



An Audit Report on

Enforcement Activities at the Funeral Service Commission

May 2017
Report No. 17-033



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Overall Conclusion

The Funeral Service Commission (Commission) had controls to help ensure that it reviewed, investigated, and resolved complaints in accordance with requirements. In addition, the Commission conducted inspections in accordance with requirements.

However, to help ensure that it continues to comply with requirements, the Commission should document its inspection procedures and establish an inspection review process.

Table 1 presents a summary of the findings in this report and the related issue ratings. (See Appendix 2 for more information about the issue rating classifications and descriptions.)

Background Information

The Commission investigates complaints against licensees and inspects establishments to ensure compliance with regulations. The Commission has two inspector positions who inspect funeral establishments, commercial embalming facilities, crematory establishments, and certain cemeteries throughout the state. In addition, the Commission has two investigators who process complaints that it receives.

For fiscal year 2016, the Commission received \$837,631 in appropriations and was authorized to have 12 full-time equivalent employees.

For fiscal year 2016, the Commission reported that it inspected 1,500 establishments and received 149 jurisdictional complaints.

Sources: The Commission and the General Appropriations Act (84th Legislature).

Table 1

Summary of Chapters and Related Issue Ratings		
Chapter	Title	Issue Rating ^a
1	The Commission Had Controls That Helped Ensure That It Reviewed, Investigated, and Resolved Complaints in Accordance with Requirements	Low
2	The Commission Conducted Inspections in Accordance with Requirements; However, It Should Document Inspection Procedures and Establish an Inspection Review Process	Low

^a A chapter is rated Priority if the issues identified present risks or effects that if not addressed could critically affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern and reduce risks to the audited entity.

A chapter is rated High if the issues identified present risks or effects that if not addressed could substantially affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern and reduce risks to the audited entity.

A chapter is rated Medium if the issues identified present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

A chapter is rated Low if the audit identified strengths that support the audited entity's ability to administer the program(s)/functions(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

Auditors communicated other, less significant issues separately in writing to Commission management.

This audit was conducted in accordance with Texas Government Code, Section 321.0132.

For more information regarding this report, please contact Cesar Saldivar, Audit Manager, or Lisa Collier, First Assistant State Auditor, at (512) 936-9500.

Summary of Management's Response

At the end of one chapter in this report, auditors made recommendations to address the issues identified during this audit. The Commission agreed with the recommendations in this report.

Audit Objective and Scope

The objective of this audit was to determine whether the Commission has enforcement processes and related controls to help ensure that it reviews, investigates, and resolves complaints and conducts inspections in accordance with applicable requirements.

The audit scope included complaints the Commission closed from fiscal year 2016 through December 22, 2016,¹ and inspections conducted for establishments licensed as of January 12, 2017.

¹ Complaints received and closed between December 1, 2016, and December 22, 2016, were excluded from audit testing.

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Detailed Results

Chapter 1

The Commission Had Controls That Helped Ensure That It Reviewed, Investigated, and Resolved Complaints in Accordance with Requirements

Chapter 1
Rating:
Low ²

The Funeral Service Commission (Commission) had controls that helped ensure that it reviewed, investigated, and resolved complaints in accordance with requirements (see text box for a summary of the Commission's complaints process). Specifically:

- Required format. For the 30 jurisdictional complaints and the 8 nonjurisdictional complaints tested, the Commission received the complaints in written format as required by Title 22, Texas Administrative Code, Section 203.40(d).³
- Jurisdiction determination. The Commission properly determined jurisdiction for all 30 jurisdictional complaints tested and 7 (88 percent) of the 8 nonjurisdictional complaints tested. For one nonjurisdictional complaint tested, the Commission incorrectly referred the complaint to another agency, rather than disposing of the complaint because the establishment (a cemetery) was not regulated by any state entity.
- Required elements. The files for the 30 jurisdictional complaints and the 8 nonjurisdictional complaints tested included all required elements (subject matter of complaint, date complaint was received, complainant name, summary of results, and the name of each person contacted in relation to the complaint), as required by Texas Occupations Code, Section 651.203.

The Commission's Complaints Process

The Commission receives written complaints from consumers, and it also generates complaints internally based on inspection results. The **Commission's Complaints** Department determines the jurisdiction for complaints and **enters them into the Commission's** regulatory system for investigation.

Commission staff investigate complaints and prepare investigative reports. The investigative reports include a summary of evidence and the recommended administrative **sanctions, which the Commission's** staff attorney and executive director review, as necessary.

Depending on the response the Commission receives from the respondent associated with a complaint, the Commission can take actions to include:

- Accept full payment and close the case.
- Settle a complaint with an agreed order and close the case.
- Dismiss a complaint.
- Refer a complaint to the State Office of Administrative Hearings for further action.

Source: The Commission.

² Chapter 1 is rated Low because the audit identified strengths that support the audited entity's ability to administer the program(s)/functions(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

³ Prior to October 18, 2015, that requirement was set forth in Title 22, Texas Administrative Code, Section 201.3(4).

- Investigative reports. For the 28 complaints tested that resulted in an investigative report, the Commission properly documented the nature of the complaint and its investigative findings. For 1 (4 percent) of those 28 investigative reports, the Commission’s documentation incorrectly specified that there were violations. However, the Commission’s internal review process identified that error in the investigative report, and the Commission administratively closed the complaint before it sent the investigative report to the respondent.
- Recording complaint information. For 29 (97 percent) of the 30 jurisdictional complaints tested and all 8 nonjurisdictional complaints tested, the Commission accurately recorded key complaint information in its regulatory enforcement system. The Commission had not correctly entered the name of the complainant for one complaint that resulted from an inspection.
- Imposing and collecting sanctions. For fiscal year 2016 through December 22, 2016, the Commission imposed \$56,977 in sanctions resulting from administrative penalties. Of that amount, the Commission had received a total of \$34,290 in payments, and \$22,687 was past due or not yet due as of December 22, 2016.⁴

Auditors tested 10 jurisdictional complaints through which the Commission imposed a total of \$13,750 in sanctions and determined the following:

- For 9 of those 10 jurisdictional complaints, the recommended sanctions were consistent with the Commission’s sanction schedule in the Texas Administrative Code. For the remaining jurisdictional complaint, auditors were unable to determine whether the recommended sanction was consistent with the Commission’s sanction schedule because the Commission had disposed of the associated investigative report in accordance with its records retention schedule.
- The Commission properly dismissed the recommended sanctions for 3 of the 10 jurisdictional complaints tested prior to imposing those sanctions. For the remaining seven jurisdictional complaints, the Commission:
 - Properly recorded the \$4,750 in payments it received from the respondents associated with 5 jurisdictional complaints.

⁴ The sanction amounts were based on unaudited information from the Commission.

- Sent a cease and desist letter and suspended the license of the establishment from which it did not receive payment for one jurisdictional complaint.
- Had already canceled the license of the establishment from which it did not receive payment for one jurisdictional complaint.

Management's Response

Management agrees with the findings. The agency will continue to monitor and update its procedures to ensure it administers investigations in compliance with statute.

The Commission Conducted Inspections in Accordance With Requirements; However, It Should Document Inspection Procedures and Establish an Inspection Review Process

**Chapter 2
Rating:
Low ⁵**

Selected State and Federal Requirements Related to the Commission

Selected state and federal requirements related to the Commission include:

- State mortuary laws (Texas Occupations Code, Chapter 651).
- State cemetery and crematory laws (Texas Health and Safety Code, Chapters 711 and 716).
- State rules (Title 22, Texas Administrative Code, Chapters 201, 203, and 205).
- U. S. Federal Trade Commission Funeral Industry Practices Regulations (Title 16, Code of Federal Regulations, Chapter 1, Part 453).

Source: The Commission.

The Commission conducted inspections in accordance with requirements.

Texas Occupations Code, Section 651.157(a), and Title 22, Texas Administrative Code, Section 203.44(a)(1), require the Commission to inspect licensed establishments at least once every two years. Licensed establishments include funeral establishments, commercial embalming facilities, crematory establishments, and certain cemeteries. In addition, a new establishment must pass an inspection before obtaining its initial license.

While the Commission is required to inspect each licensed establishment at least once every two years, the Commission asserted that its practice has been to conduct those inspections annually. In addition, the Commission used a checklist for performing inspections of licensed establishments to help ensure that it addressed significant requirements during its inspections (see text box for selected state and federal requirements related to the Commission).

Auditors determined that the Commission had controls to help ensure the following:

- The Commission inspected all 106 establishments to which it had issued new (initial) licenses since September 1, 2015, before it issued the licenses, as required by Title 22, Texas Administrative Code, Section 203.9(a)(2).⁶
- For 58 (97 percent) of 60 establishments with active licenses tested, the Commission had conducted an inspection at least once every two years. For the remaining 2 (3 percent), the Commission's regulatory enforcement system indicated that the Commission had conducted inspections for those establishments two years prior, but the Commission

⁵ Chapter 2 is rated Low because the audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

⁶ Prior to October 18, 2015, that requirement was set forth in Title 22, Texas Administrative Code, Section 203.4(a)(2).

did not have inspection reports showing that it had conducted those inspections.

The Commission asserted that its inspection practice required inspectors to obtain documentation from the establishment showing compliance with state and federal regulations. For 56 (93 percent) of the 60 establishment inspection forms tested, the Commission had supporting documentation (such as price lists and funeral purchase agreements) to demonstrate that the establishments complied with certain requirements. For the remaining 4 (7 percent), the Commission was not able to provide the key supporting documentation it obtained during the inspections.

The Commission should document its inspection procedures, develop an inspection review process, and establish cemetery inspection rules.

As discussed above, the Commission developed checklists to provide guidance for on-site inspections. While those checklists addressed significant requirements, they did not always include details to ensure consistency when conducting inspections. The Commission had not documented its inspection procedures. Having documented procedures could address the specific requirements that were not included in the checklist. In addition, while the Commission conducted inspections in accordance with requirements, it had not implemented a review process to help ensure consistency when (1) documenting the results in its regulatory enforcement system and document management system and (2) conducting inspections. Because the Commission did not have documented procedures or a review process for conducting inspections:

- The Commission identified 33 violations in 60 inspection reports tested; however, it did not have supporting documentation showing that establishments appropriately resolved violations for 9 (27 percent) of those 33 violations. (As part of the Commission's inspection process, inspectors are required to obtain documentation showing that establishments have resolved violations. That documentation can include updated price lists, payments to third-party vendors for repairs, or evidence that the establishment has displayed its original license.)
- The Commission did not record 3 (9 percent) of the 33 violations discussed above in its regulatory enforcement system.

**Excerpt from
Texas Occupations Code,
Section 651.157**

(d) The commission by rule shall establish:

(1) procedures for the inspection of a cemetery, crematory, or funeral establishment required by this section.

In addition, although the Commission established rules in the Texas Administrative Code for the inspection of crematories and funeral establishments, it did not establish rules for the inspection of a cemetery, as required by Texas Occupations Code, Section 651.157(d)(1) (see text box for an excerpt). Without formally adopted rules, the Commission cannot be assured that it conducts cemetery inspections consistently and that those inspections appropriately identify cemetery practices that may be harmful to consumers.

Recommendations

The Commission should:

- Develop and document procedures for its inspection process.
- Implement a review process for inspection documentation entered into its regulatory enforcement system and document management system.
- Establish rules in the Texas Administrative Code for the inspection of a cemetery.

Management's Response

Management agrees with the findings and will take the following corrective action:

- *Recommendation 1 – The Director of Compliance will develop a procedures manual for its inspection process by May 31, 2017. The Executive Director will approve the manual no later than August 31, 2017.*
- *Recommendation 2 – The newly developed inspection procedures manual will include a procedure on when/how to document inspection results in the agency's database and when/how to scan documents to an inspected entity's file in the agency's document management system. The procedures manual will require the Director of Compliance to audit files to ensure the inspection data was correctly entered/scanned.*
- *Recommendation 3 – The Executive Director will present a proposal to adopt rules relating to cemetery inspections to the Commission at the June 2017 Commission meeting.*

Appendices

Appendix 1

Objective, Scope, and Methodology

Objective

The objective of this audit was to determine whether the Funeral Service Commission (Commission) has enforcement processes and related controls to help ensure that it reviews, investigates, and resolves complaints and conducts inspections in accordance with applicable requirements.

Scope

The audit scope included complaints the Commission closed from fiscal year 2016 through December 22, 2016,⁷ and inspections conducted for establishments licensed as of January 12, 2017.

Methodology

The audit methodology consisted of conducting interviews, collecting and reviewing complaint investigation and inspection information, performing tests and procedures against predetermined criteria, and analyzing certain information.

Data Reliability and Completeness

Auditors used complaint and licensing data from the Commission's regulatory enforcement system and reviewed that data for validity and completeness by (1) reviewing user access, (2) reviewing data query language, (3) performing high-level review of data fields and their contents for appropriateness, (4) tracing information from source documents to the Commission's regulatory enforcement system, and (5) performing data analysis to determine the completeness of that data. Auditors determined that data was reliable for the purposes of this audit.

Sampling Methodology

To determine whether the Commission investigated complaints in accordance with requirements, auditors selected nonstatistical samples of closed complaints (30 jurisdictional and 8 nonjurisdictional) primarily through random selection. In some cases, auditors used professional judgment to select additional complaints for testing. The sample items were not

⁷ Complaints received and closed between December 1, 2016, and December 22, 2016, were excluded from audit testing.

necessarily representative of the population; therefore, it would not be appropriate to project the test results to the population.

To determine whether the Commission conducted inspections in accordance with requirements, auditors selected a nonstatistical sample of 63 active licensed establishments (funeral establishments, crematories, commercial embalming facilities, and cemeteries) primarily through random selection. In some cases, auditors used professional judgment to select additional licensed establishments for testing. The sample items were not necessarily representative of the population; therefore, it would not be appropriate to project the test results to the population.

Information collected and reviewed included the following:

- Complaint data from the Commission's regulatory enforcement system.
- Complaint and investigation documentation for complaints.
- Active licensee data from the Commission's regulatory enforcement system.
- Inspection forms and supporting documentation.

Procedures and tests conducted included the following:

- Conducted interviews with selected Commission employees and members of the Funeral Service Commission.
- Reviewed selected complaints, investigations, and any related sanctions to verify compliance with significant requirements of statutes and rules.
- Compared the Commission's inspection checklists for funeral establishments, commercial embalming facilities, crematories, and cemeteries to requirements in the statutes listed on the next page.
- Reviewed completed inspection checklists in the Commission's document management system for selected funeral establishments, commercial embalming facilities, crematories, and cemeteries.
- Reviewed inspection information in the Commission's regulatory enforcement system, and compared that information to the completed inspection checklists for selected funeral establishments, commercial embalming facilities, crematories, and cemeteries.

Criteria used included the following:

- Texas Occupations Code, Chapter 651.
- Title 22, Texas Administrative Code, Chapters 201, 203, and 205.
- U.S. Federal Trade Commission Funeral Industry Practices Regulations in Title 16, Code of Federal Regulations, Chapter 1, Part 453.
- Texas Health and Safety Code, Chapters 711 and 716.

Project Information

Audit fieldwork was conducted from November 2016 through April 2017. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The following members of the State Auditor's staff performed the audit:

- Courtney Ambres-Wade, CGAP (Project Manager)
- Steven Michael Summers, CPA, CISA, CFE (Assistant Project Manager)
- Michael Gieringer, MS, CFE
- Zachary S. Goddard
- Cameron Scanlon
- George D. Eure, CPA (Quality Control Reviewer)
- Cesar Saldivar, CGAP (Audit Manager)

Issue Rating Classifications and Descriptions

Auditors used professional judgement and rated the audit findings identified in this report. Those issue ratings are summarized in the report chapters/sub-chapters. The issue ratings were determined based on the degree of risk or effect of the findings in relation to the audit objective(s).

In determining the ratings of audit findings, auditors considered factors such as financial impact; potential failure to meet program/function objectives; noncompliance with state statute(s), rules, regulations, and other requirements or criteria; and the inadequacy of the design and/or operating effectiveness of internal controls. In addition, evidence of potential fraud, waste, or abuse; significant control environment issues; and little to no corrective action for issues previously identified could increase the ratings for audit findings. Auditors also identified and considered other factors when appropriate.

Table 2 provides a description of the issue ratings presented in this report.

Table 2

Summary of Issue Ratings	
Issue Rating	Description of Rating
Low	The audit identified strengths that support the audited entity's ability to administer the program(s)/functions(s) audited <u>or</u> the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.
Medium	Issues identified present risks or effects that if not addressed could <u>moderately affect</u> the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern(s) and reduce risks to a more desirable level.
High	Issues identified present risks or effects that if not addressed could <u>substantially affect</u> the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern(s) and reduce risks to the audited entity.
Priority	Issues identified present risks or effects that if not addressed could <u>critically affect</u> the audited entity's ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern(s) and reduce risks to the audited entity.

Copies of this report have been distributed to the following:

Legislative Audit Committee

The Honorable Dan Patrick, Lieutenant Governor, Joint Chair

The Honorable Joe Straus III, Speaker of the House, Joint Chair

The Honorable Jane Nelson, Senate Finance Committee

The Honorable Robert Nichols, Member, Texas Senate

The Honorable John Zerwas, House Appropriations Committee

The Honorable Dennis Bonnen, House Ways and Means Committee

Office of the Governor

The Honorable Greg Abbott, Governor

Funeral Service Commission

Members of the Funeral Service Commission

Ms. Jean Olinger, Presiding Officer

Mr. Jonathan Scepanski, Assistant Presiding Officer

Mr. Larry Allen

Mr. Greg Compean

Ms. Joyce Odom

Mr. Gary Shaffer

Mr. W. Scott Smith

Ms. Janice McCoy, Executive Director



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