

March 31, 1932.

Francis X. Mahoney, M. D.  
Health Commissioner,  
City Hall, Boston.

Dear Sir:

I have before me your recent communication in which you ask to be advised if the Health Department has the authority under the law to issue a burial permit to any person who is not a licensed undertaker to bury a dead human body, and the interpretation to be given to sections 45 and 46 of chapter 114 of the General Laws.

In replying I call your attention to section 45 of said chapter 114 as most recently amended by chapter 414 of the Acts of 1931 which as far as applicable to the subject matter provides as follows:

"Except as provided in sections forty-four and forty-six, no undertaker or other person shall bury or otherwise dispose of a human body in a town, or remove therefrom a human body which has been buried, until he has received a permit from the board of health. . . ."

and section 46 of chapter 114 as amended by section 3 of chapter 243 of the Acts of 1926 provides in part as follows:

"No undertaker or other person shall bury a human body or the ashes thereof which have been brought into the commonwealth until he has received a permit so to do from the board of health....."

There can be no difficulty in the interpretation to be given to these two sections, the language being unambiguous and quite positive. No where in the law does it confine the right to bury a human body to an undertaker, because if it did it would have been unconstitutional, and there can be no question

that these words "or other person" were inserted in these two sections for the purpose of preserving the constitutional rights of persons.

In the case of Wyeth vs. Cambridge Board of Health, 200 Mass. 474 in which the Board of Health of the City of Cambridge refused a license to an undertaker because he was not licensed as an embalmer, and in which the court issued a mandamus to compel the issuance of said license, the court pointed out that the rule under which the Board of Health of Cambridge was acting was unconstitutional. Said rule provided that,-

"No permit for removal, burial or disinterment shall be issued by boards of health, city or town clerks or selectmen of a town, or any other persons authorized to issue burial permits, to any person or persons who have not been registered and received a certificate from the State board of registration in embalming."

The court said, "under this rule no one can bury lawfully the dead body of a former member of his family, unless the permit for burial is obtained by a licensee of this board," and then the court said, "the right to enjoy life, liberty and the pursuit of happiness is secure to everyone under the Constitution of Massachusetts. . . . Substantially the same right is secured by the Constitution of the United States which does not permit a State to deprive any person of life, liberty or property without due process of law. . . and the refusal to permit one to bury the dead body of his relative or friend, except under an unreasonable limitation is also an interference with the property right that is not allowable under the Constitution of the Commonwealth or the Constitution of the United States."

It is a perfectly constitutional provision to provide that no one shall engage in the business of undertaker or hold himself out as an undertaker, unless he has been licensed so to do. This is not in conflict with the opinion already quoted. No one has the right to practice law or medicine in this Commonwealth unless he is licensed so to do, but there can be no prohibition against a person pleading his own case in court, nor even advising his immediate family as to medical treatment, with certain limitations.

The interpretation, therefore, that must be given to sections 45 and 46 of chapter 114 is that the issuing of a burial permit to bury a dead human body is not confined to licensed undertakers, and that the words "or other persons" was intentionally inserted to protect the constitutional rights of persons. Of course, it is to be noted by you that an individual who makes application for such a permit in the carrying out of the burial must conform strictly to every rule and regulation regarding burials.

Very truly yours,

Samuel Silverman

Corporation Counsel.

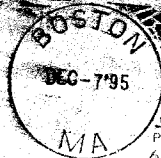
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As we discussed,  
here is the  
opinion requested.

If I can be of  
additional  
assistance, let  
me know.

Kimberly  
Bumworth Walker  
635-4020