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FOOD AND BEVERAGE SERVICE IN FUNERAL HOMES

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You asked for information on the service of food and beverages in funeral homes including (1) a summary and legislative history of Connecticut's laws and regulations, (2) what other states do, and (3) a brief summary of a 2012 Pennsylvania court case overturning the state's ban on this practice.

SUMMARY

Connecticut statutes do not address the service of food or beverages at funeral homes; rather, Department of Public Health (DPH) regulations have prohibited the practice since 1969. We did not find any DPH records regarding the regulation's adoption. We found a few references to this regulation in relevant meeting minutes and two attorney general opinions interpreting the regulation and affirming the ban on these services in funeral homes.

We found six states with statutes or regulations directly addressing food or beverage service in funeral homes. Three states (Massachusetts, New Jersey, and New York) generally prohibit the practice. Three other states (Missouri, North Dakota, and Vermont) specify conditions for food and beverage service. For example, under Missouri regulations, food sanitation laws and rules generally apply to food service provided at funerals, but there is an exception for coffee under specified conditions.

Pennsylvania also banned food and beverage service in funeral homes for over 30 years. However, in 2012, a U.S. District Court overturned the ban finding that it violated federal constitutional due process provisions. The decision came in response to a 2008 lawsuit filed by 33 representatives of Pennsylvania's funeral directing industry against the state. The court stayed the ruling for 90 days to allow the state's Board of Funeral Directors to adopt new regulations, but it did not do so. The court issued a subsequent order prohibiting the state from enforcing the food and beverage ban. The state appealed the decision and is awaiting a ruling.

STATE LAWS ON THE PROVISION OF FOOD AND BEVERAGES AT FUNERAL HOMES

Connecticut

We were unable to find any current or prior Connecticut statutes addressing the provision of food or beverages at funeral homes.

DPH regulations prohibit (1) serving food or drink in a funeral home or in connection with a funeral service or (2) storing equipment and supplies for such purposes in a funeral home. The prohibition does not apply to a funeral home proprietor who lives upon the premises and serves food or drink to invitees or family not in connection with a funeral. It also does not apply to a funeral home proprietor storing equipment and supplies for his or her employees' use or otherwise making available to employees facilities for food or drink (Conn. Agencies Reg. § 20-211-28). This regulation took effect on August 5, 1969.

We searched the minutes of the Connecticut Board of Examiners of Embalmers and Funeral Directors meetings from the years surrounding the enactment of this regulation (1967 to 1972), looking for references to discussions about this regulation or the service of food or beverages at funerals generally. The first reference was in the August 20, 1969 minutes, noting that the board secretary asked the Department of Health to send notices to all funeral homes about the regulation.

According to the August 13, 1970 minutes, the director of New York's Funeral Service Bureau was at the meeting to discuss another matter. The minutes note that he also submitted to the board a copy of New York's rules regarding serving food or beverages at funeral homes. The minutes note that the New York rules were "stringent" and that the board would examine them.

The final relevant entry during this time frame was from the March 24, 1971 meeting. The minutes note that the secretary read to the board a letter which he sent to the attorney general, asking for an interpretation of Conn. Agencies Reg. § 20-211-28 (Connecticut Board of Examiners of Embalmers and Funeral Directors, Minutes 4/15/63 thru 2/16/82, Connecticut State Library, State Archives).

On April 1, 1971, the attorney general replied to the board, specifically to the question of whether it was “permissible for food and drink to be brought into a funeral establishment for consumption.” The attorney general stated that:

The regulation indicates that the only circumstances that permit serving or storage of consumable foods and or beverages is when (a) the proprietor of a funeral home lives upon the premises and serves the food or drink to his invitees (social, not business) or his family, [or] (b) when a proprietor of a funeral home makes food or drink available to his employees.

The attorney general again wrote to the board about this issue on July 23, 1973, in response to a June 27, 1973 request from the board secretary for an interpretation of the regulation. According to the attorney general’s opinion, that request “specifically expressed concern over the recent permissiveness by certain funeral directors with respect to allowing food at the funeral home.”

The attorney general noted that the regulation “clearly states that the ‘serving of food or drink in a funeral home or in connection with a funeral service . . . is prohibited’” except for the two exceptions noted above. He went on to state that “[i]n this instance there is no ambiguity in the statute [sic], the serving of food in a funeral home or in connection with a funeral service is absolutely prohibited except in the specific instances as outlined in the regulation.”

We did not find any court cases construing this regulation. We also did not find any more recent attorney general opinions or other official sources interpreting it.

Other States

We found statutes or regulations in six other states concerning the service of food or beverages in funeral homes. We summarize these provisions below.

Please note that in addition to the states discussed below, an Indiana regulation on food service at funerals was repealed in 2013 (Ind. Admin. Code tit. 832, r. 5-2-3). The regulation prohibited funeral home licensees from serving food other than beverages at funeral homes unless the sale of food was otherwise licensed under the laws. According to the director of Indiana's Board of Funeral and Cemetery Service, the rule was repealed because the board believed it would be in the public's best interest to allow funeral homes to provide food service as an available option. The director noted that this was especially helpful for families in remote areas where other food options are not easily accessible.

Massachusetts. Massachusetts regulations prohibit providing, handling, or serving food or alcoholic beverages in connection with a funeral service by anyone (1) registered with the state's Board of Registration of Funeral Directors and Embalmers or (2) employed by a licensed funeral establishment. Establishments may serve non-alcoholic beverages in areas separate from where deceased bodies are displayed as long as the beverages do not interfere with public health or are not otherwise prohibited by law (239 CMR 3.11).

New Jersey. New Jersey law prohibits funeral establishments from serving or allowing the serving of any food or beverages in connection with any funeral service they provide (N.J. Rev. Stat. § 45:7-65.1).

New York. New York regulations prohibit food or beverage service in funeral homes by funeral home staff, families, friends, mourners, visitors, or a deceased person's next of kin (10 NYCRR § 77.5).

Missouri. Missouri's funeral director regulations provide that the Department of Health and Senior Services sanitation laws and rules governing food sanitation apply to the operation, construction, and sanitation of food service facilities provided for the comfort and convenience of a funeral party. However, coffee service using single-service cups and spoons and a coffeemaker of easily cleanable construction is deemed acceptable where this service is the only food service offered.

Licensed funeral homes providing such coffee service must provide a faucet at a suitable sink of easily cleanable construction to fill and clean the equipment in an area separate from the preparation (embalming) room and restrooms (Mo. Code Regs. Ann. tit. 20, § 2120-2.090).

North Dakota. North Dakota regulations specify that the serving of food or alcohol to the public in connection or conjunction with any part of a funeral service operation must comply with all state and local laws and regulations (N.D. Admin. Code § 25-02-01-07).

Vermont. Vermont law specifically allows a funeral establishment to offer food and drink in connection with a funeral, as long as the establishment complies with applicable department of health requirements (Vt. Stat. Ann. tit. 26, § 1272a).

PENNSYLVANIA COURT CASE

Background

On May 8, 2012, a U.S. District Court judge ruled that Pennsylvania's ban on the provision of food in funeral homes violated the federal constitution's substantive due process provisions. The decision came in response to a 2008 lawsuit filed by 33 representatives of Pennsylvania's funeral directing industry (e.g., funeral directors, managers, owners, and associates) against:

1. eight members of the State Board of Funeral Directors (the state's regulatory body),
2. one former executive deputy chief counsel for the Bureau of Professional and Occupational Affairs (BPOA, which oversees the investigation and prosecution of various state-licensed professions), and
3. one former Bureau of Enforcement and Investigation director (which oversees all BPOA investigations) (*Heffner v. Murphy*, 866 F. Supp. 2d 358 (M.D. Pa. 2012)).

The industry representatives alleged that 13 provisions of the state's [Funeral Director Law](#) (63 Pa. Stat. Ann. §§ 479.1-479.20 and 49 Pa. Code §§ 13.1-13.251) violated provisions in the federal and state constitutions. They contended that the board's current interpretation of state law and regulations was anti-competitive, sometimes contradictory, and an attempt to create a monopoly for established funeral directors (*Heffner v. Murphy*, p. 14).

(Please note that this report addresses only the portions of the court opinion addressing food services in funeral homes.)

The Industry's Arguments

The court focused on the industry's argument that the Pennsylvania Funeral Director Law's ban on serving food in funeral homes violated substantive due process rights under the U.S. Constitution's 14th Amendment. The 14th Amendment prohibits a state from depriving a person of life, liberty, or property without due process of law. For purposes of this case, the court applied the "rational basis standard." Under this standard, legislation withstands a substantive due process challenge if the government can show that the law or regulation at issue is rationally related to a legitimate government interest (another standard applies when a "fundamental right" is at issue but the parties agreed that was not the case here).

The industry argued that the state's Funeral Director Law imposed an undue restriction on food services in funeral homes because it prohibited funeral homes from serving food and alcohol but allowed service of other beverages in a room not used for preparing or conducting a funeral services (63 Pa. Stat. Ann. §§ 479.7).

Additionally, the industry argued that the board previously directed its former counsel to draft a regulation eliminating the food ban. This directive was based on an analysis of the proposed regulation that found:

1. there was no reason why food should be prohibited, as long as it was not served in a room used to embalm or prepare deceased bodies;
2. there was no public health risk associated with allowing such practice;
3. it was illogical to allow beverage but not food services since any hygiene concerns would apply to both; and
4. churches were allowed to host an open-casket funeral service followed by a reception that includes food (*Heffner v. Murphy*, p. 90).

The industry claimed that the board's only rationale for the ban was "quotations from board members regarding their personal position against food service in funeral homes," noting that due process must be "founded on something much deeper and more justifiable than personal preference" (*Heffner v. Murphy*, p. 90).

The State's Arguments

The board countered that it never disciplined anyone for bringing food into a funeral home and the law did not prohibit funeral directors from owning or operating a food service or catering business (1) on the same parcel of land as the funeral home or (2) in a building connected to the home, as long as it was not served in an area designated as part of the home (63 Pa. Stat. Ann. §§ 479.2(6)).

In addition, the board countered that:

1. rooms or areas of a building could be excluded from the definition of a “funeral establishment” and food could be served in these areas, as long as funeral directors complied with all applicable food and safety laws and
2. prohibiting food services in areas designated as part of the funeral home was necessary due to the toxic and hazardous materials used during the embalming process (*Heffner v. Murphy*, p. 91 & 92).

Findings

The court found that the law violated substantive due process because it was not rationally related to a legitimate government interest.

The court stated that the board’s own recognition that there was no reason to completely prohibit food in funeral homes indicated an irrational relationship between the prohibition and state interests. While citing the use of toxic and hazardous materials during the embalming process as a legitimate reason for the food prohibition, the court found that the board failed to explain how the use of these chemicals in one part of a funeral home would contaminate other areas that serve food and are not used in the embalming process.

The court also found the board’s argument that funeral directors could already serve food in areas adjacent to or within the home contradictory to the rationale for the food prohibition. For example, if two rooms in a funeral home were next to each and “Room 1” was an embalming room and “Room 2” was not designated as part of the home, food could be served in Room 2. However, if Room 2 was designated as part of the funeral home, food could not be served, even though the room was not used for preparing or embalming deceased bodies.

The court found that allowing funeral directors to serve beverages in a room separate from the embalming process while also allowing them to serve food in “non-designated” rooms in the same building was a “distinction without a difference” (*Heffner v. Murphy*, p. 92-94).

For the above reasons, the court issued summary judgment in favor of the industry, ruling the law unconstitutional. It stayed the ruling for 90 days to allow the board the opportunity to draft new regulations to rectify the issue. However, the board did not do so and the court issued a subsequent order prohibiting the state from enforcing the food and beverage ban, among other things.

The state appealed the ruling to the 3rd Circuit Court of Appeals and is awaiting a ruling.

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