

November 15, 2000

You indicated that a funeral director has requested that the city adopt Senate Bill 2338 (passed as Public Acts 2000, Chapter 691, as an amendment to '55-8-183 *Tennessee Code Annotated*, effective date July 1, 2000) regarding escorted funeral processions. You asked whether the city might be subjecting itself to additional liability if it does so. My short answer is that the new amendment does nothing, one way or the other, that affects the city's liability, so you are basically in the same position you were without the amendment. The amendment makes no effort to limit liability on the city's part, and my recommendation to you is to continue to follow the guidance of your insurer in deciding whether or not to escort the funerals.

If your council's purpose in adopting the amendment is to limit the city's liability, that purpose will not be accomplished. If the council's purpose is to serve a political interest, that is a different story. It probably won't hurt the city in any way to go ahead and adopt the amendment, but the potential exposure to liability will not be any different than it is now.

In the case of *Anderson v. City of Chattanooga*, 978 S.W.2d 105 (Tenn. App., Eastern Division, 1998), the City of Chattanooga was found negligent for having only one police escort with a funeral procession, when an accident occurred at another intersection. The accident occurred because the one officer could only be at one place at a time, and there were two intersections being affected by the procession at the same time. I understand that the appeal by the City of Chattanooga has been denied, so the law in the case apparently stands.

If your council determines that allowing the funeral home to conduct its own processions is appropriate, I have a few suggestions of other matters you might want to include in your adoption of the new statute. Your code of ordinances currently requires a permit for any "club, organization or similar group to hold any meeting, parade, demonstration or exhibition on the public streets. No permit shall be issued by the chief of police unless such activity will not unreasonably interfere with traffic" Section 16-110. You could add a paragraph to this section that would cover funeral processions. Mere issuance of a permit would not subject the city to liability under '29-20-205, *Tennessee Code Annotated*, which makes a governmental entity immune from liability arising out of the A issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization.

Some things to include if the city decides to adopt the statute and clarify it further are:

1. Requiring each funeral home to get a permit to conduct funeral processions
2. Requiring each funeral home to notify the police at least 24 hours before the procession is to start.
3. Setting forth some regulations as to number of escorts per number of cars in each procession.
4. Requiring proof of insurance from each funeral home that secures a permit

for processions to cover liability on the streets for negligence by the escorts, and an indemnification provision for the city, in which the funeral home's insurer would defend, indemnify and hold harmless the city against any liability arising out of the funeral home's escort of a funeral procession. You could contact the risk management pool to discuss appropriate policy limits and language to be included.

5. From your letter, it appears that only one funeral director has requested that the council adopt the ordinance. If your council decides to adopt it, such a permit must be available to any and all funeral directors in your community.
6. The council might want to decide whether any "time, place, or manner" restrictions would be appropriate, such as not having processions during rush hours, perhaps avoiding a main thoroughfare, etc. Since a procession is similar to a parade, there are implications for free speech rights, so any limitations on the right to process must be narrowly drawn. The Attorney General of Tennessee has summarized four requirements of the United States Supreme Court for "time, place, and manner" restrictions (These were first discussed in *Forsyth County, Georgia v. Nationalist Movement*, 505 U.S. 123 (1992):
 - A. Any ordinance limiting parades (or processions) must not delegate broad discretion to allow permits. The governing body needs to establish "narrow, objective standards" to help the person deciding whether to issue a permit.
 - B. The ordinance must be content-neutral. In your situation, the decision-maker cannot, for example, deny a permit to a funeral home of a certain religion or belief system, and grant a permit under the same circumstances to a funeral home associated with a different religion.
 - C. The ordinance must be "narrowly tailored to address a legitimate government interest." In your case, the city has two such purposes: 1) public safety on the highways, and 2) avoidance of liability against the city.
 - D. The ordinance must provide for "open, ample alternatives for communication." In your case, this requirement might manifest itself by allowing the procession on a less-busy street, if travel on a main thoroughfare is prohibited. See Tennessee Attorney General's Opinion 98-080, a copy of which I am enclosing.

Any restrictions your city might impose on funeral processions must meet these four requirements.

Let me know if I can help further with this problem.

