

**A statement by June Chase Hankins and Lamar W. Hankins on August 30, 2018, for consideration by the Texas Sunset Commission relating to the continuation of the Texas Funeral Service Commission**

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**A Texas Funeral: A case study in the failure of regulation**

In 1984, sweeping new regulations written by the Federal Trade Commission (FTC) went into effect. The regulations, which are referred to as the Funeral Rule, were intended to keep funeral homes from engaging in deceptive practices in their dealings with the public. Many states, including Texas, adopted the same or similar regulations and were charged by state law with enforcing them. That task in Texas is the responsibility of the Texas Funeral Service Commission (TFSC). Unfortunately, the FTC takes no enforcement actions in response to most complaints.

Our family's experience during 2010 and 2011 showed that federal and state regulations aren't worth John Nance Garner's proverbial "bucket of warm spit" because state officials will not enforce regulations intended to protect families from abuse by the funeral industry. The funeral home that carried out the 2010 funeral of Jack B. Chase (June's father) hid important and legally required information from our family, lied in order to up-sell the family to a more expensive casket, shut out the pallbearers from performing their duties, and then lied about virtually every allegation to the state regulatory investigators when we complained.

Much worse, though, was the flaccid response from the TFSC. Instead of compelling the funeral home to address our grievances, which the TFSC agreed were valid, it allowed the business to misrepresent the facts and skate free with a classic "no-apology" apology, and a tap on the wrist for good measure.

**Failure at the funeral home**

In 2010, after Jack Chase's death, his funeral was held at Sunset Memorial Gardens & Funeral Home in Odessa, Texas (hereafter termed "Sunset" or "Sunset funeral home"). The business is a combination funeral home and cemetery, with the funeral home located on the same property as the cemetery. Just under two years earlier, Nancy Chase (Jack's wife and June's mother) had died and her services were held at the same location. Everyone in the family was pleased with her services, so we expected that everything would go just as well with her husband's services. Unfortunately, that was not the case.

Four months after the services, our family wrote the funeral home and filed a complaint with the TFSC about both the violations of federal and state regulations, and the poor funeral practices we experienced. Sunset had committed three flagrant violations of the Funeral Rule that we knew about.

1. The funeral home did not provide a Statement of Goods and Services selected (an itemized receipt and contract for the funeral transaction) until **after** the funeral, even though regulations clearly require that this occur before the funeral. About an hour after Jack Chase's's burial concluded, a funeral director appeared at his home, where the family had gathered to visit and share our memories. The funeral director met with my Jon Chase, the eldest child, and requested that he sign the Statement of Goods and Services and pay for the funeral then. He was not willing at that time to break away from other family members to take care of this commercial transaction and told the funeral director that he would take care of the bill the next day. Jon Chase signed the Statement of Goods and Services and the funeral director left. The total amount billed—\$8,177— was paid the next day.

2. The most egregious violation of regulations – it is clearly fraud – is that the funeral director falsely dated the Statement of Goods and Services to a date that preceded the funeral by three days, falsely indicating that the Statement had been received and signed before the funeral. This incident was witnessed by Jon Chase's wife, and recounted to us and to Dahrl Chase McCain (the sister of Jon Chase and June Hankins) soon afterward.

3. Contrary to law and regulation, a funeral director from Sunset told our family that a plain, wooden casket, termed a “cremation” casket could not be used for burial. This is a flagrant violation of the federal and state regulations that prohibit making false, deceptive, or misleading statements about the sale or use of merchandise. Faced with this deception at a time of great stress, my family chose a more expensive “burial” casket rather than prolong the arrangement conference over this issue.

In addition to these three violations of the Funeral Rule, numerous other matters were mishandled by the funeral home staff. They demonstrate that a funeral home that does a good job one day can perform like uncaring amateurs on another, especially when making as much money as possible takes precedence over serving a grieving family.

When the staff picked up Jack Chase's body at his home on the day of his death, our family was asked to sign a form giving permission to embalm the body, and they wanted to know **when** the funeral would be held. The three siblings had not had time to consider questions about the funeral arrangements so soon after the death and refused to sign the permission to embalm form, considering it inappropriate and insensitive to be asked

about embalming when the body was being picked up and details of the funeral had not been determined. Attempting to force such quick decisions on grieving families is an affront to human decency, but we know from experience that it is a technique funeral directors use to increase the cost of funerals.

As it turned out, the body was not embalmed, and the family paid \$495 for refrigeration for five days. While all funeral homes can charge whatever amount they want, charging \$495 for refrigeration – a service that costs no more than \$1.00 a day (according to the manufacturers of funerary refrigeration equipment) – is outrageous price-gouging.

And the family was charged \$495 for “other preparation” of the body. However, there was no “other preparation” to be done to the body since it was not an open casket service and his body was not viewed at the visitation. Yet, the TFSC failed to consider this unlawful charge in its investigation.

On the day that the obituary needed to be filed, the funeral director did not notify the family of a 2 pm deadline set by the local newspaper until a few hours before the deadline, though he had known of the deadline when he agreed to handle the funeral. This created unnecessary grief and anxiety as the survivors scrambled to make sure the notice would appear in time for friends and acquaintances to learn of the death and know when and where the funeral would be held.

A visitation with family and friends was scheduled for the evening before the funeral service. The funeral director promised that the service program would be available for proofreading no later than the time of the visitation, but it wasn't. As a result, corrections were being made to the service program *the next day, after* guests had arrived for the funeral service. Astonishingly, the names of all the pallbearers had been omitted from the program.

And there were other problems, such as the incorrect spelling of Jack Chase's middle name on a DVD of family pictures prepared by the funeral home, and the backward display on the casket of a blanket that included the logo of his alma mater Texas A & M.

At the cemetery, the funeral director gave no instructions to the pallbearers. To the family's shock and dismay, the pallbearers were not allowed to act as pallbearers at all: The funeral director told some cemetery grounds workers to place the casket on top of a small green garden wagon and wheel it to the gravesite, some 300 feet from the chapel where the service was held. The cemetery workers were wheeling the casket to the gravesite as we exited our cars that had been in the funeral procession following a winding route through the cemetery. The pallbearers did not even have an opportunity to

get to the hearse before the garden wagon was loaded by the workers and wheeled toward the gravesite. The family could not imagine why the funeral director did not allow the pallbearers to perform their expected role.

Finally, the funeral home's itemized receipt for goods and services (in reality, a contract) included a provision under the heading "TERMS AND CONDITIONS," that requires arbitration of "ANY CLAIM OR CONTROVERSY" or "ANY CLAIM OR DISPUTE BETWEEN OR AMONG THE SELLER, YOU AS THE PURCHASER, ANY PERSON WHO CLAIMS TO BE A THIRD PARTY BENEFICIARY OF THIS AGREEMENT... ." In plain language, the receipt, which the family was required to sign, forces customers to give up the right to sue the funeral home, an action we never contemplated or discussed.

Furthermore, the arbitration provision in the contract appears to be intended to make families believe they are prohibited from making complaints to appropriate authorities. Any contractual provision that is a violation of both state and federal regulations pertaining to funeral service. All consumers are allowed by federal and state law to lodge complaints against a funeral service for its misconduct, including violations of pertinent federal and state regulations. Such provisions should be prohibited by the TFSC and struck from such contracts. Since Lamar Hankins was not a party to the contract, nothing prevented him from filing the complaint.

We have attended many funerals in our lives, given eulogies and readings at several, and arranged more funerals than have most people. Never have we attended a funeral that was handled as ineptly as was this funeral. The funeral home did not earn the amount it charged for nearly every service paid. The casual, incompetent, and insolent behavior of the staff was inexcusable and does a disservice to those funeral establishments that fulfill their duty to families to honor and respect their loved ones.

Sunset funeral home told the TFSC that it would send a letter of apology to the family concerning the rules violations it committed. The letter, however, does not apologize for the rules violations. It apologizes for not "meeting the family's expectations." At no time did Sunset ever admit that it committed any rules violations, nor did it admit even to performing poorly.

### **Regulatory indifference**

To its credit, the Texas Funeral Service Commission found that the funeral home did violate federal and state regulations pertaining to the Statement of Goods and Services' falsification and presentation after the funeral, as well as the claim that a cremation casket cannot be used for burial, for which two Letters of Warning were issued. In

addition, the TFSC investigator discovered that Sunset had overcharged for the placement of the two obituaries and had not returned the excess money. The TFSC found that this was a separate violation and required the repayment of the overcharge to the family. A third Letter of Warning was issued for this violation of regulations. But Sunset then took credit in its refund letter to the family for discovering the over-payment for the obituaries, another falsification of the facts by Sunset.

While Sunset was not required to pay a fine or penalty, it was required to provide to the TFSC **“a written report that describes the measures taken to implement corrections”** of the violations found to have been committed by Sunset. The written reports were to include **“the dates those measures were implemented.”**

On October 12, 2011, the General Manager of the funeral home, Bill Vallie, and the funeral director in charge of Jack Chase’s services, Dudley Chandler, submitted a letter outlining their compliance with the Commission's requirements. The letter clearly indicates that they did **not** comply with the Commission's directives. The letter states that they have periodic training for staff, but there was no indication in their letter that any compliance actions related to the Letters of Warning were taken after the Letters of Warning were sent to them. No dates were provided about when any corrective actions were supposedly taken.

Lamar Hankins has spent twenty-five years working to educate families about their rights and how to avoid unscrupulous behavior by some funeral directors. This experience, which June has supported, helps us both conclude that unless funeral homes have to pay substantial monetary penalties for their misconduct, there is little incentive for them to stop their unlawful and deceptive practices. The fact that there had been no other formal complaints against this funeral home in thirty years (a factor considered by the TFSC) means very little when one considers what it takes for families to make formal complaints. As part of its investigation, for instance, four family members had to travel substantial distances to Austin to attend an informal conference with the TFSC staff as part of its investigation of this complaint, an investigation that lasted nearly a year and a half. In addition, as discussed earlier, the arbitration provision used by Sunset is a likely deterrent to such complaints.

Most funeral homes can easily calculate their funeral prices against the likelihood that violations of the rules will result in substantial penalties. Naturally, many decide that it pays them in the long run to ignore any rules that are inconvenient. This cost-benefit calculation is found in all regulated industries. The only way to overcome it is to base penalties, in part, on the profits made from violating the rules.

The funeral home demonstrated that it has little respect for the authority of the TFSC or the concerns of the family. Sunset funeral home has thumbed its nose at the TFSC and the family by its impudence and noncompliance in responding to the Commission's decisions. And why shouldn't it? The Commission was unwilling to take any action to enforce its orders against the funeral home after Sunset's noncompliance was pointed out in writing to the Commission's Executive Director.

To add insult to injury, we had to make a Public Information Act request to learn the details of the TFSC's actions against this funeral home *eighteen months after the initial complaint was filed*.

Because the TFSC refused to make public its findings that the funeral home officials lied about what really happened, the funeral home knows that its tactics have worked and they have skated through this matter with relative ease. The TFSC even allows funeral homes in Texas to use documents that families are tricked into signing to avoid their compliance with the federal and state regulations. Once funeral homes learn of these regulatory omissions, it is no wonder that many of them use obfuscation and deceit as regular practices in their dealings with Texas families.

As further evidence of the funeral home's utter indifference to its actions and their effect on grieving families, the funeral home alleged in its communications with the TFSC that Lamar Hankins is an "anti-industry advocate." Even if this were true, it is beside the point and an *argumentum ad hominem* attack, a favorite tactic of scoundrels who have been caught in malfeasance. In fact, he is a pro-family advocate who believes in holding deceitful funeral homes to account for their wrong-doing.

Clearly, TFSC did not hold this funeral home to account in a fair, satisfactory, or effective manner. The TFSC failed to live up to its own mission as explained on its website at <https://www.tfsc.texas.gov>:

The mission of the Texas Funeral Service Commission (TFSC) is to protect the public from deceptive practices in the funeral and death care industry through a process of impartial enforcement, inspection, licensing and education in order to guarantee every citizen's final disposition is conducted professionally and ethically.

Arranging for a funeral, cremation or burial is a major consumer purchase involving many emotional, religious and social considerations. As such, the TFSC requires the highest standards of professional and ethical conduct from the funeral and death care industry.

The TFSC serves the public of Texas and is accountable to the public.

The families of Texas deserve better treatment than our family received from either the funeral home or the regulators who are supposed to protect the public. The length of the investigation, the inconvenience to the family, the inadequate penalty, the failure to compel the funeral home to comply with the TFSC's orders, and Sunset's violations of rules that have been in effect now for over 30 years are all matters that should be and can be remedied by the Texas Legislature. It remains to be seen whether there is anyone in that institution who cares enough about Texas families to find remedies to these problems.

The TFSC has regulated the practice of funeral directing for 80 years. Texas families are no better protected now from abuses relating to the purchase of funeral services than they were in 1938. The best remedy we can find is to eliminate the TFSC and transfer its regulatory functions to another more accountable and reliable agency, such as the Texas Department of Licensing and Regulation. Doing so will save the state's scarce resources by reducing enforcement costs and will put a responsible agency in charge of protecting Texas families from those licensees unwilling to voluntarily act ethically, professionally, and lawfully.

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