board Action

Action taken on cases identified in the letter to staff in Exhibit VI-3 is detailed below:

EXHIBIT VI-4

<u>Type of Complainant</u>		<u>Action By Board</u>			<u>Referral</u> ⁶	
<u>1975</u>	Total	None ³	Reprimand ⁴	Formal Sanction ⁵	Yes	No
Consumer ¹	4	4	0	0	1	3
Licensee ²	8	4	2	2 (1 pending)	0	8
<u>1976</u>						
Consumer ¹	7	7	0	0	1	6
Licensee ²	7	2	1	4	0	7
<u>1977</u>						
Consumer ¹	16	14 (1 pending)	1	1	7	9
Licensee ²	12	6	2	4	3	9

* Footnotes can be found on following page.

1. includes any person not listed in the Board's annual report as being licensed.
2. indicates complaints initiated by Board or "newspaper articles" and individual licensees or establishments.
3. includes cases in which (a) Board felt were outside its jurisdiction, (b) evidence may have seemed inadequate for action or indicated no violation, (c) complaints were withdrawn or settled before Board hearings could be held, or (d) no sworn statement was received from the complaining party.
4. includes reprimands in person or by mail and instances in which Board censored (sic) the licensee.
5. includes suspension, probation or revocation of licenses and in 1977 included fines.
6. includes referrals made to Consumer's Protective Division (sic) of Attorney General's Office, Social Security Administration, County and District Attorneys' Offices, Banking Department, Insurance Commission.

As evidenced by information contained in Exhibit VI-4, a significant difference in disposition of complaints initiated by consumers and those initiated by licensees or the Board is apparent. The incidence of nonaction on consumer complaints is higher than for licensee complaints. All reprimands in 1975 and 1976 and two of three in 1977 were ordered for complaints lodged by licensees. Only once, in 1977, was a sanction imposed as a result of a complaint presented by a consumer. Nine of the eleven sanctions imposed by the Board in the past three years were based on complaints generated by the Board.

Sanctions usually consisted of suspending or probating licenses. In only one case was a license revoked. Appeal of that case is pending. The use of fines by the Board, authorized by S.B. 899, passed in the 65th Legislative Session, has been undertaken twice as an alternative to removing an individual's livelihood.

Differences in disposition between consumer and licensee-initiated complaints may result from a number of causes. First, many consumer complaints may

be about situations which are puzzling or upsetting to consumers, but which may be established practice in the funeral industry. Such practices may concern prices, credit policy, or lack of clear itemization of charges. While individual Board members' experiences equip them to form unofficial judgments in these cases, the Board has traditionally not felt it is proper to take an official stand on these issues.

Procedures used by the Board to investigate complaints also may affect the complaint results. The use of personnel with past and continuing ties to the industry (see Criterion 9) to investigate complaints causes some concern, considering the pattern of differential outcomes.

A method of complaint processing, apparently receiving increasing use, is referral to other agencies. As with some other measures of performance, the number of referrals reported by the Board is questionable. Checks with the Attorney General's Consumer Protection Division in Austin, San Antonio and Houston show no records of the two cases the Board reports referring to them in 1975 and 1976. Also, two of six referrals to that office in 1977 apparently were not received. The State Board of Insurance reports no record of receiving one Board-referred complaint in 1977. The Department of Banking received one of two complaints referred. Verification of the one remaining referral for 1977 was not possible.

An additional area of concern in the disposition of complaints is Board action and policy on hearing complaints against Board members. In the past three years, at least five complaints on current Board members' establishments have been received by the Board. The Board had not discussed the adoption of a formal code of ethics until January, 1978. The adoption of such a code of behavior in the future should help to lend an additional element of objectivity to these types of investigations.

Summary

Numerous concerns exist on the processing of complaints by the agency. The concerns include:

- 1) inconsistent and incomplete record keeping on complaints;
- 2) the position routinely taken by the Board that consumer complaints on quality of service and price are outside its jurisdiction;
- 3) lack of a code of ethics for processing complaints against Board members; and
- 4) using persons with past and present industry ties to investigate complaints.

Criterion 7

The extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates, and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The review under this criterion began with a determination of the statutory requirements regarding public participation both in the agency's enabling law and general statutes. The agency's procedures were reviewed to determine compliance with these statutes. The agency files and self-evaluation report were reviewed to determine the nature and extent of public participation and any results which might be attributed to public participation.

The Board of Morticians has no formal procedure or policy for the use of mass media announcements or printed documents of any nature whose purposes are to inform the public of the Board's responsibilities and activities. Interviews with the Board's Executive Secretary indicated that the Board relies on the Texas Funeral Directors' Association for providing the public with general information concerning funeral home practices in the state.

The only informative document published by the Board and available to the public (upon request and the payment of \$2.10 per copy) is the annual report. Board staff indicated that requests for the annual report were infrequent. Information concerning the Board's duties and responsibilities is, therefore, quite limited insofar as the public is concerned.

There has been very little, if any, attendance and participation by the public at Board meetings. This must be attributed, in large part, to the fact that the public is not adequately informed of the Board's meetings, duties and responsibilities.

Review of agency records and interviews with Board employees reveal that the Board has not fully complied with its statutory requirements concerning the publication of notice. Discussion of this aspect and the regularity with which advance notification is given to the Texas Funeral Director's Association is more fully developed under the part of Criterion 10 relating to open meetings.

Summary

The Board: 1) has developed no approaches, in addition to those required by statute, to encourage public participation in its affairs, 2) has had practically no public attendance or participation in its meetings, 3) has not fully complied with the statutory requirements concerning publication of notice of meetings; and 4) has relied on the Texas Funeral Directors' Association to disseminate material to the public, which does not appear to have produced results. (It has been a common practice for members of the Board of Morticians to serve simultaneously on the Board of Directors of TFDA and this membership could have been used to further public interest.)

Criterion 8

The extent to which the agency has complied with applicable requirements of an agency of the United States or of this state regarding equality of employment opportunity and the rights and privacy of individuals.

The review under this criterion centered on an identification of agency Equal Employment Opportunity reporting requirements and policies regarding the rights and privacy of individuals. Federal and state statutes were reviewed; agency policies and procedures were documented; and appropriate agency files were inspected to determine the adequacy of records maintained to verify the data presented under this criterion. The Governor's Office of Personnel and Equal Employment Opportunity was consulted. The general procedures regarding personnel actions and protection of the rights and privacy of individuals are examined under Criterion 10.

Compliance Procedures

The State Board of Morticians has developed no written Equal Employment Opportunity (EEO) procedures or Affirmative Action Plan (AAP). The executive secretary, the person logically responsible for implementing an AAP, stated that he does not feel the need for such a plan exists within the Board's role as a small licensing agency.

The Board's staff feels that agencies responsible for notifying them of the need for compliance with this requirement and other legal requirements have failed in their duties. However, some information does filter to the Board. A check with the Governor's Personnel and Equal Employment Office revealed the Board has filed the required profiles of employee backgrounds. However, the Board has never submitted an AAP.

Apparently, outside consultation on the Board's EEO provisions has not been sought. Board minutes show the Board decided against assigning a staff member to attend an EEO meeting in January, 1977.

The only evidence of equal employment opportunity practices is in two posters displayed in the Board's offices, declaring it is illegal to discriminate in hiring practices. The executive secretary is unsure when these signs were posted. The Governor's Personnel and Equal Employment Opportunity Office reports the signs were mailed in the fall of 1976.

Employment openings within the Board's staff are often filled from a waiting list of qualified applicants. If no one is hired from the waiting list, two different procedures are used for hiring the executive secretary and field representatives, and office clerical staff.

Although it is not specified in the law or written rules, it is Board policy to fill the executive secretary and field representative positions with licensees with experience in embalming and funeral directing. If no one is hired from the waiting list of previous applicants, the Board has advertised vacancies in The Texas Director and Morticians of the Southwest. Advertisements for these positions have not been published in newspapers of the state, according to the executive secretary, because newspaper advertisements have not been necessary.

According to the executive secretary, employment agencies are contacted for referrals for clerical staff positions not filled from the waiting list. Private employment agencies are apparently used because the Texas Employment Commission (TEC) reports no contacts with the Board. Again, no newspaper advertisements are used.

Two basic mobility tracks exist for advancement for Board staff. In the clerical track, a person can move from the entry level position of office assistant to become office secretary. In the other track, field representatives can hope to be promoted to executive secretary. No office secretary has ever been promoted to executive secretary. Qualifications for advancement are not clearly spelled out since job descriptions are vague and unwritten. Activities are under way, however, to begin consideration of the development of a job description for inspectors, i.e., field representatives.

Tabulation of employees by job category, race, and sex follows:

Type	Number	Avg. Age	Sex		Race		
			Male	Female	White	Black	Other
Executive	1	67	1	0	1	0	0
Field Representative	2	56	2	0	2	0	0
Clerical	3	36	0	3	3	0	0

No established or documented grievance procedure exists for Board employees. If employees have problems or complaints, they discuss them with the executive secretary. At his discretion, the matter is brought before the Board. No formal complaints have been presented to the executive secretary. He feels his office is "one big happy family."

Summary

The size of the agency makes implementation of an effective Affirmative Action Plan difficult. To achieve a greater degree of compliance, public or private outside consultants could be obtained to tailor a plan to the Board's needs. Such a plan should be quantified where possible, and could be used as an effective management tool.

Lack of written job descriptions can hinder the attraction and promotion of qualified applicants. Lack of use of TEC services and the occasional use of trade journals, with circulation limited largely to whites, to advertise job openings increases the possibility that some qualified applicants may be excluded from the selection process. The probability that this has occurred becomes larger when one considers that the agency currently employs whites only.

The small size of the agency makes implementation of an effective grievance process difficult. The Board could investigate the feasibility of establishing a Board grievance committee to accept and investigate employee grievances should they arise.

Criterion 9

The extent to which the agency issues and enforces rules relating to potential conflict of interests of its employees.

The review under this criterion centered on an identification of documented agency practices and procedures regarding the filing of individual financial statements and affidavits with the Office of the Secretary of State. The provisions of the statute (Article 6252-9b, V.A.C.S.) were reviewed and agency interpretations of the nature and intent of the provisions of the Act were sought. Records maintained by the agency and the Secretary of State under the authority of the legislation concerned with conflict of interest were reviewed to determine the extent of agency compliance with the letter and intent of the Act and to verify the accuracy of the data presented under this criterion. In addition, inquiries were directed to selected areas where conflicts of interest might exist that could not be discerned through review of official documents.

"It is the policy of the State of Texas that no state officer or state employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business transaction or professional activity or incur any obligation of any nature which is in substantial conflict with the proper discharge of his duties in the public interest" (Article 6252-9b, V.A.C.S.).

To determine the State Board of Mortician's compliance with the letter and spirit of the above cited statute, a review has been made of the following areas:

1. Provisions of Article 6252-9b (V.A.C.S.).
2. Provisions of the statutes relating to the make-up and activities of the State Board of Morticians (Article 4582b, V.A.C.S.).
3. Applicable documents on file in the Secretary of State's office.

4. Attorney General Opinions related to conflicts of interest.
5. Procedures adopted by the Board to comply with Article 6252-9b, V.A.C.S.
6. Minutes of Board meetings.

In addition, interviews were conducted with Board members and staff and the State Auditor's Office to clarify and further specify Board operations in relation to the topic of conflict of interest.

As of January 1, 1974, the **executive secretary** is required to file a financial statement relating to his and his family's financial activity for the preceding year. This statement is to be filed with the Secretary of State and reviewed and updated in April each year (Sections 3 and 4, Article 6252-9b, V.A.C.S.). Board members are required to disclose business interests regulated by the state through **affidavits** filed with the Secretary of State (Sec. 5. 6252-9b, V.A.C.S.). In addition, Section 6 requires Board members having a personal or private interest in any measure, proposal, or decision pending before the **Board** to publicly disclose the fact to the Board in an Open Meeting (as defined in Article 6252-17, V.A.C.S.) and to refrain from voting or otherwise participating in the decision. This disclosure is to be entered in the minutes of the meeting.

Section 8(c), Article 6252-9b, V.A.C.S. reads as follows:

No state officer or state employee should accept other employment or compensation which could reasonably be expected to impair his independence of judgment in the performance of his official duties.

No requirements relating to conflict of interest are included in the Board's enabling legislation.

Filing Compliance

Procedures to inform employees and Board members of conflict of interest laws did not exist prior to November 1977, when the agency became aware of the

specifics of Article 6252-9b, V.A.C.S. At that time, copies of the statute were provided to the agency by staff to the Sunset Advisory Commission. The agency then initiated a system to provide Board members a copy of the law and secure their written affirmation of compliance. Currently, all six Board members have filed statements of compliance with the executive secretary of the Board. Board employees explain that statutory compliance would have come earlier if they had been aware of the requirements.

Affidavits from five current Board members and a financial statement from the executive secretary are on file with the Secretary of State.

The Board has no procedures to suggest proper action in employees' or Board members' other activities. As of November 1977, employees received copies of Article 6252-9b, V.A.C.S. Prior to that date, they were verbally cautioned by the executive secretary not to accept gratuities from or become obligated to anyone.

Disqualification Procedures

The Board has developed no policy regarding Board members disqualifying themselves from participation in investigations, discussions, votes or hearings in which they have or appear to have an interest or in which their objectivity could be questioned.

In one case, a Board member actively participated in a matter affecting his business. The complaining letter charged soliciting business. The Board member reported at a Board meeting held January 11, 1978, that he had "extended every hospitality" to the complainant to try to resolve the matter. Although the Board member's role in the State Board's investigation is not clear, transcripts of the proceedings document that the Board member actively participated in the questioning of witnesses during testimony regarding the complaint against him on December 14, 1977. At the January 1978 meeting, upon the failure of the

complaining party to appear, that Board member actively discussed and supported a motion to discontinue Board consideration of the complaint.

In relation to this matter, one Board member suggested at the January meeting that legal counsel prepare a code of ethics which would include a policy statement on disqualification procedures.

Relationships with Industry

Employees. Employment by a funeral establishment prior to employment with the Board is standard practice for inspectors. The Board currently requires that field representatives be licensed as both funeral directors and embalmers. Of the two current field inspectors, one reports that he owns stock in his family's funeral business.

No provisions exist to prevent field representatives from inspecting funeral homes in which they or their families own an interest or in which they were formerly employed. A review of field reports documents that this practice does in fact take place. Inspection reports show that establishments with connections to a field representative are not always inspected annually as required by law. In addition, one establishment with such a relationship was reported to have no deficiencies. Review of the inspection report reveals, however, that the establishment had no vent fan or hot running water in the preparation room as required by statute (4582b, Sec. 4(C5), V.A.C.S.).

Board Members. An area of possible concern is the close relationship Board members appear to have with various trade associations. One Board member, M. Watson Frazar, appointed June 30, 1975, has worked actively as the head of a non-profit corporation (Texas Funeral Directors' and Embalmers' Foundation, Inc. [TFDEF]) while serving on the Board of Morticians. This foundation was charged by

the Texas Funeral Directors' Association (TFDA) to develop the plans for a new building in which TFDA and the Board of Morticians are now housed. Since Mr. Frazer has resigned the presidency of TFDEF (June 1976), he has actively worked as a Board member to negotiate a long-term, pre-paid rental agreement between TFDEF and the Board. In October 1976, the Board pre-paid \$27,000 to the Foundation for five of the ten years' rental agreement.

Summary

It appears that numerous opportunities exist for violation of the conflict of interest law by employees and Board members. The possibility of such occurrences is increased since: 1) the Board is composed entirely of persons in the industry; 2) a close association exists between the Texas Funeral Director's Association and the Board; and 3) the Board has not developed clear guidelines for itself or staff to follow in troublesome circumstances.

Criterion 10

The extent to which the agency complies with the Open Records Act and Open Meetings Act.

Examination of elements under this criteria was separated into components dealing with responsibilities for making agency documents available to the public under open records requirements and responsibilities for public notification of proposed agency actions. Under the area of open records, statutes were reviewed in relation to written or unwritten policies used by the agency. Where written policies did not exist, interviews were conducted to determine actual compliance. Materials contained in the self-evaluation report were verified and open records decisions reviewed. Open meetings compliance was verified through review of agency written and unwritten policies to determine if they accurately reflected statutory requirements. Interviews with agency personnel were conducted in instances where written policies were lacking or information contained in minutes of meetings was incomplete or unclear. Records in the Office of the Secretary of State were reviewed on a selected basis to determine compliance with posting and informational requirements.

Open Records

While the State Board of Morticians has not adopted formal written policies concerning access to records, the informal procedures of the agency are to make records open to any person during working hours. Under these procedures, the Board does not ordinarily provide copies of documents to individuals who request them and has not developed a schedule of reasonable charges should an individual indicate a willingness to pay for the reproduction costs of documents. No accurate measure of the volume or type of requests could be determined as data of this

nature is not compiled. Interviews with staff of the Board indicate that the number of such requests, in the past, has been very low.

A review of the types of files maintained by the Board indicates that several contain information to which the public is not entitled access or only to limited access. Files maintained on apprentices contain information which either cannot be released to the public or can only be released to the individual about whom the information is kept. Examples of this kind of material include birth certificates, grade transcripts and reports of alleged criminal acts. Files relating to complaints under investigation include reports from investigative personnel and correspondence relating to these complaints which may also be excluded from review by the public prior to resolution of the complaint.

To determine compliance with the stated informal policy, interviews were conducted with staff of the Board and appropriate files relating to these practices were reviewed. This review revealed no indication of improper handling of material in the apprentice files. However, the actual handling of materials in complaint files presented a practice which differed from the open access procedure described. In regard to these files, the agency does not provide information to the general public, but does supply copies of reports and correspondence relating to complaints under investigation or complaints which may be investigated to representatives of the Texas Funeral Directors' Association.

A review of procedures utilized by other agencies of comparable size and nature in the area of open records indicates that simple written procedures have been developed that offer basic guidelines for control of documents. A range of charges relating to reproduction of copies can be obtained through the Board of Control. Classifications of documents can also be determined in coordination with the Attorney General.

In summary, while no violations of the statutory provisions dealing with public access to records have been documented, the lack of any sort of written procedures for the release of information increases the chances of such a violation occurring. Particular care should be required in distribution of information relating to complaints currently under investigation or in litigation. The propriety of the procedure of providing TFDA members with this type of information prior to resolution of a complaint is questionable, particularly since these persons have no basis for receiving the documents other than as members of the general public.

Open Meetings

The Board of Morticians, like other similar governmental agencies, must meet certain requirements relating to public notice of meetings and conduct of such meetings once convened. Current statutory provisions require that written notice of the date, hour, place and subject of state governmental body meetings must be filed with the Secretary of State and published in the Texas Register for at least seven days before the meeting.

Proposed rule changes require notice to be published at least 30 days prior to the meeting in the Texas Register. In the event of an emergency meeting, two hours shall be sufficient time for a posted notice. Any action taken at a meeting on a subject not covered by the notice shall be voidable. In general, all meetings are open to the public.

In addition to these general requirements, additional notification requirements are specified in the Board's enabling legislation. These requirements specify that notice of meetings shall be published at least fifteen days in advance of any regularly scheduled meeting in three daily newspapers in three different cities in the state.

The review of meetings during calendar years 1976 and 1977 was divided

between those of the full membership, in open or executive sessions, and meetings of committees of the Board. In calendar year 1977, the full membership of the Board met 14 times. Notice for three of these meetings was received by the Texas Register Division of the Secretary of State two days before the meetings and were identified as emergency meetings. One meeting notice was received six days before the date of the meeting and no notice was filed for the September 27, 1977 meeting held in Austin. In identifying the subject matter of the meetings, the review shows that at the August 1977 meeting, rules changes were discussed and adopted that were not identified by either a regular or emergency addition to the agenda. For five of the meetings held in 1977, emergency additions to the agenda were filed the day before meetings covering reciprocal and other applicants and new complaints. The additional notification requirements set out under the enabling legislation were followed only in the instances of Board meetings held in connection with examination. This occurred once in 1976 and once in 1977. The 15-day requirement was not met in either instance. Notification of rule changes under this procedure was not given at any time during 1976 and 1977, although such changes were discussed and adopted during meetings held within this time period. were discussed and adopted during meetings held within this time period.

A review of the minutes indicates that the Board held 10 executive sessions in three years -- six in 1975, three in 1976 and one in 1977. Topics of discussion listed in the minutes include salary and mileage reimbursement adjustments, merit salary increases, decisions on hiring new staff members, a job classification plan with a pre-determined pay raise schedule, revisions to control expense accounts and provision for documentation for employee car allowances and reimbursement rates. No determination could be made from existing documents regarding the exact

nature of these subjects or whether the decisions made concerning these subjects were announced in open meeting following the executive session.

The Board also transacts official business through special committees assigned specific topics or subject areas. Documentation on the activities of these committees is either extremely limited or non-existent and no determination could be made as to the extent or nature of such meetings.

In addition to the notification requirements which serve to make the general public aware of Board activities, other formal and informal processes exist for the purpose of notification of specific groups. The enabling statute requires written notice to all licensees at least 30 days in advance of meetings covering changes of Board rules and regulations. No direct mail notification for meetings of this nature has ever been undertaken by the Board. Informal procedures have also developed over time with one of the two state trade associations. Under this procedure, an exchange of information takes place with the Texas Funeral Directors' Association concerning Board meetings. Each year, the executive secretary of the Board of Morticians is provided a list of current members of the Board of Directors of the Association. Prior to each Board meeting, the executive secretary notifies two individuals from this list of the meeting, provides copies of the agenda for the meeting and documentation on hearings and complaints.

From the foregoing review, it can be concluded that efforts to comply with general notification, under open meetings requirements, have not been satisfactory. Failure to give timely notice will occur from time to time in any agency, but failure to attempt notice should not be allowed to occur. The Board has also failed to observe specific statutory requirements in terms of notification through newspapers and mail. The contrast between these efforts to inform the public, and

the consistent manner in which members of the Board of Directors of the Texas Funeral Directors' Association are informed of meetings, can only serve to strengthen the presumption that the public interest is not given proper attention.

It is equally important when notice is given, that major items for discussion be identified. On one occasion, the Board considered and adopted increases in fees without agenda identification. Actions of this nature cannot be assumed to be unimportant to either current license holders or to members of the public in general.

In terms of the manner in which meetings are conducted, it is not possible to determine, from available records, whether executive sessions have been properly utilized. Meetings of committees of the Board are not documented, nor is there any indication that notification of these kinds of meetings has been attempted.

Criterion 11

The impact in terms of federal intervention or loss of federal funds if the agency is abolished.

Presently the funeral industry is regulated in some fashion by the state government in all 50 states. Even though that regulation exists, and perhaps due to the quality of that regulation, the Federal Trade Commission, Division of Special Projects, Bureau of Consumer Protection, in August 1975, published proposed federal trade regulation rules for the funeral industry.

These rules are quite extensive, and likely more extensive than anything Texas would choose to enforce. However, these proposed rules are the only foreseeable areas of impact from the federal level. Since the proposed rules are not finalized, it cannot be projected whether they will be adopted, and if adopted, in what form and what impact they will have.

CONCLUSIONS

A bill introduced by a member of the Senate Committee on Public Health in 1903 established the State Board of Embalming, predecessor to the current State Board of Morticians. This law was enacted at a time when states all across the country were regulating occupations that had an impact on public health. The original statute clearly intended to license embalmers only and specifically excluded "any person simply engaged in the furnishing of burial receptacles for the dead."

Thirty-two years later, however, the Board began to expand its original role and regulated that activity by licensing funeral directors, who possessed no skills directly relating to public health. Medical advancements since 1903 in prevention of contagious diseases had done much to accomplish original health-related objectives of the Board and may account for the Board's shift in emphasis from protecting public health to controlling the "quality", morality and social acceptability of persons entering the occupation. Today, protecting citizens from uncouth or insensitive embalmers or funeral directors appears to have become the primary focus of Board activities.

Review of agency performance raises serious doubts as to whether the agency is effectively performing either its original health-related function or its more recently mandated enforcement function.

According to medical officials at the National Center for Disease Control and the Texas Department of Health, within the United States embalming has no public health significance. However, embalming is a well established tradition in the U.S. If the licensing of embalmers is continued for other reasons, the function could be located in the Health Department.

The review also indicated enforcement objectives are not being achieved. Enforcement, as broadly construed and as described in writing by the Board

would be expected to protect the general public from unscrupulous or unqualified practitioners. However, Board mechanisms currently in place, inspections and actions on complaints, do not achieve that goal.

The current annual establishment inspection, consisting of inspection of the preparation room for sanitary purposes, verification of the number of caskets on display and determination of adequate chapel facilities, is not adequate to check the procedures used in embalming or to determine if standards of proficiency are maintained.

In the area of complaint handling, a totality of statutory prohibitions contained in the Act creates a condition which essentially involves settlement of disputes initiated by licensees. This is apparent from the review of complaint files which indicates that for a three year period from 1975 through 1977, 88 percent of the complaints acted upon by the Board were lodged by licensees. Such action in response to consumer complaints is infrequent, although 40 percent of complaints are from that group. For the same three-year period only one reprimand and one sanction were issued for consumer-initiated complaints.

One area in which consumer complaints are received and one sanction has been issued is solicitation. In this area, Board action is relatively vigorous; however, the statutory definition of the offense is vague. It states that a violation has occurred:

Whenever a licensee, apprentice, or any other person, whether employee, agent or representative, or one in any manner associated with a funeral establishment shall solicit business or offer any inducement, pecuniary or otherwise, for the purpose of securing or attempting to secure business for such funeral establishment, unless such solicitation is made pursuant to a permit issued under the provisions of Article 548b, Vernon's Texas Civil Statutes, or Senate Bill No. 129, Acts of the 58th Legislature, Regular Session, 1963.

While this statutory language is imprecise the Board has never sought clarifying legal interpretations or modifications.

Most other violations over which the Board feels it has jurisdiction are aimed at keeping non-licensed persons from practicing in the industry, an issue of primary concern to licensees. In comparison, the consuming public's complaints evidence more concern over price and quality of service. However, the Board has taken the position that these types of problems do not lie within its jurisdiction. Yet, despite the pattern of the public's complaints, the Board has not sought modification of its law. Neither has the Board acted with a great deal of promptness in transferring such consumer complaints to other agencies having jurisdiction.

From the above review, the staff has determined that functions currently performed by the Board are not meeting objectives of protecting the public from health hazards and improper business practices.

However, should the legislature determine that the functions currently performed by the State Board of Morticians should continue, organizational and operational changes outlined below could be made to increase the efficiency and effectiveness with which these functions are carried out.

THE MAJOR ADMINISTRATIVE OPERATIONS OF THE STATE BOARD OF MORTICIANS COULD BE CONSOLIDATED WITH THOSE OF THE HEALTH DEPARTMENT AND THE ATTORNEY GENERAL'S OFFICE COULD WORK WITH THE DEPARTMENT IN RESOLVING CONSUMER COMPLAINTS.

The Board and Health Department have overlapping target populations. The Health Department promulgates regulations that all Board licensees must follow in the areas of preparing and transporting dead bodies, and registering vital statistics information.

Both agencies perform functions of administration, licensing, examination, and enforcement, although for differing populations. As demonstrated in Criterion 4, any special expertise currently provided by the Board can be obtained using alternate methods.

If the functions of the Board were transferred to the Health Department, the management experience and expertise of the Health Department suggest that consistent and reliable performance would result. In addition, the present process would be simplified so that the agency making rules governing occupational performance could also register (or continue to license) those persons. The consolidation of regulation would streamline Texas statutes, reduce areas of overlapping program responsibilities in the state, and could result in proportionately greater resources becoming available to address problems associated with achievement of agency or other state objectives.

The enforcement experience of the Health Department would enable it to assume responsibility for handling the type of complaints currently addressed by the Board. Any expanded enforcement duties could be transferred to the Attorney General's Office.

Various other operational changes could be considered if the functions of the agency are to be continued with the Board. These changes are outlined below.

AGENCY FUNDS COULD BE DEPOSITED TO THE STATE TREASURY.

Poor financial management techniques, as detailed in Criterion 1, have led to an unnecessarily low rate of return on unused funds. The absence of a workable monthly operating budget has hampered fiscal planning. A more complete control of funds by the State Treasury would help eliminate these current difficulties. Also, current differences in agency procedures from general procedures prescribed for agencies receiving funds appropriated from the State Treasury would be eliminated. These differences are detailed below:

- 1.) regular inventories of physical assets are not made;
- 2.) Board of Control supply purchasing services are not used;
- 3.) building lease was not negotiated through the Board of Control, and was leased and prepaid for 5 years;

- 4.) equal standardized amounts of employee group health insurance are not paid; insurance is arranged through the private group plan of the Texas Funeral Directors' Association;
- 5.) accurate records on sick leave and vacation time signed by employees are not kept;
- 6.) travel and expense vouchers are not fully completed and properly authorized before payment;
- 7.) two agency employees receive a \$50 per month car allowance for in-town travel for which no records are kept;
- 8.) Board employees receive a 20¢ per mile reimbursement on travel; other agencies receive 18¢.

WRITTEN PROCEDURES COULD BE DEVELOPED AND FOLLOWED FOR MANY AGENCY FUNCTIONS.

No written procedures currently exist in the following areas:

- 1.) for determining which files should be destroyed and which maintained;
- 2.) for specifically defining job classifications and responsibilities, procedures for advancement, procedures for handling employee grievances;
- 3.) for release of information in agency files to the public;
- 4.) for handling potential conflicts of interest.

TECHNIQUES USED IN LICENSING OPERATIONS OF OTHER AGENCIES COULD BE REVIEWED TO DETERMINE THEIR USEFULNESS.

The manner in which apprentice case reports are compiled could be studied to determine if there were means by which the volume of work associated with the individual filing of 100 notarized case reports could be reduced. The appropriateness of annual licensing as opposed to a three or five year period could be reviewed. In addition, benefits derived from one license form as opposed to two separate forms could be reviewed.

THE STATUTORY DEFINITION OF SOLICITATION COULD BE MODIFIED TO CLEARLY INDICATE RESULTS TO BE PRODUCED BY PROHIBITING THE ACTION.

Under current statutory definition, any acts from newspaper advertisements to "ambulance chasing" could be construed to be illegal. The present definition could be modified to clearly indicate specific limitations on timing and methods of practice allowed.