

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

February 13, 2014

Opinion No. 14-18

Registration of Human-Remains Removal Services

QUESTIONS

1. Is a human-remains removal service owned by a licensed funeral director or licensed embalmer as a sole proprietorship exempt from registration?

2. Is a human-remains removal service exempt from registration that (a) is organized as a corporation or limited liability company that is not a licensed funeral establishment and (b) has a licensed funeral director or a licensed embalmer as an officer or manager?

OPINIONS

1. Yes.

2. No.

ANALYSIS

Tenn. Code Ann. § 62-5-318(a) provides that “no removal service shall operate in this state unless the removal service is registered with the board of funeral directors and embalmers.” A “removal service” is “any person or entity that engages in arranging, directing, supervising or performing the transportation of deceased human remains for a fee” but does not include “a licensed funeral director, a licensed embalmer, a licensed funeral establishment or person’s employees.” Tenn. Code Ann. § 62-5-101(10).

1. As this Office explained in Tenn. Att’y Gen. Op. 14-08 (Jan. 14, 2014), a sole proprietorship has no legal existence or identity separate or apart from the sole proprietor. See *Hitt v. Hitt*, No. 02A01-9310-CV-00218, 1994 WL 618608, at *2 (Tenn. Ct. App. Nov. 9, 1994) (quoting *Black’s Law Dictionary* 1248 (5th ed. 1979)) (“A sole proprietorship is defined as: ‘[a] form of business in which one person owns all assets of a business in contrast to a partnership and corporation. The sole proprietor is solely liable for all the debts of the business.’”). Because a sole proprietorship is operated in the owner’s personal capacity, a removal service owned by a licensed funeral director or licensed embalmer as a sole proprietorship is exempt from registration under Tenn. Code Ann. § 62-5-318(a).

2. Under the plain language of the statute, any “entity” that is operating as a removal service must be registered with the Board unless it constitutes a licensed funeral establishment. Tenn. Code Ann. § 62-5-101(10). *Black’s Law Dictionary* defines “entity” as “[a]n organization (such as a business or governmental unit) that has a legal identity apart from its members.” *Black’s Law Dictionary* 573 (8th ed. 2004); *see also Old Hickory Eng’g & Mach. Co. v. Henry*, 937 S.W.2d 782, 785 (Tenn. 1996) (noting that “a corporation is an entity separate and distinct from its officers and shareholders”). Thus, where a removal service is organized as a corporation or a limited liability company and is not a licensed funeral establishment, such removal service must be registered with the Board regardless of whether a licensed funeral director or a licensed embalmer serves as an officer or manager. The statutory exemption for licensed funeral directors and embalmers applies only to those funeral directors and embalmers operating in their personal capacities.

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