

University of Denver

Digital Commons @ DU

---

All Publications (Colorado Legislative Council)

Colorado Legislative Council Research  
Publications

---

11-1964

## 0094 Consumer and Funeral Problems

Colorado Legislative Council

Follow this and additional works at: [https://digitalcommons.du.edu/colc\\_all](https://digitalcommons.du.edu/colc_all)

---

### Recommended Citation

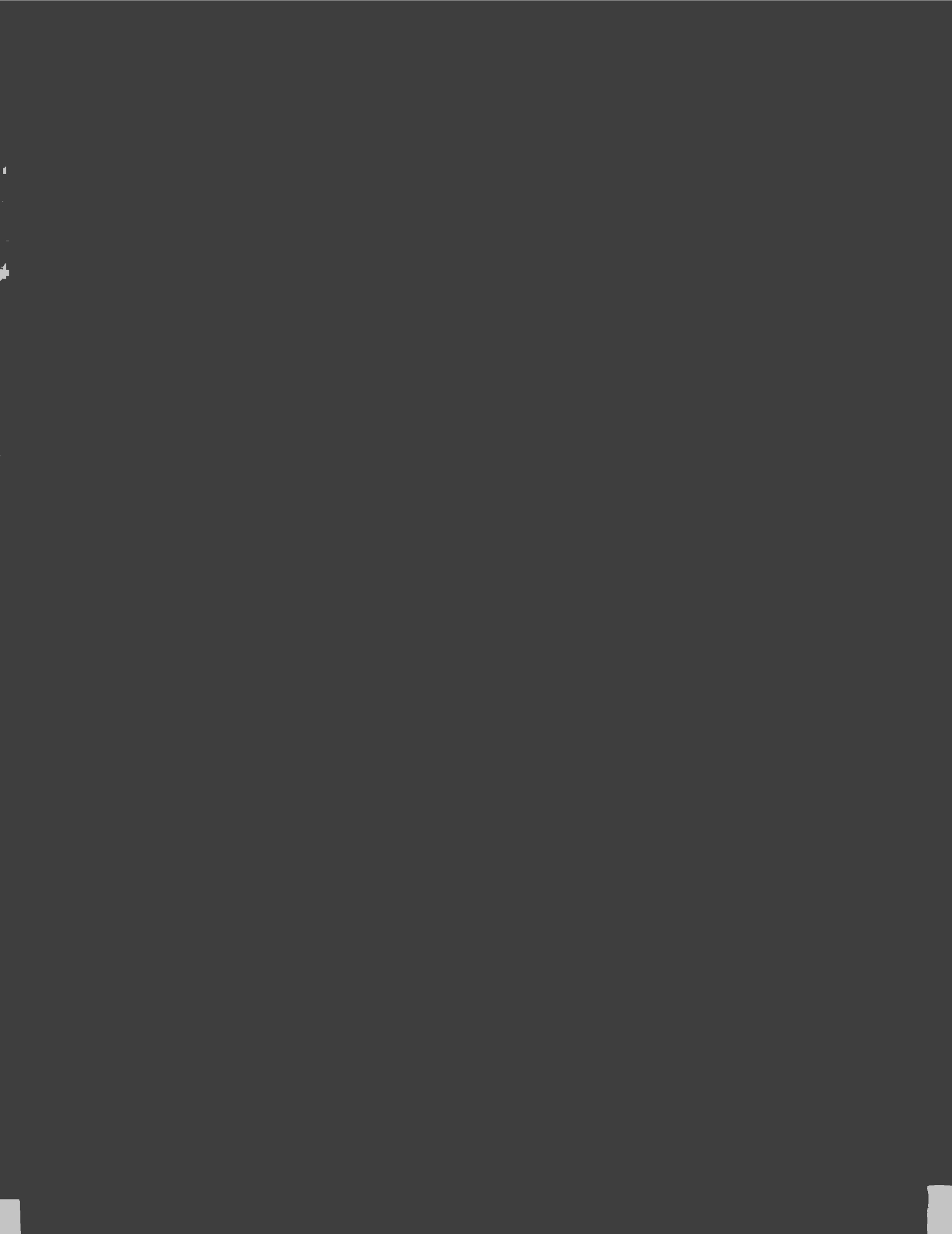
Colorado Legislative Council, "0094 Consumer and Funeral Problems" (1964). *All Publications (Colorado Legislative Council)*. 102.

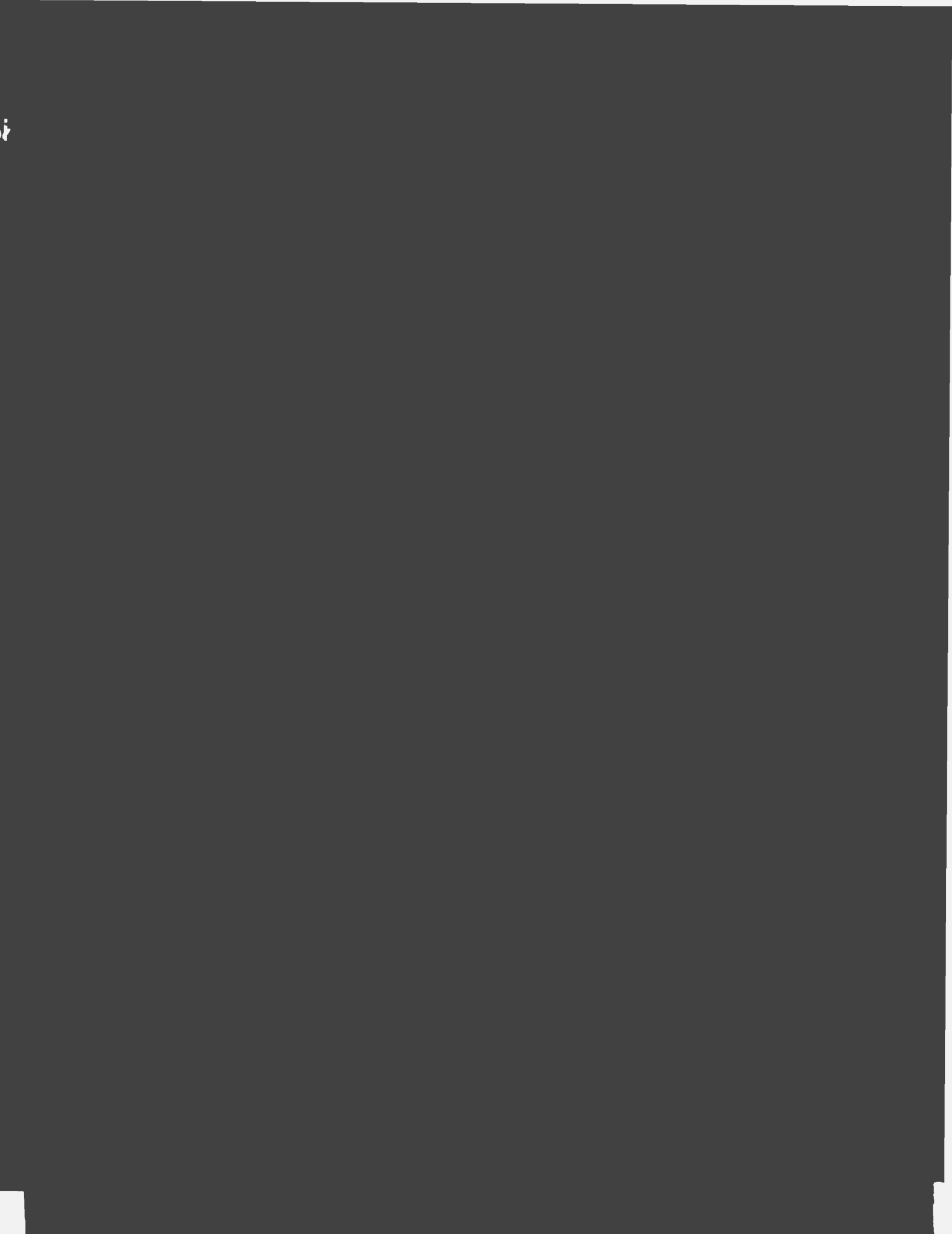
[https://digitalcommons.du.edu/colc\\_all/102](https://digitalcommons.du.edu/colc_all/102)

This Article is brought to you for free and open access by the Colorado Legislative Council Research Publications at Digital Commons @ DU. It has been accepted for inclusion in All Publications (Colorado Legislative Council) by an authorized administrator of Digital Commons @ DU. For more information, please contact [jennifer.cox@du.edu](mailto:jennifer.cox@du.edu), [dig-commons@du.edu](mailto:dig-commons@du.edu).

---

## 0094 Consumer and Funeral Problems





UNIVERSITY OF DENVER COLLEGE OF LAW LIBRARY

CONSUMER AND FUNERAL PROBLEMS

( Colorado Legislative Council -- Committee on Consumer Problems  
and the Funeral Industry )  
Report To The

Colorado General Assembly

Research Publication No. 94  
November, 1964

**OFFICERS**

Rep. C. P. (Doc) Lamb  
Chairman  
Sen. Fay DeBerard  
Vice Chairman

**STAFF**

Lyle C. Kyle  
Director  
Harry O. Lawson  
Senior Analyst  
Phillip E. Jones  
Senior Analyst  
David F. Morrissey  
Research Assistant  
Myran H. Schlechte  
Research Assistant  
Janet Wilson  
Research Assistant

**COLORADO GENERAL ASSEMBLY**



**LEGISLATIVE COUNCIL**

ROOM 341, STATE CAPITOL  
DENVER 2, COLORADO  
222-9911—EXTENSION 2285

**MEMBERS**

Lt. Gov. Robert L. Knous  
Sen. William E. Bledsoe  
Sen. Edward J. Byrne  
Sen. Frank L. Gill  
Sen. Floyd Oliver

Speaker John D. Vanderhoof  
Rep. Joseph V. Calabrese  
Rep. John L. Kane  
Rep. William O. Lennox  
Rep. John W. Nichols  
Rep. Clarence H. Quinlan

November 24, 1964

To Members of the Forty-fifth Colorado General Assembly:

In accordance with the provision of House Joint Resolution No. 1030, 1964 regular session, the Legislative Council submits the accompanying report and recommendations relating to consumer problems and to the funeral industry.

This report and recommendations of the committee appointed to carry out these two studies were approved by the Council at its meeting on November 23, 1964, for transmission to the members of the Forty-fifth General Assembly.

Respectfully submitted,

C. P. (Doc) Lamb,  
Chairman

**OFFICERS**

Rep. C. P. (Doc) Lamb  
Chairman  
Sen. Fay DeBerard  
Vice Chairman

**STAFF**

Lyle C. Kyle  
Director  
Harry O. Lawson  
Senior Analyst  
Phillip E. Jones  
Senior Analyst  
David F. Morrissey  
Research Assistant  
Myran H. Schlechte  
Research Assistant  
Janet Wilson  
Research Assistant

**COLORADO GENERAL ASSEMBLY**



**LEGISLATIVE COUNCIL**

ROOM 341, STATE CAPITOL  
DENVER 2, COLORADO  
222-9911—EXTENSION 2285

**MEMBERS**

Lt. Gov. Robert L. Knous  
Sen. William E. Bledsoe  
Sen. Edward J. Byrne  
Sen. Frank L. Gill  
Sen. Floyd Oliver

Speaker John D. Vanderhoof  
Rep. Joseph V. Calabrese  
Rep. John L. Kane  
Rep. William O. Lennox  
Rep. John W. Nichols  
Rep. Clarence H. Quinlan

November 12, 1964

Representative C. P. Lamb, Chairman  
Colorado Legislative Council  
Room 341, State Capitol  
Denver, Colorado

Dear Mr. Chairman:

Your committee appointed to conduct studies relating to consumer problems and problems within the funeral industry has completed its work for 1964 and submits the accompanying report and recommendations thereon.

As may be noted, the committee concentrated its efforts in 1964 on the study of the funeral industry since this was assigned as a one-year undertaking. However, the committee developed a substantial amount of preliminary information concerning consumer problems in Colorado, which was a study scheduled for completion over a two-year period, and this information should provide the basic ground work for a new committee to resume this work in 1965, with a final report being prepared for the 1966 session.

Respectfully submitted,

Paul E. Wenke, Chairman  
Committee on Consumer  
Problems and the Funeral  
Industry

PEW/mp

## FORWARD

Recent public complaints relating to consumer problems in the market place and in dealings connected with funerals and burials resulted in the Legislative Council being directed by the provisions of House Joint Resolution No. 1030, 1964 regular session, to carry out studies of these problems. The committee created by the Council to conduct these two separate but related studies consisted of the following members: Senator Paul E. Wenke, chairman; Senator William B. Chenoweth, vice chairman; Senators Roy R. Romer and Sam T. Taylor; and Representatives Joseph R. Albi, George W. Atkinson, Ray H. Black, Robert S. Eberhardt, Mark A. Hogan, Rex G. Howell, John Kane, Raymond H. Simpson, and John D. Vanderhoof. Representative C. P. Lamb, chairman of the Legislative Council, also served as an ex officio member of the committee.

In order to provide the general public with the opportunity to express their views on general consumer problems and funeral and burial problems, the committee conducted hearings on the Eastern Slope (Denver) and the Western Slope (Grand Junction). However, only a limited number of such persons took advantage of these meetings to present their views to the committee. The committee and staff appreciates the interest and cooperation provided by representatives of the Denver Better Business Bureau, the Colorado Home Economics Association, the funeral and cemetery industries, and state agencies and boards participating in the committee's studies.

The accompanying report and recommendations reflect the committee's activities and deliberations during 1964. As the committee points out, however, additional interim study consideration needs to be given to various aspects involved with the funeral industry and with general consumer problems.

Providing staff assistance to the committee were James C. Wilson, Jr., assistant attorney general assigned to the Legislative Reference Office, and Phillip E. Jones, senior research analyst, Legislative Council staff.

November 12, 1964

Lyle C. Kyle  
Director



## TABLE OF CONTENTS

	<u>Page</u>
LETTERS OF TRANSMITTAL	iii
FOREWORD	vii
SUMMARY OF COMMITTEE RECOMMENDATIONS	xi
CONSUMER PROBLEMS AND THE FUNERAL INDUSTRY	1
STUDY OF THE FUNERAL INDUSTRY	1
Pre-need Funeral Programs	1
Pre-need Funeral Contracts in Colorado	2
Types of Contracts Provided	2
"Value" of Services and Total Contract Price	3
100 Per Cent of Payments in Trust	3
Income from Trust Funds	3
Grace Period	3
When Designated Mortuary Does Not Provide	4
Services	4
Liquidated Damages	4
Unpaid Balance at Time of Death	4
Other Comments	5
Amount Invested in Pre-need Funeral Contracts	5
Summary of Committee Meetings	14
Committee Recommendations	17
Cemeteries	17
Major Problems in Colorado	17
Committee Recommendations	18
State Board of Funeral Directors and Embalmers	18
Summary of Problems	19
Committee Recommendations	20
Other State Agency Programs Involving Funerals	21
State Department of Public Health	22
State Department of Public Welfare	22
Committee Recommendations	23
CONSUMER PROBLEMS	23
Summary of Committee Meetings	23
Denver Better Business Bureau	24
Colorado Home Economics Association	25
Debt Management Plans	26
Other Consumers	27
Survey of State Agencies	27

TABLES

I -- Comparison of Contract Provisions of Companies Licensed to Sell Pre-need Funeral Services in Colorado	6
II -- Comparison of Fiscal Year 1963-64 Annual Reports of Companies Licensed to Sell Pre-need Funeral Services in Colorado	15

APPENDICIES

A -- "Minimum Personal Service for Traditional Service"	33
B -- Attorney General Opinon Relative to State Board of Funeral Directors and Embalmers	35

## SUMMARY OF COMMITTEE RECOMMENDATIONS

The accompany report of the committee appointed to study consumer problems and problems of the funeral industry contains the full text of the committee's findings and recommendations. The recommendations of this committee may be summarized as follows:

### Pre-need Funeral Programs

1. The administration of pre-need sales regulation and licensing should be transferred to the State Commissioner of Insurance.
2. All merchandise, except monuments, as well as services should be included within the provisions of the pre-need law.
3. One hundred per cent of the payments under any pre-need contract should be required to be placed in an independent trust company approved by the insurance commissioner.
4. All pre-need contracts should contain the following in bold type on the face of the contract -- "NOT INSURANCE."

### Cemeteries

1. Cemeteries should be licensed by the state.
2. Cemeteries should be required to file a map of plot locations with the county clerk and recorder of the county in which the cemetery is located.
3. The sale of pre-need interments, including cemetery plots, materials, and services, should be included under the provisions of the law relating to pre-need funeral services. Further, any contract involving such a sale should contain on the face thereof the full disclosure of any charges and services in addition to the cost of the plot or interment right which must be paid before the plot or right may be used. Also, the law should provide that a vault cannot be made a pre-condition to the sale of a plot or interment right within any cemetery.
4. Fifty per cent of the proceeds from sales of plots should be placed in a perpetual care trust fund at the time of burial, the interest from which is dedicated to the maintenance of the plots, with this provision not applying to governmentally-owned-and-operated cemeteries and cemeteries not operated for profit by religious and benevolent groups and fraternal, labor, and cooperative associations. A provision should be included in the law to allow that not to exceed 50 per cent of a refund on a pre-paid contract could be withdrawn from the perpetual care trust fund, if a cemetery cares to provide for re-funding of its contracts in some cases.

### State Board of Funeral Directors and Embalmers

1. The membership of the state board should be expanded to include one representative of the general public and one representative

of the cemetery industry, appointed by the Governor from the state at large and subject to confirmation by the Senate.

2. Section 61-1-13, 1963 C.R.S., should be clarified to read that where embalming of a dead human body is performed, it shall be performed only by a regularly-licensed embalmer or by an apprentice embalmer under the supervision of a regularly-licensed embalmer.

3. Section 61-1-8, 1963 C.R.S., should include a minimum educational requirement of a high school education as one of the qualifications for a funeral director, and not two years of general college education as is contained in the present law.

4. A statutory provision should be adopted to require mortuaries to furnish, at the time funeral arrangements are made for the care and disposition of the body of a deceased person, a written statement which includes an itemized listing of the services and merchandise to be provided with accompanying prices for each such service and article of merchandise.

5. A statutory provision should be adopted to state that no container is required in cases of cremation except in such cases where a container may be required by the State Board of Public Health.

#### State Department of Public Health

1. The statutes involving vital statistics need to be revised and brought up-to-date to meet modern-day conditions.

#### Consumer Problems

1. Cash fund collections of the State Department of Agriculture should be deposited in the State General Fund and an appropriation made therefrom to finance the various activities within the department.

2. Bond requirements for broker-dealers and issuer-dealers in the securities' law should be increased to \$25,000, with exceptions provided for solely mutual fund salesmen, and the bond exemption for registrants whose net capital exceeds \$10,000 should be repealed.

#### Further Study Needed

The committee's one-year study resulted in the recommendation for further study with respect to certain aspects of the funeral industry and the completion of the preliminary work begun by the committee in regard to general consumer problems.

# CONSUMER PROBLEMS AND THE FUNERAL INDUSTRY

## COMMITTEE FINDINGS AND RECOMMENDATIONS

The Second Regular Session of the Forty-fourth Colorado General Assembly directed the Legislative Council to undertake studies relating to consumer problems and to the funeral industry. Under the provisions of House Joint Resolution No. 1030, the study of consumer problems was directed "for the purpose of determining if Colorado Law is adequate to safeguard the rights of its citizens from questionable sales promotion devices and individuals. The committee so appointed shall make a report of progress to the first regular session of the Forty-fifth General Assembly and a final report at the second regular session."

The other assignment consists of "a study of the funeral industry, the rules and regulations adopted by the Board of Funeral Directors and Embalmers, and problems related to the industry, with particular emphasis on costs of funerals, pricing practices, taxation of the industry, the competitive situation, prepaid funeral practices, and types of funerals offered."

The committee established by the Legislative Council to carry out these directives of the General Assembly, in view of the two-year assignment on the study of consumer problems and a one-year deadline on the study of the funeral industry, concentrated its efforts during 1964 on the latter subject. At the same time, however, the committee developed substantial preliminary information on consumer problems in Colorado, including some recommendations for legislative consideration in the 1965 session, but additional work will be needed in 1965 before this study is completed.

### STUDY OF THE FUNERAL INDUSTRY

The committee's study of the funeral industry was divided into four general areas: (1) pre-need funeral programs; (2) cemeteries; (3) the State Board of Funeral Directors and Embalmers; and (4) other state agency programs involving funerals.

#### Pre-need Funeral Programs

Funeral costs generally involve two categories -- the funeral and the burial. These costs include expenses for services provided by (1) the mortuary, (2) the crematory (if the body is cremated), (3) the cemetery, and (4) a public carrier (if the body is transported other than locally).

Usually, the selection of the funeral service desired is directly related to the casket selected and the price thereof; also, since the cost of the funeral is often the same as the price of the casket selected, charges may not be broken down for the specific services provided by the mortuary. To illustrate the scope of these services, a Denver funeral director prepared a list of the minimal

personal services provided for a "traditional" funeral, a copy of which is contained in Appendix A. The services in this list total 61 minimum man hours.

Until fairly recently, formal advance arrangements for an individual funeral consisted largely of insurance programs designed to reduce or eliminate the financial burden on the survivors. However, a new concept has been added with the introduction of so-called pre-need or pre-arrangement programs in Colorado and in other states in the nation. The benefits under these programs, as reported by one licensee in Colorado, include eliminating the burden of making funeral arrangements on the survivors, as well as the financial burden, and preventing over-emotional spending at the time of death. Another benefit is also reported to be protection against the effects of inflation on funeral costs.

Because of the period of time which may be involved between payment and receipt of the contracted services, the Colorado General Assembly has seen fit to regulate this activity in the interests of the public, declaring "that the business of selling contracts or agreements whereby the seller agrees to provide funeral goods or services upon death is affected with a public interest, and the preservation of the safety and welfare of the public from unconscionable dealing requires regulation of the sale of such contracts and of the disposition of funds obtained as a result of such sales" (Section 14-19-1, 1963 Colorado Revised Statutes).

As provided by this 1961 law, all licensees are regulated by the State Bank Commissioner. All funds collected by licensees are required to be deposited with a trustee within 45 days after they are received.

### Pre-need Funeral Contracts in Colorado

Thirty-five contract sellers of funeral services are licensed by the State Banking Commissioner under the provisions of the 1961 law. These licensees, however, do not include some companies engaged solely in the sale of merchandise, such as caskets, or in the sale of pre-need cemetery programs.

Table I contains a comparison of the pre-need contracts for the 33 licensees replying to the committee's request for this information. As may be noted, these contract provisions are quite similar in some respects, but in other respects there is a substantial variance in their provisions.

Types of Contracts Provided. Approximately one-half (17) of the 33 licensees reporting appear to maintain their pre-need programs as a convenience to prospective clients, such as old age pensioners; that is, they have no formal, prepared contracts; payments are optional with the payee; there is no provision for "liquidated damages"; or they report that they have no salesmen or solicitors in connection with these programs.

The remaining 16 licensees, on the other hand, maintain formal contracts with specified provisions for installment payments, liquidated

damages, etc., and most, if not all, utilize sales campaigns as part of their programs. In addition, at least six of these 16 licensees appear to have separate vault or interment contracts, the receipts from which may be treated as not coming under the 100 per cent trust provisions in the 1961 law.

"Value" of Services and Total Contract Price. One major selling point used in connection with pre-need funeral service plans is that the purchaser can beat "the high cost of dying" by paying for these services in advance of the time of need. Seven of the 33 licensees incorporate this approach in their contracts by including a comparison of the "value" of the services with the total contract price.

The contracts for five of these licensees -- A, B, G, H, and N -- include specific dollar amounts for both instances which indicate that the total contract price is around 20 per cent less than the value of the services he will receive. The contracts for two licensees -- F and R -- include a specific dollar amount for the value of the services and a blank space where presumably a lower dollar amount would be written in for the total contract price.

100 Per Cent of Payments in Trust. On the basis of the pre-need funeral services contracts submitted, all but one -- Licensee P -- includes a provision that all receipts will be placed in trust, and the name of the trustee or trust fund administrator is included in the contracts for ten of the licensees.

In contrast are the provisions of the vault or interment contracts. In four of these, listed or reported for Licensees F, G, R, and FF, the contracts do not contain provisions on placing the receipts in trust. This contract for Licensee O provides that the amount placed in trust will be based upon present "wholesale" costs to pay for the merchandise and services. Licensee GG is believed to have a contract similar to that for Licensee FF, but a copy thereof was not submitted.

In connection with the disposition of the receipts for vault or interment contracts, perhaps of significance are the comments of the attorney for Licensee G which are included in Table I. In brief, he suggests this type of contract must be used by the average or medium-sized funeral home in order to finance the pre-need funeral services contracts.

Income and Appreciation from Trust Funds. Another way of financing pre-need funeral services contracts is through the requirement that the income and appreciation from the monies placed in trust accrue to the contract seller, and the contracts for more than 20 of the 33 licensees contain this requirement. Three of these, for Licensees A, N, and O, also include the provision that any depreciation in the value of the trust will be sustained by the contract seller. In such contracts as those provided by Licensees C, S, X, BB, and DD, however, interest accrues to the contract purchaser.

Grace Period. Because many of the pre-need funeral services contracts provide for payments on an installment basis, the accompanying table includes a comparison of these provisions. For those

contracts having this type of provision, the usual grace period is 30 days, with extensions possible of up to one year, either with or without a service charge of one dollar per month. The contracts for Licensees R and FF also provide that the grace period may be extended for more than one year while payments are being made under a vault purchase agreement.

Several of the contracts do not provide for a grace period since payments are made at the convenience of the buyer.

When Designated Mortuary Does Not Provide Services. In the event the designated mortuary does not provide the funeral services, well over half of the pre-need funeral services contracts provided that total refunds of all monies paid shall be made. Three licensees have contracts which provide for partial refunds in such cases -- Licensees G, J, and EE.

Liquidated Damages. At least 16 of the 33 licensees have pre-need funeral services contracts which provide that liquidated damages are due the contract seller in the event the contract buyer decides to withdraw from the plan. The amount of damages charged by these licensees is shown in the following tabulation:

<u>Licensees:</u>	<u>Rate Charged</u>	<u>Amount On \$1,000 Contract</u>
A, D, E, G, H, K, L, M, O, R, and FF (11)	25% of contract price	\$250
B, and J (2)	20% of contract price	200
I (1)	20% of monies deposited	---
S (1)	Penalty of ___% on money withdrawn	---
EE (1)	20% of ?	---

In the case of the vault or interment contracts, the liquidated damages provision is not applicable since these contracts either are on the basis of a promissory note or the contracts state that no refunds shall be made if the buyer defaults.

Unpaid Balance at Time of Death. If there is an unpaid balance under the pre-need funeral services contracts at the time of death of the purchaser, several of the contracts provide that this balance must be paid immediately; otherwise, a full refund will be made of the monies paid in and the licensee will no longer have any responsibility or liability under the contract. However, under the same situation, i.e., when the balance is not paid, six licensees have contracts specifically providing that only partial refunds shall be made -- Licensees A, E, G, K, L, and M.

At the same time the contracts of Licensees K, L, and M, as well as Licensees B and P, provide that, if various conditions have been met, the contract holder will receive the services specified in the event he dies before all time payments have been made. These conditions include such things as age and that the contract holder "has never contracted nor suffered from cancer, tumors, diabetes, epilepsy, heart trouble, high blood pressure, paralysis, tuberculosis, ulcers,



or from any other illness of a serious nature, unless proof is shown of a complete recovery." (Emphasis added.)

Other Comments. Table I includes a column entitled "Other Comments." This column is included largely to report special comments on different provisions from the usual contracts. However, since many of the licensees included comments when they replied to the request for copies of their contracts, these comments have been reported in this column to supplement the information in the remainder of the table.

Investments in Pre-need Funeral Contracts. More than four million dollars were being held in trust under pre-need funeral contracts as of July 1, 1964, according to the annual reports filed by the 35 companies licensed to sell pre-need funeral services in Colorado. At least another four million dollars, and possibly as much as eight million dollars, remains to be collected on balances due under existing contracts, making a minimum grand total of from eight to 12 million dollars which has or will be invested in pre-need service contracts in Colorado. Further, this grand total does not include investments in an unknown number of pre-need contracts, such as for caskets and cemetery lots, which are not reported to any state agency.

Of the four million dollars being held in trust, almost 90 per cent, or \$3,510,658, is being held in trust under contracts of eight of the 35 licensees, and one of these -- Licensee A -- accounts for 37 per cent of the total, with \$1,487,807 being held in trust. In contrast, 19 licensees report less than \$30,000 each as being held in trust, and 11 of these have less than \$10,000 apiece in trust funds. The remaining eight of the 35 licensees each report between \$32,000 and \$54,000 as being held in trust.

As may be noted in Table II, the 35 licensees have sold almost 19,000 pre-need funeral contracts. At least 2,100 of these contracts were classified as being paid in full, and the bulk of the remaining contracts were listed as active, or where payments were continuing to be made. Seven licensees included contracts classified as "inactive," and it may be significant to note that two of these licensees -- F and G -- are known to have separate vault or interment contracts, and it appears likely that some or all of the other five licensees -- H, K, L, M, and P -- may also have similar separate contracts which they feel do not come under the provisions of the 1961 law.

Thirty-three of the 35 licensees have collected \$1,178,394 on pre-need contracts which have been paid in full, with details not being reported by Licensees A and B. The average value of these contracts ranges from \$207 to \$817, with \$561 being the median value.

In regard to active contracts, for those licensees reporting the requested information, \$920,608 has been paid in as of July 1, 1964, and the balance due totals more than \$3,500,000. These contracts, ranging in average value from \$350 to \$1,180, have a median value of \$628. (Applying this median value to the number of contracts for Licensees A and B results in the estimated additional four million dollars in outstanding collections mentioned above.)

Table I

## COMPARISON OF CONTRACT PROVISIONS OF COMPANIES LICENSED TO SELL PRE-NEED FUNERAL SERVICES IN COLORADO

<u>Licensee</u>	<u>"Value" of Contract Services</u>	<u>Total Contract Price</u>	<u>100% of Payments in Trust</u>	<u>Income &amp; Appreciation Payable to:</u>	<u>Grace Period</u>	<u>If Designated Mortuary Does Not Provide Services:</u>	<u>Liquidated Damages</u>	<u>Unpaid Balance at Time of Death</u>	<u>Other Comments</u>
A	\$1,125 925 895	\$ 925 725 695	Yes--trustee not designated in contract.	Contract seller.	30 days	Refund made of amount standing to credit of the contract.	25% of total contract price.	If balance not paid immediately, refund will be made of all monies paid less 25% of total contract price.	Any depreciation in value of trust shall be sustained by licensee.
B	1,275 950 675 Blank	1,000 750 550 Blank	Yes--trustee designated in contract.	Contract seller.	Up to one year	Refund made of amount standing to credit of the contract, plus 3% simple interest per annum.	20% of total purchase sum.	Unless "Time Payment Protection Plan" applies, balance immediately due and payable.	A "Time Payment Protection Plan" is included which provides that, if various conditions have been met, the contract holder will receive the services specified in the event he dies before all time payments have been made.
C	(No set agreements or contracts)		Yes	3% simple interest paid to pre-need purchasers.	Not available.	Pre-need purchasers may withdraw their money at any time.	None	Not available.	Licensee reports it has no salesmen nor door-to-door nor telephone solicitations for pre-arrangements.
D	Blank	Blank	Yes--trustee designated in contract.	Contract seller.	30 days, with extension possible up to one year.	Refund made of all monies paid toward the total purchase sum.	25% of total purchase sum.	If balance not paid, all monies paid under contract may be refunded or they may be credited against total expenses for services performed by designated mortuary.	Plan may be terminated by contract purchaser within 30 days after its inception and all monies paid thereunder shall be refunded to purchaser.
E	None listed	Blank	Yes--trustee not designated in contract.	Contract seller.	None listed.	Refund made of all monies paid under contract.	25% of total contract price (but see "Other Comments").	Balance becomes immediately due and payable, or refund of all monies less 25% of total contract (but see "Other Comments").	Licensee reports it has never withheld any monies or refunds and never will. Also, contract purchaser may terminate contract within 60 days from its inception and all monies paid shall be refunded.
F	895	Blank	Yes--trustee not designated in contract.	Contract seller.	30 days, with extension possible up to one year.	Refund made of amount standing to credit of the contract.	None specified.	Balance becomes due and payable.	Licensee also has a separate contract to furnish articles, services, and facilities for the final interment of the contract purchaser. This contract price is blank, and not included in the contract is a provision that monies paid shall be placed in trust. Further, if the contract purchaser defaults and fails to pay the full contract price, these shall be retained by the licensee as sales and administrative expenses.

Table I  
(continued)

<u>Licen- see</u>	<u>"Value" of Services</u>	<u>Total Contract Price</u>	<u>100% of Payments in Trust</u>	<u>Income &amp; Appreciation Payable to:</u>	<u>Grace Period</u>	<u>If Designated Mortuary Does Not Provide Services:</u>	<u>Liquidated Damages</u>	<u>Unpaid Balance at Time of Death</u>	<u>Other Comments</u>
G	5 935	\$ 695	Yes--trustee designated in contract.	Contract seller.	30 days, with extension possible up to one year.	If contract paid in full, total amount refunded. If not paid in full, refund made of monies paid less 25% of total contract price.	25% of total contract price.	If balance not immediately paid in full, refund made of monies paid less 25% of total contract price.	Licensee also has a separate contract to furnish services and merchandise for the actual interment of the contract purchaser. This contract price is blank, and not included in the contract is a provision that monies paid shall be placed in trust. Further, if default is made in the required payments, or if the full contract price is not paid immediately upon the death of the beneficiary, then all sums paid thereunder shall be retained by the licensee as and for administrative expenses and the licensee shall have no liability or responsibility under the contract. In this connection, counsel for the licensee writes:  "An average or medium sized funeral home, in order to protect its future business, must engage in the sale of pre-need contracts if any other mortuary in the area <u>(it services)</u> is selling such a contract. Therefore, <u>(this interment)</u> or some similar contract, as an exemption under Chapter 157, 1961 Session Laws, must be resorted to in order to obtain sufficient monies to finance the sale of <u>(the funeral services' contract)</u> ."
H	1,087 897 687	885 685 595	Yes--trustee designated in contract.	Contract seller.	30 days, with extensions possible up to one year.	Refund made of all monies paid toward total purchase sum.	25% of total purchase sum.	Heirs may pay balance due, or refund will be made of all monies paid under contract.	
I	None listed.	Blank	Yes--in trust or escrow account--trustee not designated in contract.	Contract seller.	Not necessary--payments made at convenience of contract purchaser.	All monies deposited shall be paid to the mortuary performing the services.	20% of the monies deposited under the contract.	If balance not paid immediately, the amount paid shall be applied to a funeral service which those in charge may select.	
J	None listed.	Blank	Yes--trustee designated in contract.	Contract seller.	30 days, with "reasonable" extension possible.	All monies in excess of 20% of contract price shall be refunded.	20% of the contract price.	Contract seller shall have responsibility only when balance is paid, or satisfactory arrangements are made for its future payment.	
K	None listed.	Blank	Yes--trustee not designated in contract.	Contract seller.	30 days, with extension possible up to one year and \$1 per month service charge.	Refund made of all sums paid under contract.	25% of total purchase price.	If balance not paid immediately, refund will be made of all monies paid less 25% of total purchase price, unless "Extra Protection" provision applies.	"Extra Protection" provision included which is almost word-for-word the same as the "Time Payment Protection Plan" discussed for licensee C.

Table I  
(continued)

<u>Licen- see</u>	<u>"Value" of Services</u>	<u>Total Contract Price</u>	<u>100% of Payments in Trust</u>	<u>Income &amp; Appreciation Payable to:</u>	<u>Grace Period</u>	<u>If Designated Mortuary Does Not Provide Services:</u>	<u>Liquidated Damages</u>	<u>Unpaid Balance at Time of Death</u>	<u>Other Comments</u>
L	None listed.	Blank	Yes--trustee not designated in contract.	Contract seller.	30 days, with extension possible up to one year and \$1 per month service charge.	Refund made of all sums paid under contract.	25% of total purchase price.	If balance not paid immediately, refund will be made of all monies paid less 25% of total purchase price, unless "Extra Protection" provision applies.	"Extra Protection" provisions included which is almost word-for-word the same as the "Time Payment Protection Plan" discussed for licensee C.
M	None listed.	Blank	Yes--trustee not designated in contract.	Contract seller.	30 days, with extension possible up to one year and \$1 per month service charge.	Refund made of all sums paid under contract.	25% of total purchase price.	If balance not paid immediately, refund will be made of all monies paid less 25% of total purchase price, unless "Extra Protection" provision applies.	"Extra Protection" provisions included which is almost word-for-word the same as the "Time Payment Protection Plan" discussed for licensee C.
N	\$1,395 1,105 None listed.	\$ 985 825 Blank	Yes--trustee not designated in contract.	Contract seller.	30 days.	Refund made of the amount standing to credit of contract purchase.	None.	If balance not paid immediately, all payments made under contract may be refunded.	Any depreciation in value of trust shall be sustained by contract seller.
O	None listed.	Blank	Yes--trustee not designated in contract.	Contract seller.	30 days, with extension possible up to one year.	Refund made of all monies paid under contract.	25% of total contract price.	If balance not paid, or if there is no balance due, next of kin may elect to receive all monies paid in under contract.	Any depreciation in value of trust shall be sustained by contract seller.
	None listed.	Blank	No--amount placed in trust based upon "present" wholesale costs to pay for merchandise and services.	Any income over actual costs of merchandise and services will be paid to the perpetual care trust fund.	30 days, with extension possible up to six months.	Refund of all monies received for such merchandise.	Not applicable.	Not applicable.	<b>NOTE:</b> This is a promissory note plan, providing for the sale of caskets as well as interment spaces, vaults, grave markers, etc., and is not a pre-need plan for the providing of funeral services generally.
P	None listed.	Blank	Not mentioned.	Not mentioned.	31 days.	Not specified.	Not specified--may not be applicable as this appears to include a promissory note as part of the plan.	Under certain conditions, all further payments may be waived.	Licensee reports it is not marketing a pre-need program at the present time. The material submitted does not appear to be complete, and a promissory note may be included under this plan.

Table I  
(continued)

Licen- see	"Value" of Services	Total Contract Price	100% of Payments in Trust	Income & Appreciation Payable to:	Grace Period	If Designated Mortuary Does Not Provide Services:	Liquidated Damages	Unpaid Balance at Time of Death	Other Comments
Q	---	---	---	---	---	---	---	---	Licensee reports that in the past 11 months, approximately 80 persons have come to him to discuss pre-need funeral arrangements. He suggested to them that it would be to their advantage to purchase a small industrial insurance policy through their own independent life insurance company and to date only four insisted that licensee take their money on a pre-need plan. Licensee does not solicit, and did not submit a copy of a formal plan or agreement.
R	\$ 750 595 465	Blank Blank Blank	Yes--trustee not designa- ted in contract.	Contract seller.	30 days, with extension possible up to one year and \$1 per month service charge. Also, grace period may be extended while payments being made under vault purchase agree- ment.	Refund of payments made if arrange- ments not made with another mortuary by con- tract seller to perform like services at no additional cost.	25% of pay- ments made, or \$50, which- ever amount is greater.	If balance not paid, refund made of amounts paid under contract.	
- 6 -	None listed.	None \$ 225 110	Not mentioned.	Not mentioned.	30 days, with extension possible up to one year and \$1 per month service charge.	For the \$225 agree- ment, refund made of payments in excess of \$155, which amount is retained as an administra- tive and counseling fee. For the \$110 agreement, refund made of payments in excess of \$75.	Not mentioned.	Agreement will be fulfilled upon pay- ment of the balance due.	Apparently there is no vault purchase agreement in connection with the \$750 funeral service plan, and a vault may be included in this \$750 total.
S	None listed.	None	In escrow account.	Depositor (contract buyer).	Not necessary-- payments made at convenience of contract buyer.	Amount standing to credit of contract buyer shall be refunded.	"A penalty of ___ per cent on money with- drawn."	Not specified.	
T	None listed.	None	Yes--trustee designated in contract.	Licensee (but see "Other Comments").	Not necessary-- payments made at convenience of contract buyer.	Amount on deposit shall be used to defray funeral expenses, although another mortuary may perform the funeral services.	None	Not specified.	Licensee writes: "Since the amount of pre- need accounts we have on file is so small we are not paid interest by the bank and in return the bank does not charge us to administer these trust accounts."

Table I  
(continued)

<u>Licen- see</u>	<u>"Value" of Services</u>	<u>Total Contract Price</u>	<u>LOCA of Payments in Trust</u>	<u>Income &amp; Appreciation Payable to:</u>	<u>Grace Period</u>	<u>If Designated Mortuary Does Not Provide Services:</u>	<u>Liquidated Damages</u>	<u>Unpaid Balance at Time of Death</u>	<u>Other Comments</u>
U	None	Blank	Not mentioned.	Not mentioned.	Not mentioned.	Not mentioned.	Not mentioned.	Not mentioned.	Licensee reports its Funeral and Interment Contract "was brought about by the State Department of Public Welfare making it possible for the Old Age Pension Group to deposit up to \$350.00 and still retain a thousand dollars balance for themselves. All of our contracts are of this nature with possibly two or three exceptions. We do not advertise or sell any type of Pre-need Contracts, other than the unsolicited deposits as above stated, which are Trust Fund Accounts and may be withdrawn by the Depositor at any time their need might arise."
V	None listed.	Blank	Yes--trustee designated in contract.	Contract seller.	Not mentioned	Not mentioned.	Not mentioned.	Not mentioned.	
W	(No contract)		---	---	---	---	---	---	"We do not have a contract, as you have reference to. As an example on Thursday a lady who is on Old Age Pension, has just sold her home, and by the sale of the house she... had more funds than the department would permit her to have, so she paid us \$400.00 toward her own funeral and burial at the time of need. This procedure will reduce her cash assets \$400.00 and I assume will permit her to remain on the Old Age Pension rolls. And by this transaction there will never be any chance of the Welfare Department having to contribute funds toward her burial; otherwise her family could ask for assistance at the time of her death. All I give her is a receipt for the \$400.00, we prepare a ledger sheet for her showing the \$400.00 prepayment, and deposit these funds in a separate account in an Insured Savings & Loan. These funds are never withdrawn until an individual's death, then they are withdrawn. Semi-annually we report <u>to</u> the Banking Commissioner regarding these funds.
X	None listed.	None	Yes--blank for trustee's name included in contract.	Depositor's savings account.	Not necessary-- payments made at convenience of contract purchaser.	Entire amount credited to the depositor (contract purchaser) shall be withdrawn and applied on the service and merchandise selected by person in charge of the funeral arrangements, but no cash withdrawal shall otherwise be permitted.	None	None	"I have no salesmen or anyone else soliciting for me in any plan or program, neither do I do any selling or soliciting myself, I merely have this available for those who request it. I wish there was no such thing at all."

Table I  
(continued)

<u>Licen- see</u>	<u>"Value" of Services</u>	<u>Total Contract Price</u>	<u>100% of Payments in Trust</u>	<u>Income &amp; Appreciation Payable to:</u>	<u>Grace Period</u>	<u>If Designated Mortuary Does Not Provide Services:</u>	<u>Liquidated Damages</u>	<u>Unpaid Balance at Time of Death</u>	<u>Other Comments</u>
Y	Yes	Yes (Same as "value").	Yes--trustee designated in contract.	Not mentioned.	Not mentioned.	Not mentioned.	None.	Not mentioned.	"The State Banking Commissioner and The... County Welfare Board has approved this type of contract since about 1950."
Z	(No contract)	---	---	---	---	---	---	---	"...we do not have anyone out selling nor do we in any way solicit this type of business. When any of our people bring us money toward a burial in the future, we give them a receipt for the same and deposit the full amount in a trust fund... The major part of our depositors are people on O.A.P. At any time they so desire, they may draw out the full amount."
28	(No contract)	---	---	---	---	---	---	---	"We do not solicit pre-need funeral business and do not offer a contract in anyway, shape or form, nor do we honor any such plan sold in our area. If people come to our office and ask to prepay funeral service, we draw up an information sheet to the needs of the individual. This paper is not signed, it is merely a statement of what is to be done and what money is to be used for that purpose. This money, if any is involved, is placed in the First Federal Savings & Loan of... and there are no charges or commissions taken out. The money is placed there 100% and should the people wish to withdraw it at any time this is their privilege. Actually all that we do is place their money in savings for them. We operate on the basis that this money is not ours until such time as a service needs to be performed and our people are instructed this way."
33	None listed.	Blank	Yes--trustee not designa- ted in contract.	Contract purchaser or depositor.	Not applicable.	Not mentioned.	None. Funds may be with- drawn at any time except those deposit- ed under Public Welfare Dept. Regula- tion 4511.3.e, which are irrevocably deposited until the death of contract purchaser.	None.	Licensee has two types of pre-need trust agreements, both of which contain the same essential provisions. One type applies when someone makes a pre-need deposit for someone other than himself; the other applies when someone makes a pre-need deposit for himself.

Table I  
(continued)

<u>Lic- see</u>	<u>"Value" of Services</u>	<u>Total Contract Price</u>	<u>100% of Payments in Trust</u>	<u>Income &amp; Appreciation Payable to:</u>	<u>Grace Period</u>	<u>If Designated Mortuary Does Not Provide Services:</u>	<u>Liquidated Damaoes</u>	<u>Unpaid Balance at Time of Death</u>	<u>Other Comments</u>
CC	None listed.	Blank	Yes--trustee not designated in contract.	Contract seller.	Not mentioned.	Not mentioned.	None. Funds may be withdrawn at any time without penalty.	Not mentioned.	"Enclosed is a copy of a Trust Purchase agreement we had printed when we started in business six years ago; we have issued only eight in the entire period. We have no salesmen and do not try to sell on a pre-need basis, but have these as a convenience and protection for anyone who may want to come to us and place some money in trust."
DD	None listed.	None	Yes--blank for trustee's name included in contract.	Depositor's savings account.	Not applicable-- payments made at convenience of contract purchaser.	Entire amount credited to the depositor (contract purchaser) shall be withdrawn and applied on the service and merchandise selected by the person in charge of the funeral arrangements, but no cash withdrawals shall otherwise be permitted.	None.	None.	licensee comments "that the state health <u>17</u> department has no legal right to specify a burial amount to its pension recipients that can be put in trust with a mortuary. This in itself promotes pre-arranged funerals -- right from the state capitol."
EE	Blank	Blank	Yes--trustee not designated in contract.	Contract seller.	Not mentioned.	Refund of all monies paid less a handling charge of 20%. (Contract does not specify 20% of what.)	Amount paid not subject to refund unless the contract purchaser permanently changes residence from Denver and the Iri-County area, in which case the comments in the preceding column apply.	Not mentioned, but contract provides: "All services are to be conducted by the <u>licensee's</u> mortuary, and the funds paid to the Trustee are not to be transferred to any other Mortuary under any circumstances."	"We have no contracts with anyone representing us in the preneed program, and have no salesmen nor solicitors."
FF	None listed.	Blank	Yes--trustee not designated in contract.	Contract seller.	30 days, with extension possible up to one year and \$1 per month service charge. Also, grace period may be extended while payments being made under vault purchase agreement.	Total amount in trust shall be paid the funeral establishment which performs the services or to the legal representative of the contract purchaser.	25% of payments made or \$50, whichever amount is greater.	If balance not paid, refund made of amounts paid under contract.	



Table I  
(continued)

<u>Licen- see</u>	<u>"Value" of Services</u>	<u>Total Contract Price</u>	<u>100% of Payments in Trust</u>	<u>Income &amp; Appreciation Payable to:</u>	<u>Grace Period</u>	<u>If Designated Mortuary Does Not Provide Services:</u>	<u>Liquidated Damages</u>	<u>Unpaid Balance at Time of Death</u>	<u>Other Comments</u>
	None listed.	Blank	Not mentioned.	Not mentioned.	30 days, with extension possible up to one year and \$1 per month service charge.	"...all sums paid hereunder by Memorial Purchaser in excess of____, which shall be retained as an administrative and counseling fee, shall be refunded."	Not mentioned	Agreement will be fulfilled upon payment of the balance due.	
GG	None listed.	Blank	Yes--trustee not designated in contract.	Contract seller.	30 days, with extension possible up to one year with \$1 per month service charge.	Refund made of all amounts paid under contract.	None.	Funeral services contracted for will be provided upon payment of balance due, or refund of all amounts paid under contract.	Contract includes statement that: "Payments shall not be credited hereunder until payments have been completed upon any outstanding vault contract with Colorado.....Co, Inc." No copy was submitted of the vault contract referred to, but it would appear from the quoted language that such a contract might be required before anyone could purchase the pre-need funeral services contract, i.e., without the required separate purchase of a vault or container. Also, it may be that funds received under the separate vault contract are not being placed in a trust account.

The inactive contracts, or where payments have been temporarily suspended, vary in average value from \$515 to \$1,143, with the median value being \$660.

### Summary of Committee Meetings

As a result of the committee's meetings, it is apparent that conflict exists within the funeral industry in regard to pre-need funeral contracts, or among the funeral directors themselves, and there is also conflict between the funeral directors and non-funeral directors such as sales organizations and casket sellers.

In contrast to some of the benefits reported for pre-arranged funeral plans, the Colorado Funeral Directors and Embalmers Association stated that there are two important truisms which should be considered in connection with these plans:

"1. Unless a person knows when, where and under what circumstances he is going to die and who will be responsible for his funeral, arrangements made in advance of death create problems instead of avoiding them.

"2. Unless meaningful laws exist which are properly enforced, the public is going to suffer. Only it may take a long time, perhaps 20 years, to feel the damage that is being done."

This state association, which is an affiliate of the National Funeral Directors Association, consequently recommended to the committee that "legislation be enacted outlawing the solicitation of funerals by any person, firm or organization, either before need or at the time of need, as well as the outlawing of solicitation for the sale of funeral merchandise and goods, including caskets and vaults..." (but) "when an individual is interested in a pre-arranged funeral contract it is proper and appropriate for the funeral director to accede to the desires of the client."

The position of the Colorado Funeral Directors Association represents the thinking of the majority of the funeral directors in Colorado. However, several funeral directors have indicated to the committee that complete prohibition of pre-need funeral programs is the only answer.

The State Banking Commissioner reported that the 1961 law can never be administered properly until the language is clarified as to what constitutes a funeral service, and the problem of enforcement could be cured if the law were made to be all-inclusive in its application. On the other hand, an examiner with the banking department stated that he believed Colorado has an unworkable law which cannot be enforced, and he recommended that all pre-need plans be prohibited entirely. An example of one of the problems under the present law, he reported, involves the splitting of contracts; that is, the sale of a casket for \$500 under one contract and the price of \$195 for funeral services under a second contract. The first contract is paid off first and these proceeds do not go into a trust fund; consequently, there is no guarantee that the casket will be furnished 20 years from now unless the buyer wants to keep it in his basement until it is needed. This

Table II

COMPARISON OF FISCAL YEAR 1963-64 ANNUAL REPORTS OF COMPANIES LICENSED TO SELL PRE-NEED FUNERAL SERVICES IN COLORADO

Licensee <sup>1</sup>	Number of Contracts				Paid-Up Contracts Total Amount Held in Trust	Active Contracts		Inactive Contracts		Total Contract Amount Held in Trust	Total Balance Due	Average Value		
	Paid In Full	Active Accounts	Inactive Accounts	Total		Amount Paid In	Balance Due	Amount Paid In	Balance Due			Paid-Up Con- tracts	Active Con- tracts	Inactive Con- tracts
B	---	---	---	6,777	\$ ---	\$ ---	\$ ---	\$ ---	\$ ---	\$1,487,807	\$ N.A.	\$ ---	\$ ---	\$ ---
C	---	---	---	2,356	---	---	---	---	---	430,498	---	---	---	---
D	82	-0-	-0-	82	39,233	-0-	-0-	-0-	-0-	39,233	-0-	478	-0-	-0-
E	11	15	-0-	26	7,085	3,380	5,220	-0-	-0-	10,465	5,220	644	573	-0-
	8	-0-	-0-	8	4,498	-0-	-0-	-0-	-0-	4,498	-0-	562	-0-	-0-
F	75	447	10	532	44,638	55,835	471,663	565	5,735	101,038	477,398	595	1,180	630
G	29	231	38	298	20,977	21,004	140,136	2,030	20,390	44,011	160,526	723	698	590
H	576	2,229	211	3,016	331,207	451,735	892,847	12,422	117,048	795,364	1,009,896	575	603	614
I	18	6	-0-	24	10,204	1,030	1,070	-0-	-0-	11,234	1,070	567	350	-0-
J	92	44	10	146	31,797	7,631	---	205	---	39,633	---	346	---	---
K	246	417	20	683	135,795	72,250	200,044	1,455	21,400	209,500	221,444	552	653	1,143
L	9	169	16	194	6,075	23,347	94,018	340	10,780	29,762	104,798	675	695	695
M	130	607	34	771	88,385	125,226	271,753	1,735	21,825	215,346	293,578	680	654	693
N	58	43	-0-	101	32,497	11,315	---	-0-	-0-	43,812	---	560	---	-0-
O	31	-0-	-0-	31	8,644	-0-	-0-	-0-	-0-	8,644	-0-	279	-0-	-0-
P	45	407	257	709	23,175	6,357	203,218	-0-	132,355	29,532	335,573	515	515	515
Q	4	-0-	-0-	4	2,271	-0-	-0-	-0-	-0-	2,271	-0-	568	-0-	-0-
R	59	767	-0-	826	35,325	5,049	451,109	-0-	-0-	40,374	451,109	599	595	-0-
S	37	-0-	-0-	37	18,118	-0-	-0-	-0-	-0-	18,118	-0-	490	-0-	-0-
T	11	-0-	-0-	11	3,322	-0-	-0-	-0-	-0-	3,322	-0-	302	-0-	-0-
U	-0-	37	-0-	37	-0-	12,633	---	-0-	-0-	12,633	---	-0-	---	-0-
V	32	2	-0-	34	16,281	1,025	138	-0-	-0-	17,306	138	509	582	-0-
W	-0-	66	-0-	66	-0-	23,034	---	-0-	-0-	23,034	---	-0-	---	-0-
X	2	-0-	-0-	2	513	-0-	-0-	-0-	-0-	513	-0-	207	-0-	-0-
Y	16	-0-	-0-	16	6,631	-0-	-0-	-0-	-0-	6,631	-0-	414	-0-	-0-
Z <sup>2</sup>														
AA	11	3	-0-	14	4,155	470	910	-0-	-0-	4,625	910	378	460	-0-
BB	70	-0-	-0-	70	32,946	-0-	-0-	-0-	-0-	32,946	---	471	-0-	-0-
CC	1	3	-0-	4	817	1,050	---	-0-	-0-	1,867	---	817	---	-0-
DD	-0-	100	-0-	100	-0-	33,772	---	-0-	-0-	33,772	---	-0-	---	-0-
EE	5	5	-0-	10	1,783	654	---	-0-	-0-	2,437	---	357	---	-0-
FF	3	9	-0-	12	2,235	670	6,110	-0-	-0-	2,905	6,110	745	753	-0-
GG	-0-	23	-0-	23	-0-	8,379	---	-0-	-0-	8,379	---	-0-	---	-0-
HH <sup>3</sup>	171	-0-	-0-	171	97,777	-0-	-0-	-0-	-0-	97,777	-0-	572	-0-	-0-
II <sup>3</sup>	59	267	-0-	326	30,995	22,449	155,809	-0-	-0-	53,841 <sup>4</sup>	184,515 <sup>4</sup>	525	668	-0-
JJ <sup>3</sup>	237	1,177	-0-	1,414	141,015	32,313	667,812	-0-	-0-	173,328	667,812	595	595	-0-
TOTAL	2,128 <sup>5</sup>	7,074 <sup>5</sup>	596 <sup>5</sup>	18,931	\$1,178,394 <sup>5</sup>	\$920,608 <sup>5</sup>	\$3,561,857 <sup>5</sup>	\$18,752 <sup>5</sup>	\$329,533 <sup>5</sup>	\$4,036,457	\$3,920,097 <sup>5</sup>			

1. Licensees correspond to those included in staff memo dated August 3, 1964, comparing contract provisions.

2. Licensee has surrendered license and did not submit annual report.

3. Not included in staff memo of August 3, 1964, since they did not submit copies of their contracts.

4. Do not balance, but these are totals reported by licensee. If were to balance, contract trust total would be \$53,433 and total balance due would be \$155,809.

5. Incomplete total because item breakdown not reported by all licensees.

examiner also said that about half of the large and small pre-need operators engage in this form of contract splitting.

On the other hand, several pre-need licensees appeared before the committee to recommend continued or improved regulation of sellers of pre-arranged funeral plans. A president of a consulting firm in the field of pre-arranged funeral trust sales suggested that the existing law, properly enforced, will provide the necessary regulation, although he questioned the constitutionality of the requirement that all, or 100 per cent, of the receipts be placed in trust. Similarly, one licensee recommended "the continuance of properly regulated and controlled pre-need arrangements as a guarantee against emotional overspending at time of need."

The executive vice president of the Interment Association of America, Inc., concluding that pre-arrangement "is a practical and economic method of marketing that offers exceptional benefits to the families of Colorado," recommended that firms offering pre-arrangement should be required to do the following:

1. Register or be licensed so that the selling organization is properly identified.
2. Place adequate reserves in a trust fund in a bank, trust company, or other financial institution in the state.
3. In determining the amount required for trust funding, it should be considered that the sales and administrative costs of the selling entity are incurred today at the time of sale and should be compensated for today...at least 35 per cent would be a reasonable estimated allocation.
4. At the end of each year, before earnings are withdrawn from the trust fund, the principal of the fund must be adequate to deliver at the then wholesale or procurement prices of the merchandise and services from which the selling entity had funded.
5. Release of any principal dollars for delivery or performance should require receipted documentation from the manufacture or company serving upon a death.

Another licensee of pre-need funeral services, who also provides a separate pre-need cemetery program, recommended a provision requiring that 100 per cent of the wholesale cost of the merchandise and services sold in a pre-arranged funeral plan be placed in trust, plus an extra percentage to provide more than adequate protection. One licensee charged that the present 100 per cent requirement is discriminatory and unfair, and recommended that this requirement should be abolished completely and the state should let the free enterprise system work this out.

The president of the State Board of Funeral Directors and Embalmers concluded that all money collected by any person or company in advance of death for funeral or interment purposes should be subject to the insurance laws, the securities law, or be placed 100 per cent into trust with the interest payable to the depositor. Further, the

1961 pre-need law should be revised to eliminate areas of misunderstanding and misinterpretation, including whether or not pre-need funds are subject to inheritance taxes.

### Recommendations

The sale of pre-need services and merchandise for future delivery involves certain qualities unlike most other business transactions so that regulation by the state is required in order to protect the interests of the general public. Complete prohibition of these programs, however, is not the answer, but to regulate these activities properly the committee believes that the following changes to the 1961 act are needed:

1. The administration of pre-need sales regulation and licensing should be transferred to the State Commissioner of Insurance.
2. All merchandise, except monuments, as well as services should be included within the provisions of the pre-need law.
3. One hundred per cent of the payments under any pre-need contract should be required to be placed in an independent trust company approved by the insurance commissioner.
4. All pre-need contracts should contain the following in bold type on the face of the contract -- "NOT INSURANCE."

### Cemeteries

Cemetery costs are in addition to the cost of the funeral services, although in some cases the mortuary and the cemetery are owned and operated by the same company. These costs include the price of the grave plot and charges for opening and closing the grave. In addition, depending on the requirements of the individual cemetery, a grave liner may be required and a grave marker purchased from the cemetery may also be required. Perpetual care charges may be included in the cost of the grave plot.

### Major Problems in Colorado

There are three basic types of cemeteries operating in Colorado -- governmentally owned and operated, private non-profit, and commercial cemeteries operated for profit. However, state laws regulating the operations of these cemeteries are quite limited. In fact, one witness appearing before the committee expressed his shock at finding that Colorado does not have a perpetual care act for cemeteries. Cemeteries also do not come under the provisions of the pre-need funeral services law of 1961.

Various examples of cemetery promotions which failed were reported for Canon City, Cortez, Fort Collins, Fowler, Monte Vista, and other communities in Colorado. One file was presented to the committee containing exhibits of purchasers of grave space, vaults, markers, and monuments purchased from the Fremont Memory Gardens in

Canon City, with the following comments: "These are the records of people who paid from a few dollars down to more than a thousand dollars in full for grave space and cemetery services and for vaults, markers, and monuments. The promoters are long gone. The cemetery has grown high with weeds. Some people are buried. Some have markers and memorials set. But the greatest number have nothing to show for what they paid. This and more involving funerals and funeral merchandise has happened in other communities in Colorado and other areas while the people of still other states are protected against it happening to them."

### Recommendations

State action in regard to cemeteries is urgently needed, not only to protect the people purchasing plots therein but also to protect the general public against the burden of assuming the operation of insufficiently financed and poorly administered cemeteries. The committee therefore submits the following recommendations:

1. Cemeteries should be licensed by the state.
2. Cemeteries should be required to file a map of plot locations with the county clerk and recorder of the county in which the cemetery is located.
3. The sale of pre-need interments, including cemetery plots, materials, and services, should be included under the provisions of the law relating to pre-need funeral services. Further, any contract involving such a sale should contain on the face thereof the full disclosure of any charges and services in addition to the cost of the plot or interment right which must be paid before the plot or right may be used. Also, the law should provide that a vault cannot be made a pre-condition to the sale of a plot or interment right within any cemetery.
4. Fifty per cent of the proceeds from sales of plots should be placed in a perpetual care trust fund at the time of burial, the interest from which is dedicated to maintenance of the plots, with this provision not applying to governmentally-owned-and-operated cemeteries and cemeteries not operated for profit by religious and benevolent groups and fraternal, labor and cooperative associations. A provision should be included in the law to allow that not to exceed 50 per cent of a refund on a pre-paid contract could be withdrawn from the perpetual care trust fund, if a cemetery cares to provide for refunding of its contracts in some cases.

The committee is not convinced of the necessity to require that cemeteries be bonded or that an endowment fund of from \$10,000 to \$25,000 should be required before a cemetery could begin operating.

### State Board of Funeral Directors and Embalmers

Under the provisions of the Funeral Directors and Embalmers Code of 1957 (Sections 61-1-1 through 61-1-34, 1963 C.R.S., as amended by 1964 Session Laws), the state board consists of the secretary of the

State Board of Public Health and four licensed funeral directors and embalmers, one from each congressional district appointed by the Governor and confirmed by the Senate. The board, which is assigned to the Division of Registration within the Department of State, meets in January and in August to conduct examinations of applicants for registration or licensing. Other meetings may also be held as needed.

The committee met with officials of the State Board of Funeral Directors and Embalmers and other interested persons to review the board's operations, its problems, and areas where improvements are needed. As a result of these meetings, several problems with the 1957 code were pointed out.

### Summary of Problems Discussed at Committee Meetings

The board's secretary reported that the state board had nothing to do with any of the following subjects contained in the provisions of H.J.R. 1030, i.e., "costs of funerals, pricing practices, taxation of the industry, the competitive situation, prepaid funeral practices, and types of funerals offered."

In reviewing the provisions of the 1957 code and a copy of a publication entitled "Colorado Laws, Rules and Regulations Governing The Practice of Embalming, Funeral Directing, Mortuary Registration, 1958, As Adopted and Compiled by the Colorado State Board of Funeral Directors and Embalmers," a number of questions were raised by the committee.

Section 61-1-13 provides: "Every manager of a funeral establishment or branch establishment shall cause all dead human bodies to be embalmed by a regularly licensed embalmer, or by an apprentice embalmer under the supervision of a regularly licensed embalmer." When asked by the committee whether this language required embalming in all cases, the board's secretary replied by referring to Regulation 72 of the State Board of Health which provides, in part, "All bodies kept over 24 hours must be embalmed or properly refrigerated."

Because the general public believes that a casket is required in cases of cremation, the committee inquired as to the basis of this belief since this is not covered by the 1957 code. A former member of the state board reported the crematories have adopted a rule that they will not accept a dead human body for cremation unless it is in a container because of the danger to the health of their employees, and regular caskets are used for this purpose. In most instances, he continued, wooden caskets are used as the crematories will not accept a container if it contains glass, and the lowest-priced container costs about \$28 wholesale. On the other hand, the director of the State Department of Public Health informed the committee that he knew of no reasons relative to health for the requirement by crematories that a body must be in a container for purposes of cremation.

Several questions were raised about some of the board's rules and regulations contained in the publication provided the committee members. Another question was also raised about the board's position that it does not have the power to initiate a complaint against a funeral director or embalmer. In order to clarify these points, the

Attorney General was requested to provide the committee with his opinion thereon.

Appendix B contains the text of the reply from the Attorney General's Office. Briefly, this opinion agreed with the committee that the state board may initiate investigations, or without the filing of complaints. Also, there is no statutory authorization for the imposition by board rule of a \$50 reinstatement fee for the holder of a license by reciprocity. Subsequently, however, at a later meeting the president of the State Board of Funeral Directors and Embalmers reported that the board had never adopted any rules and regulations under the 1957 act.

The board's president also reported that since the Colorado Supreme Court threw out the requirement in the 1957 act that a year must be spent in a mortuary science school in order to be licensed as a funeral director, perhaps the law should be amended to require a license only where the public health is involved, i.e., have licensed morticians, but not require that the funeral director be licensed, similar to the laws in Minnesota and Wisconsin.

The president further stated that he felt the board had sufficient funds to initiate investigations -- up to now the board has been concerned with such things as proper ventilation, lighting, etc., but the situation has changed in the past few years and it appears that the public is interested in proper funeral management.

Counsel for a licensee under the 1961 pre-need funeral services law, but not a licensed funeral director, suggested the following statutory changes:

1. The State Board of Funeral Directors and Embalmers should be abolished, and its duties and functions transferred to the State Department of Public Health.

2. All mortuaries should be required by law to post with the state a schedule of prices for their professional services, exclusive of casket, and further they should be required to invoice each item of service separately in accordance with this schedule, having performed such services for a family requiring same.

3. All mortuaries should be required to perform burial services regardless of where or how a family desires to acquire a casket, eliminating by law the necessity of purchasing a casket only through the officiating mortuary, as a pre-requisite for a funeral service.

### Recommendations

The committee believes as a fundamental principle that self-regulation of an industry is preferable to governmental regulation where at all possible. The committee therefore recommends that the State Board of Funeral Directors and Embalmers should continue to carry out the duties and functions assigned under the provisions of the 1957 code. The membership of this board, however, should be expanded to include one representative of the general public and one representative



of the cemetery industry, appointed by the Governor from the state at large and subject to confirmation by the Senate. These additions should help the board to continue to re-evaluate its activities in light of changing conditions within the funeral industry itself and to establish itself as a central place where consumers may bring their complaints about the funeral industry. The committee also supports the proposal for state licensing boards, including the State Board of Funeral Directors and Embalmers, to consolidate their staffs and to centralize their offices in order to provide better services to the public.

As another statutory change, the committee recommends clarification of Section 61-1-13, 1963 C.R.S., to read that where embalming of a dead human body is performed, it shall be performed only by a regularly-licensed embalmer or by an apprentice embalmer under the supervision of a regularly-licensed embalmer.

Section 61-1-8, 1963 C.R.S., should include a minimum educational requirement of a high school education as one of the qualifications for a funeral director, and not two years of general college education as is contained in the present law.

Because the funeral industry ties the cost of the complete funeral services to the price of the casket as a general rule, the committee believes that this practice has led to confusion in the minds of many members of the general public and has opened the door to misleading criticisms of the funeral industry. Consequently, the committee recommends the adoption of a law requiring mortuaries to furnish, at the time funeral arrangements are made for the care and disposition of the body of a deceased person, a written statement which includes an itemized listing of the services and merchandise to be provided with accompanying prices for each such service and article of merchandise. The committee does not believe that all mortuaries should be required by law to perform burial services regardless of where or how a casket is acquired.

As a final matter involving statutory change, the committee recommends that Article 1 of Chapter 61, 1963 C.R.S., include a provision stating that no container is required in cases of cremation except in such cases where a container may be required by the State Board of Public Health.

In regard to rules and regulations of the state board, the committee believes that no state agency, including the state board, should publish an official document entitled "Rules and Regulations As Adopted..." when in fact it has not officially adopted any such rules and regulations. So far as the State Board of Funeral Directors and Embalmers is concerned, attention should be given either to adopting rules and regulations or not releasing a publication purporting to be the board's rules and regulations.

#### Other State Agency Programs Involving Funerals

In addition to its other activities relating to funerals, the committee reviewed the programs of the State Department of Public

Health and the State Department of Public Welfare as they pertain to this general subject.

### State Department of Public Health

The State Department of Public Health, besides having the director serve as a member of the State Board of Funeral Directors and Embalmers, is charged with the registration of deaths and with public health aspects of the disposal of human remains. Morticians or persons acting as such are required to file a death certificate for each death and to obtain a burial transit permit before disposal of the body or removal of the body from the registration district in which death occurred. Generally, the department reported, there is reasonable compliance with these requirements, although occasionally there may be a removal from one registration district to another without the burial transit permit, but this is usually an instance where death occurred late at night in a remote part of the district, some miles distant from the local registrar's office.

After pointing out that the present statutes covering death registration were written in 1907, the director of the department cited examples showing a need for the department to have more flexibility in regulating the transportation of human remains and their disposition. He cited as one reason that the pattern of dying today is much different from what it was 50 years ago -- many people die away from their homes, in automobile accidents far away from home, in city hospitals, etc.

In connection with its study of consumer problems, the committee was informed by the director of the Division of Vital Statistics, in the public health department that this law also needs to be revised for birth certificates, marriage certificates, and divorces. Changes could be made to clear up existing red tape, for example, connected with the issuance of birth certificates for adoptive children. Also, a central index is needed in the division as there are no accurate statistics in this state now because information on births, deaths, marriages, and divorces is maintained on a local basis.

The director of the public health department also suggested that surviving family members probably would enjoy better service if morticians would not serve as coroners. In most cases where there is only one mortician in a county, he said, the problem usually does not exist because there is not much competition, and in some rural areas in the state, the mortician may well be the best qualified person to serve as coroner. There are about 26 coroners who are morticians and 23 who are physicians. Ideally, the director stated, the department would recommend a medical examiner system for Colorado.

### State Department of Public Welfare

The director of the State Department of Public Welfare, who has left the state's service since meeting with the committee last spring, reported that this department is involved with funeral expense under four programs -- the Old Age Pension Program where the state may pay not to exceed \$200 for funeral and burial expense, and Aid To the

Needy Disabled, Aid To the Blind, and Tuberculosis Assistance where the state and counties may pay not to exceed \$100 for funeral expenses. Funeral expenses under general assistance are borne entirely by the counties, he pointed out, and other welfare programs, such as Aid To Dependent Children, do not include provisions for funeral expenses, and if any such financial assistance is needed, the funds are paid solely by the counties from general assistance. The federal government does not participate financially in any burial program.

The department has not had a major problem in getting funeral homes to bury persons under the various welfare programs; however, most funeral homes report to the department that they are losing money on the \$200 service, let alone the \$100 service. For 1963, the state contributed \$71,685.99 for 428 burials under the Old Age Pension Program, or for 11 per cent of the pensioners who died during that year. The costs under the programs involving aid to the needy disabled and aid to the blind were shared 80 per cent by the state and 20 per cent by the counties, and totaled \$8,273 for 93 burials in 1963. The \$100 cost for two burials under the tuberculosis assistance program was shared equally (50-50) by the state and county welfare departments. Also in 1963, the counties expended \$14,403.87 for funeral expenses of persons receiving general assistance.

### Recommendations

The committee believes that the statutes on vital statistics need to be revised and brought up-to-date to meet modern-day conditions, but the committee is not recommending a specific bill at this time to carry out this recommendation. The committee further believes that additional consideration needs to be given to the medical examiner system proposal and to the allowances provided by law for state assistance in welfare burial cases, including not only whether these amounts should be increased but whether the state's program should be extended to cover other welfare programs. Consequently, the committee hopes that attention to these matters can be continued in 1965 and a report thereon prepared for the 1966 session.

### CONSUMER PROBLEMS

The committee's study to determine "if Colorado law is adequate to safeguard the rights of its citizens from questionable sales promotion devices and individuals" has been based on the assumption that this subject will be continued during the 1965 interim. Consequently, much of the committee's efforts during 1964 were directed toward defining the areas of consumer problems in Colorado, with recommendations for legislative consideration in the 1965 session being made only where the committee felt the problems were most urgent.

### Summary of Committee Meetings

Opportunities for the general public to discuss consumer problems were provided by the committee on three separate occasions in 1964. On the whole, however, the response from the general public was quite limited, with most of the information being supplied the committee

by representatives of the Denver Better Business Bureau and the Colorado Home Economics Association.

### Denver Better Business Bureau

Mr. Dan Bell, executive director of the Denver Better Business Bureau, reported that two general areas may be classified as specific problems facing Colorado consumers: (1) The intentional scheme or racket, i.e., where a confidence man is working within the business community and usually intends to make his money quickly and then leave town, with such examples as referral plan selling involving any number and types of products, home-work schemes, debt adjustment, employment or trade schools, etc. -- there are some 750 different types of schemes classified which are creating problems. (2) The tricks-of-the-trade problems area which exists in every type of business operation and includes such activities as telephone solicitations, door-to-door selling, misleading or confusing labels and advertising, real estate promotions, home improvements, drugs and prescription "clubs," one-time purchases such as furnaces, appliances, etc., collection agencies, television repair services, automobiles, funeral plan promotions, and so forth.

Mr. Bell suggested that the committee review the possibilities of horizontal legislation; for example, Colorado has no effective law now on misleading advertising. Oral representations of things not in the written contract are another source of problems. The installment sales contract is a third area where there are serious problems in that the contract is sold to a financial institution and the seller of the merchandise takes the position that he no longer has any responsibility for the product sold.

A fourth area suggested by Mr. Bell for committee inquiry consists of the state's lien laws which do not protect the consumer. A law is needed in a fifth area to control private business or trade schools as Colorado has become a haven for con men operating in this area, not only to protect the consumers but also to protect the legitimate schools in Colorado. A sixth area is the cemetery field where perpetual care funds are not regulated or protected, and Mr. Bell predicted that this situation will get worse in years to come if nothing is done about it.

Mr. Bell further suggested that the committee review existing Colorado laws regarding consumer fraud and then review the administration of these laws to consider possible overlapping of jurisdictions, possible areas where more financial assistance is needed, and possible areas where some stimulation to the administration of these laws is all that may be needed. Also, since these things are a continuing problem, consideration may want to be given to creating some kind of a joint group, with representatives of government, business, and consumers; to assist in the review of these laws and their administration and to serve as a sounding board for making recommendations to the legislature. On the other hand, in regard to government consumer protection agencies, Mr. Bell stated that the bureau feels that the overlapping of jurisdiction is interfering with a free market place; government should serve to stimulate the business community to do a better job; and a tax-financed agency is not needed.

## Colorado Home Economics Association

Representatives of the Colorado Home Economics Association appeared before the committee on two separate occasions -- at the meeting in Denver on May 9th and at the meeting in Grand Junction on July 17th. At the Denver meeting, Mrs. Jeannette Lynch, the president of the association, reported a number of consumer problems which had been noted within the last year or two:

1. Lax meat inspection procedures in some localities of Colorado -- no compulsory state-wide inspection.
2. Unwholesome poultry slaughtered and sold.
3. Eggs marked U. S. Grade AA often test out a full grade lower.
4. Poultry mislabeled or misadvertised as U. S. Grade A.
5. Deceptive package as to weights and contents, grades.
6. Bread products that do not show net weights.
7. Insufficient detail on food packages to describe ingredients used and processing methods.
8. Thawed meats not labeled "thawed" at meat counters.
9. Lack of uniformity in pricing of meat and other products in low-income residential areas; overcharging.
10. Food products hauled in trucks which just hauled agricultural poisons.
11. Scales at produce counter which weigh differently from check-out counter scales.
12. Careless handling of agricultural poisons by distributors and retailers; food sometimes found next to poisons in retail stores.
13. Fruitgrowers and municipalities exempted from Pesticide Applicator's Law -- particularly concerned that municipalities can spray deadly poisons without any check on knowledge of operator or calibration of equipment.
14. Unsanitary conditions in retail stores and restaurants in low-income residential areas.
15. Products offered for sale in violation of the Colorado Insecticide, Fungicide and Rodenticide Act.
16. Exaggerated load weights of household belongings by moving vans.
17. Questionable schemes that range from cleaning furnaces to real estate to bait advertising.

18. Failure to disclose full credit charges.
19. Health insurance policies which are cancelled following an illness.
20. The labeling of fluid milk, including the use of misleading terms concerning its contents.

The conditions which the association believes breeds consumer problems include inadequate laws; inadequate enforcement of existing laws; the absence of well-known channels through which consumers can report their complaints or suggestions regarding better consumer protection; lack of citizen understanding of a free versus a controlled economy and how each works; communication failures between the marketing system and consumers; and inadequate consumer knowledge of points to look for when buying.

To correct some or all of these conditions, the association suggested that one of the following alternatives be taken:

1. Authorize the Attorney General's Office to be a contact for Colorado consumers so that they would feel free to carry their comments and complaints to that office with the expectation that something would be done about them.
2. Establish a separate consumer counsel patterned after the program in California.
3. Authorize the Attorney General to stage a consumer conference, as has been done in Michigan, Massachusetts, and other states, working with the Home Economics Association, the Denver Better Business Bureau, the Colorado Education Association, Chambers of Commerce, labor unions, universities and other schools, etc.
4. Establish or have the Attorney General appoint an advisory committee on consumer problems.

#### Debt Management Plans

Mr. Bill Gagnon, of Radio Station KTLN, Denver, presented the committee with the results of his investigation of so-called commercial debt management or credit counseling plans in Colorado. In brief, these firms offer their services to the debt-ridden members of the general public for a fee, but at best these firms provide no services which their customers could not do themselves, and at worst some of these firms merely accept their customers' money and provide no services at all. In fact, a former vice president of a Denver debt management firm recommended to Mr. Gagnon in a taped interview that prohibition of this activity and not governmental regulation is the only solution to the problem created by these firms.

As long ago as 1955, the Committee on Suggested State Legislation of the Council of State Governments considered a proposed draft of suggested legislation to establish court-supervised arrangements for debtor trusteeship. The purpose of the measure was to provide wage earners who become deeply enmeshed in debt with a simple and inexpensive

method of pooling their obligations and paying their creditors regularly and periodically. The further purpose was to provide protection of such persons from the so-called "budget planners" and "debt adjusters" who charge extremely high rates for minimum services.

The suggested legislation proposed by this committee followed the pattern established by laws in Georgia, Maine, Massachusetts, New York, Pennsylvania, and Virginia. This committee stated in its suggested program report for 1957 that it concurred with the views expressed by former Attorney General Jacob Javits of New York who, after a careful study of debt pooling activities in that state, said:

"As a matter of basic policy I am opposed to outlawing any business, yet my office could suggest to the legislature no practical way to regulate properly such activities."

### Other Consumers

A few individual consumers appeared before the committee to report what they consider to be consumer problems. These included inadequately labeled bakery products as to contents, misleading advertising, the use of preservatives in bread, and salacious movies, movie advertising, and ladies' fashions.

### Survey of State Agencies

Following a review of the statutes, some 33 state agencies were classified as functioning in areas involving consumers. These agencies, plus the district attorneys, were requested to comment on (1) the adequacy of their present laws, and (2) enforcement or other problems they might have in regard to the administration of these laws.

Briefly, four state agencies -- savings and loan department, professional nursing board, accountancy board, and natural resources director (licensing of weather modifiers) -- reported no changes needed either in their laws or the enforcement thereof.

Three other state agencies indicated they may have some problems. The chairman of the Public Utilities Commission expressed his availability to meet with the committee in regard to this request and, in the meantime, the matter will be further investigated to determine whether or not some suggestions relative to legislation should be made.

The professional engineers' board reported that the Colorado Engineering Council has been working the past two years on a proposed new law to regulate professional engineering practices, and it is planned to submit this proposal to the 1965 session. Mr. Samuel H. Hawkins, who is chairman of the Council's governmental relations committee, will meet with the committee if that is felt necessary.

The executive secretary of the pharmacy board stated that some of the laws are out-dated and need revision, such as the laws relating to poison. However, work is underway on drafting what he

believes to be the most needed legislation, with the expectation that it will be introduced in the 1965 session. This proposal includes a provision to control drug wholesalers and manufacturers, who are not now licensed under the law, as well as clarification and technical administrative changes in the present law.

Fifteen agencies did not respond to the committee's inquiry, presumably indicating they had no problems concerning consumer protection. These 15 agencies are as follows: abstracters' board; architects' board; bank commissioner (consumer finance act, money orders, retail installment sales law, etc.); barbers' board; basic sciences examiners' board; collection agency board; dental board; industrial commission (private employment agencies); medical examiners' board; motor vehicle supervisor (licensing and supervision of motor vehicle dealers); optometry board; physical therapy board; shorthand reporters' board; Secretary of State (dance schools, bingo); and state inspector of oils (gasoline pumps and fuel products, antifreeze).

A total of 12 state agencies replied that they were encountering problems in regard to statutory provisions, enforcement, or both, as follows:

Agriculture Department -- The State Department of Agriculture administers numerous programs which deal directly with consumer protection. The State Agricultural Commissioner indicates improvements are needed in most of these programs, as well as establishing a new program for meat and slaughter house inspection. These programs include the seed law, pesticide act, fertilizer law, nursery act, applicators act, fruit and vegetable inspection act, dairy products law, bee and bee products law, poultry act, egg inspection act, feed act, and the weights and measures act.

In addition, as a general administrative improvement, the commissioner recommended that cash fund collections by the department be deposited in the General Fund and the the department be financed by appropriations from the General Fund. This procedure would allow the department to establish more economical and efficient inspection programs and would also result in more efficient administration of the various programs. As matters exist today, where cash funds collected must be deposited to the account of the individual cash fund, the efficiency of the personnel for the various cash fund programs is greatly reduced and at the same time the cost of inspections is also increased.

Chiropractic Examiners' Board -- The board pointed out that, for better enforcement, various state boards should combine part of their resources to enable the hiring of a full-time investigator. This would solve a problem that has been facing various boards for a number of years.

Cosmetology Board -- The executive secretary of the cosmetology board reported that "it is my feeling there are many inadequacies in our present law that propose problems in enforcement and administration. I would be most happy to ...discuss this if you feel it is necessary."

District Attorneys -- The District Attorney for the 18th Judicial District informed the committee that his office had had



considerable difficulty and many problems concerning consumer frauds. Further, "it has become one of our outstanding law enforcement problems." After citing such examples of consumer fraud problems as door-to-door salesmen, fly-by-night construction companies, and home-improvement companies, he expressed his willingness to discuss these problems and possible solutions with the committee.

Electrical Board -- This board believes that additional legislation is necessary for the adequate protection of the public and submitted proposed amendments to the committee dealing with minimum electrical standards.

Insurance Commissioner -- The commissioner reported several areas where statutory improvements are needed: (1) New corporations intending to write insurance; (2) Holding companies; (3) Adjusters' licenses; (4) Group credit insurance; (5) Control of advertising by non-licensed companies; (6) Uninsured employee welfare plans; (7) Prepaid benefit plans; (8) Licensing of fraternal agents; (9) Minors and life insurance; and (10) Insider transactions. The commissioner added that all of the foregoing can have a detrimental effect on the public if not properly controlled, and his office is studying these carefully to make sure that adequate recommendations can be made for legislative action.

In regard to enforcement, the commissioner stated that "the last item above would be one area where we have no power to enforce as would number eight, number six, and number five. In all of these areas, because we have no control, misrepresentation can be made to the public and they can suffer financial loss as a result." To assist in the enforcement of the laws regarding insurance, the following areas need to be strengthened: (1) An office should eventually be established on the West Slope staffed either with a deputy commissioner, an investigator, and a clerk, or with just an investigator and a claims individual and a clerk, in order to bring supervision and control closer to the people. (2) Additional personnel is needed to properly conduct all the examinations and to carry out investigations of alleged violations of the current and proposed laws.

Practical Nurse Examiners' Board -- The present permissive law relating to practical nurses should be made mandatory in order that only qualified persons could represent themselves as practical nurses.

Psychologist Examiners' Board -- So far as the protection of the consumer is concerned, the board believes that it provides adequate control over the activities of psychologists and all who call themselves psychologists. "However," the board chairman stated, "a person can hold himself out to the public, using a name other than psychologist, and provide a similar type of service. Neither this board nor any agency, so far as I know, can protect the consumer in this instance."

Public Health Department -- The director reported that areas of needed legislation or where better administration could be achieved include a transfer of the indigent tubercular program from the welfare department to the health department; a revision of the vital statistics law (previously noted herein); a radiological licensing and control

act; setting tolerance and governing the sale, storage, and use of pesticides; color additives in foodstuffs; and the definition of narcotics and regulation of wholesalers of narcotic drugs. In addition, the public health department and the agriculture department are reviewing provisions for an act to provide for state inspection of poultry and meat.

Real Estate Commission -- A number of problems exist in connection with subdivision developments in Colorado and the act passed by the General Assembly in 1963 to control this matter (Sections 118-16-1 through 118-16-7, 1963 C.R.S.). It is the opinion of the commission that the personal licensing of subdividers as provided by present law fails in its purpose of controlling subdivisions since the land is not identified nor described. The commission is of the further opinion that the issue of one permit for the sale from an identified subdivision (i.e., the identified land itself) is sufficient. The commission does not recommend that the state engage in any zoning or recording duties. Instead, the state's position should be one of aid to the counties and the commission suggested that the following requirements be included in any new proposed legislation in this field:

1. Legal description of the land and the names and addresses of the owners.
2. Evidence submitted of title.
3. A sworn statement that it will comply with county requirements, including recording of plat and survey.
4. Instrument of conveyance must disclose any encumbrances.
5. Escrow of deposit money in the event a blanket mortgage exists without containing a release clause.
6. Investigation, revocation, and injunctive power of the state agency after a hearing.

Securities Commissioner -- The commissioner brought two suggested amendments to the attention of the committee which he considers "important in the area of 'consumer problems' and necessary in the public interest." The first deals with the bond requirement for broker-dealers and issuer-dealers, and the commissioner recommended that their bond requirement be increased from \$10,000 to \$25,000 and eliminate the exemption that no bond is required of a registrant whose net capital exceeds \$10,000 as the present law does not provide enough protection to the general public. An exception is needed, however, for those who only sell mutual funds and operate out of their own homes as they do not handle funds.

The second inadequacy in the present law which the commissioner recommended be changed involves registration by coordination. That is, under the present law a security may be registered by coordination where a registration statement or notification under Regulation A of the Federal Securities Act of 1933 has been filed in connection with the same offering. Essentially a filing under this provision is almost automatically effective for distribution in Colorado upon clearance with the Securities Exchange Commission and, therefore, the so-called merit provisions do not apply as they do in the case of

intrastate offerings. The commissioner stated that "this is not ordinarily a serious problem since, probably, at least 90 per cent of the offerings filed federally are considered legitimate and would pass the standards presently considered acceptable. In the remaining small percentage the (state) administrator should be given some authority with respect to passing the issue on the basis of fraud or where unreasonable amounts of commissions, promoter's profits and options are involved."

Veterinary Medicine -- The State Board of Veterinary Medicine reported the dangers accompanying the artificial insemination of livestock by poorly trained, untrained, or unscrupulous individuals, and recommended the adoption of a bill providing for the examination and licensure of qualified candidates to conduct artificial insemination in Colorado.

### Recommendations

As pointed out previously, the committee concentrated its efforts in 1964 on the study of the funeral industry, leaving the study of consumer problems for completion during the 1965 interim. On the basis of its preliminary work in 1964, however, the committee recommends that legislative consideration be given the following in the 1965 session:

1. That cash fund collections of the agriculture department be deposited in the General Fund and an appropriation be made therefrom to finance the various activities within the department.

2. That bond requirements for broker-dealers and issuer-dealers in the securities law be increased to \$25,000, with exceptions provided for solely mutual fund salesmen, and that the bond exemption for registrants whose net capital exceeds \$10,000 be repealed.

In regard to commercial debt management or consolidation programs in Colorado, the committee believes that this type of activity may well be inimical with the best interests of the general public. However, since this committee has not had sufficient time to review this problem in depth, the committee is merely calling this situation to the attention of the Legislative Council at this time, and if no action thereon is taken in the 1965 session, the committee believes that it should be a matter of study prior to the 1966 session.

In addition to these specific recommendations, the committee recognizes the need for legislation to meet the consumer problems pointed out by the Commissioner of Insurance and understands that industry representatives are working with the commissioner to draft proposed legislation for the 1965 legislature. If remedial legislation is not adopted in 1965, however, further interim consideration should also be given these matters before the 1966 session.

The committee also understands that the real estate industry is working on problems involved in the state's subdividers' law. The committee believes that until the members of the real estate industry can agree among themselves on recommended improvements, there is little that can be done about these problems.

The foregoing recommendations and conclusions are by no means intended to indicate committee disapproval of the other consumer problems brought before it during 1964. Rather, the committee believes that it is not in a position to reach conclusions on these matters and that they should be reviewed intensively in 1965 for presentation in the 1966 session. The committee also feels that attention should be given to consolidating various inspection programs within state government, or where two state agencies carry out separate but related programs at the present time, as a means of obtaining better enforcement and better protection to the consumers.

## APPENDIX A

### MINIMAL PERSONAL SERVICE

#### For Traditional Funeral

Personnel and man hours are based on absolute basic minimum requirements. These represent only the items each family sees or is aware of which relate directly to the one service in which they are interested.

Maintenance, clerical or other necessary behind-the-scene personnel are not considered.

Available mortuary facilities and equipment are omitted.

<u>Activity</u>	<u>Persons</u>	<u>Man Hours</u>
1. First call received	1	0
2. Removal of deceased from place of death to mortuary	2	3
3. Immediate vital statistics from family or representative	1	1
4. *Embalming and restoration	2	6
5. Obtaining physician's signature on death certificate	1	1
6. Exchanging certificate for burial permit	1	1
7. Delivering burial permit to cemetery	1	1
8. Obtaining deceased's clothing	1	1
9. Driver picking up family for funeral arrangements	1	1
10. *Arrangement conference	1	2
a. Contacting clergyman		
b. Arranging type and place of service		
c. Calling pallbearers		
d. Contacting cemetery for grave opening		
e. Miscellaneous necessary details		
11. *Selection of casket and service	1	1
12. Selection of outer receptacle and arranging delivery	1	1
13. Driver returning family to residence	1	1
14. Notices prepared and delivered to papers	1	1

\*(Asterisks indicate items which can vary in personnel and man hours through conditions, situations or local customs: condition of remains relating to restorative art and embalming technique; customary length of calling hours; size of funeral service; etc.)

	<u>Activity</u>	<u>Persons</u>	<u>Man Hours</u>
15.	*Notification of friends and relatives for family	1	1
16.	Casketing and placing deceased in reposing room	2	1
17.	*Receiving, recording and displaying flowers	1	2
18.	*Calling hours: 7-9 for 3 nights (24 hour on-duty personnel not included)	2	12
19.	Completing veteran forms and obtaining flag from post office	1	1
20.	Driver for family car before, during and after funeral service	1	3
21.	Movement of deceased and flowers to church for funeral service	3	3
22.	Staff or church organist for funeral service	1	1
23.	*Soloist	1	1
24.	*Staff to handle church service	3	3
25.	*Staff to handle funeral procession to cemetery	3	3
26.	Committal service, supervision of vault placement, and burial	1	1
27.	Post service meeting with family: Floral Record, Social Security or Veteran forms, Life Insurance, and other post service details	1	2
	Estimated hours - not directly chargeable to above items		6
	<b>Total Minimum Man Hours</b>		<b><u>61</u></b>



**The State of Colorado**

**DEPARTMENT OF LAW**  
OFFICE OF THE ATTORNEY GENERAL  
DENVER 2

**DUKE W. DUNBAR**  
ATTORNEY GENERAL

**FRANK E. HICKEY**  
DEPUTY ATTORNEY GENERAL

June 18, 1964

Lyle C. Kyle, Director  
Legislative Council  
Room 341 State Capitol  
Denver, Colorado 80203

Dear Mr. Kyle:

This is in reply to your request for an opinion concerning the following:

1. May the State Board of Funeral Directors and Embalmers require that all applicants for licenses must be legal residents of Colorado? The answer to this question is in the affirmative. CRS '53 (1960 Perm.Supp.), 61-3-8 and 61-3-16, require that applicants for licensure as a Funeral Director or Embalmer shall be residents of the State of Colorado.

2. May the State Board require a reinstatement fee of \$50.00 for the holder of a license by reciprocity in view of the fact that reciprocity fees are not included in Sec. 61-3-23, CRS'53 (1960 Perm.Supp.)? The answer to this question is in the negative. The State Board is only authorized to charge and collect such fees as are authorized by statute. There is no statutory authorization for the imposition of a \$50.00 reinstatement fee for the holder of a license by reciprocity.

3. Under the provisions of Sec. 61-3-31, CRS '53 (1960 Perm. Supp.), may the State Board require, as it does in Rule 6 of its Rules and Regulations, that an applicant for a license by reciprocity must justify his request to the Board and that any such applicant must be a legal resident of this State? The answer to this question is in the affirmative. Under the provisions of the cited statute, the granting of a

Lyle C. Kyle, Director  
page 2-

license by reciprocity is discretionary with the State Board. It would appear, therefore, that the State Board has the right to require an applicant to justify his request for licensure by reciprocity and to state his reasons for requesting licensure in the State of Colorado. It further appears that an applicant for licensure by reciprocity must also be a legal resident of this State, inasmuch as, under Sec. 61-3-31, licenses by reciprocity are granted subject to the provisions of said Article 3, one of which is that applicants for licensure as a Funeral Director or Embalmer must be residents of the State of Colorado.

With respect to your last question concerning the investigatory powers of the State Board, under CRS.'53, (1960 Perm. Supp.), 61-3-5(2), the State Board is empowered "To investigate and report the violations of this article and violations of the rules and regulations of the board to the district attorney of any judicial district in which such violations are committed, or to the grand jury of the judicial district in which such violations are committed." Although in my opinion the better procedure in most instances would be to require a verified complaint to be filed with the State Board before it takes action on a particular matter, it appears that the State Board can act on its own initiative if circumstances so require.

Very truly yours,

DUKE W. DUNBAR  
Attorney General

By: 

FRANK E. HICKEY  
Deputy Attorney General

CAF:K.