



HENRY McMASTER
ATTORNEY GENERAL

July 10, 2009

G. P. Callison, Jr., Esquire
McCormick County Attorney
Post Office Box 3208
Greenwood, South Carolina 29648-3208

Dear Mr. Callison:

In a letter to this office you raised several questions regarding the burial of bodies of indigent individuals.

In your first question, you asked whether the County is responsible for the disposal of the remains of indigent individuals. A prior opinion of this office dated June 25, 2001 stated that as to the question of whether a county can legally appropriate money for funeral expenses of indigent deceased persons when the family of the deceased will not pay the expenses, it was concluded that

[c]ounty governments are authorized to appropriate and expend public funds for services and property which serve a public purpose. S.C. Code Ann. §4-9-30. The disposal of the bodies of indigent individuals is clearly such a public purpose. In fact, this Office has previously opined that “the General Assembly has recognized the responsibility of disposing of [such] bodies at public expense.” See Op. Atty. Gen. dated September 28, 1995. The method chosen by the county for disposal, i.e. cremation or burial, does not alter the public purpose of the expenditure. Therefore, it is my opinion that, the Sumter County Council can “give the families/funeral homes an alternative by accepting \$300 from the county towards the burial of [an indigent] loved one.”

S.C. Code Ann. § 17-5-570 states that

(A) [a]fter the post-mortem examination, autopsy, or inquest has been completed, the dead body must be released to the person lawfully entitled to it for burial. If no person claims the body, the coroner or medical examiner must notify the board created pursuant to Section 44-43-510... (“the Board for Distribution of Dead Bodies for Scientific Purposes)...If the board does not accept the body, the body must be turned over to the coroner of the county where death occurred for disposition as provided by law. If the deceased has an estate out of which burial expenses can be

paid either in whole or in part, the estate must be taken for that purpose before an expense under this section is imposed upon a county.

(B) If the body cannot be identified through reasonable efforts, the coroner must forward the body to the Medical University of South Carolina or other suitable facility for preservation. If the body remains unidentified thirty days after the coroner forwarded the body, the Medical University of South Carolina or other facility preserving the body must immediately notify the State Law Enforcement Division (SLED). If the body has not been identified within thirty days after SLED has entered the unidentified person's DNA profile into the Combined DNA Indexing System pursuant to Section 23-3-635, the Medical University may retain possession of the body for its use and benefit or return the body to the coroner of the county where death occurred for disposition as provided by law. A facility other than the Medical University utilized by the coroner for storage of an unidentified body may dispose of the body as provided by law or return the body to the coroner of the county where death occurred for disposition.

(C) If an unidentified body is preserved at the Medical University, the county is responsible for transporting the body to and from the Medical University; however, the county is not responsible for the cost of preserving the body at the Medical University. If an unidentified body is preserved at the Medical University, the Medical University must absorb the cost of preserving the body for not less than thirty days.

S.C. Code Ann. § 46-1-130 states that

(a) Notwithstanding any other provisions of the law, any person having knowledge of the death of a person who engages in seasonal agricultural work as his primary source of income and does not normally return to his permanent place of residence each night shall, without delay, report the fact of such death to the Department of Health and Environmental Control in the county in which the body is located together with any information he may possess respecting the deceased including his identity, place of employment, permanent residence, and the name, address, and telephone number of any relatives. The County Department of Health and Environmental Control shall within a reasonable amount of time of receiving such report transmit to the State Department of Health and Environmental Control notice of the death of the deceased worker and information pertaining thereto. The State Department of Health and Environmental Control shall upon such notification make every effort to inform the nearest relative of such death.

(b) In the event that the identity of the deceased cannot be determined within a reasonable period of time, or in the event that the body of the deceased is unclaimed

seven days after death, or in the event that the estate or the relatives are unable to provide for the burial of the deceased, the Department of Health and Environmental Control is authorized to allocate a sum of not more than three hundred and fifty dollars for the burial of such worker.

(c) In the event that the estate or the relatives of the deceased are able to provide for the burial but are unable to provide for the transportation of the body of the deceased to his legal residence or the legal residence of the relatives, the Department of Health and Environmental Control is authorized to allocate a sum of not more than two hundred dollars to defray the transportation expenses.

(d) The Department of Health and Environmental Control is authorized to file a claim with the Social Security Administration for reimbursement of the maximum amount allowable in behalf of the deceased and to use such funds or any assets belonging to the deceased to defray the burial or transportation expenses.

The opinion of this office dated September 28, 1995 referenced above dealt with the question of whether a particular county was responsible for providing funds for the disposition of bodies and whether the county had the authority to establish the means of disposal. Such opinion stated that

...Section 17-5-570 provides that as to bodies that fall within the coroner's jurisdiction reference is made to a county bearing the expense of disposition where the deceased's estate cannot provide for the expense of disposition and where the Board for Distribution of Dead Bodies for Scientific Purposes does not accept the body. Section 32-8-320 refers to the authorization of cremation by certain public individuals "if the decedent is indigent or if the final disposition is the responsibility of the State or an instrumentality of the State." S.C. Code Sections 44-43-510 et seq. in providing for the Board for Distribution of Dead Bodies for Scientific Purposes makes provision for bodies that have to be disposed of at public expense. Section 44-43-530 states that

(e) each officer, agent and servant of every city in the State and of every almshouse, prison, morgue, hospital, jail or other public institution in such cities having charge or control of any dead human body which is required to be buried at the public expense ... shall notify the Board ... whenever and as soon as any such body comes to his possession, charge or control, and shall, without fee or reward, deliver such body and permit the Board ... to take and remove any such body to be used for the advancement of medical science.

Therefore, in the opinion of this office, the General Assembly has recognized the responsibility of disposing of bodies at public expense in the referenced circumstances.

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You next stated that S.C. Code Ann. § 17-5-570 states that the coroner must first contact the “Board for Distribution of Dead Bodies for Scientific Purposes” to see if that Board desires the body to be used for scientific purposes. According to your letter, you have been unable to locate such a board and have talked with the University of South Carolina School of Medicine and the Medical University of South Carolina. You indicated that the U.S.C. School of Medicine indicates that it will only accept bodies in which the individual donated the body prior to death. You have questioned whether there is a “Board for Distribution of Dead Bodies for Scientific Purposes” as provided by Section 44-53-510 and how can this Board be contacted?

As you stated, Section 17-5-570 provides for a coroner to contact “the Board for Distribution of Dead Bodies for Scientific Purposes” in order to see if that Board desires a dead body for scientific purposes. I have spoken with Mr. Tim Fitzharris at MUSC who confirmed to me that the Board does exist as an entity although it has no office or telephone numbers and does not meet. I was informed that the Board itself does not accept bodies but as to the Medical University of South Carolina, it operates under the “Uniform Anatomical Gift Act. See: S.C. Code Ann. §§ 44-43-310 et seq. Bodies are accepted pursuant to such provisions. Section 44-43-330 provides for an individual to make a gift of his or her body and other provisions allow for other individuals, such as a spouse or parent of a decedent, to make a gift of a body. Such provisions do not specifically authorize a coroner or other county official to make such a donation although it does provide for a donation from “any other person authorized or under obligation to dispose of the body.” This office cannot categorically conclude that a county official, such as a coroner, would be included, as is the case in S.C. Code Ann. § 32-3-820 which as outlined below authorizes cremation by a coroner and/or a “public administrator.” Therefore, this is an area that ideally should be clarified by the General Assembly.

You next questioned whether if both of the referenced medical schools or the referenced Board refuses to accept bodies of indigent individuals, can the body be cremated by the County? In such circumstances, you have asked whether this is a county expense. You referenced that Section 32-3-820 permits the county coroner and/or “a public administrator” to authorize the cremation of a body. In such circumstances, you have questioned whether the consent of family members is required. You indicated that it is your reading that consent is not required and that a public administrator or coroner can authorize cremation. S.C. Code Ann. § 32-8-320 states that

(A) In the following order of priority these persons may serve as a decedent's agent and in the absence of a preneed cremation authorization may authorize cremation of the decedent:

- (1) the person designated as agent for this purpose by the decedent in a will or other verified and attested document;
- (2) the spouse of the decedent at the time of the decedent's death;
- (3) the decedent's surviving adult children;
- (4) the decedent's surviving parents;

(5) the persons in the next degree of kinship under the laws of descent and distribution to inherit the estate of the decedent.

(B) In the absence of a person serving as a decedent's agent pursuant to subsection (A), the following may serve as an agent and may authorize a decedent's cremation:

- (1) a person serving as executor or legal representative of the decedent's estate and acting according to the decedent's written instructions;
- (2) a public administrator, medical examiner, coroner, state appointed guardian, or other public official charged with arranging the final disposition of the decedent if the decedent is indigent or if the final disposition is the responsibility of the State or an instrumentality of the State.

(C) If a dispute arises among persons of equal priority, as provided for in subsection (A), concerning the cremation of a decedent, the matter must be resolved by order of the probate court. (emphasis added).

Therefore, as set forth by subsection (B), “[i]n the absence of a person serving as a decedent's agent pursuant to subsection (A), the following may serve as an agent and may authorize a decedent's cremation: a public administrator, medical examiner, coroner, state appointed guardian, or other public official charged with arranging the final disposition of the decedent if the decedent is indigent or if the final disposition is the responsibility of the State or an instrumentality of the State.” I agree with your construction that in such circumstances, consent of the family is not required and a public administrator or coroner can authorize cremation. As stated in the response to the first question, in the opinion of this office, the General Assembly has recognized the responsibility of disposing of bodies at public expense in certain circumstances.

Pursuant to Section 32-8-320, reference is made to a “public administrator”. You questioned whether that includes the county administrator or the county manager. I have been unable to locate anywhere in the Code of Laws where the term “public administrator” is defined and its usage is confined to the provisions of Section 32-8-320. This office has also never separately defined that term. Therefore, in the absence of a statutory definition, it is the opinion of this office that a “public administrator” should be defined to include the county administrator or county manager.

You next questioned whether if the County has the responsibility and the authority to dispose of a body by cremation, does it have the responsibility to dispose of the cremated remains? If so, where should the remains be disposed? Can the County leave the remains with the funeral home/crematory, whether located in the County or not, to dispose of the ashes in accordance with State law?

S.C. Code Ann. §32-8-325(2) states that

(A) A crematory authority shall not cremate human remains until it has received all of the following:

(1) A certified copy of the death certificate; however, if the decedent was pronounced dead during hours the department was not open to the public, a completed copy of the death certificate, excluding the signature of the State Registrar of Vital Statistics, signed by the attending physician must be provided to the crematory authority; the death certificate signed by the registrar must be filed the next working day of the department and a certified copy must be provided to the crematory authority.

(2) A cremation authorization on a form prescribed by the board and executed by the decedent on a preneed basis or executed by the decedent's agent and which contains:

(a) the identity of the human remains and the date and time of death;

(b) the name of the funeral director or funeral establishment responsible for obtaining the authorization;

(c) the notification of infectious, contagious, or communicable disease or a disease declared by the department to be dangerous to the public health;

(d) the name, address, and phone number of the agent and the relationship between the agent and the decedent;

(e) a statement that the agent has the right to authorize the cremation of the decedent, as provided for in Section 32-8-320 and that the agent is not aware of a person who has a superior priority right to that of the agent or is not aware of a person of equal priority who disagrees with authorizing the cremation;

(f) authorization from the agent and the funeral director or funeral establishment for the crematory authority to perform the cremation;

(g) a statement that, to the best of the agent's knowledge, the human remains do not contain a pacemaker or any other material or implant that may be hazardous or cause damage to the cremation chamber or the person performing the cremation;

(h) the name of the agent or funeral establishment authorized to receive the cremated remains;

(i) the method by which disposition of the cremated remains is to take place, if known. If the authorization form does not specify final disposition in a grave, crypt, niche, or scattering area, the form may indicate that the cremated remains are to be held by the crematory authority for thirty days before they are released, unless they are picked up by or shipped to the agent or funeral establishment before that time. At the end of thirty days, if final disposition arrangements have not been made, the crematory authority may return the cremated

remains to the agent, crematory authority, or funeral establishment. If at the end of sixty days no final disposition arrangements have been made, the crematory authority or funeral establishment in charge of arrangements may dispose of the cremated remains in accordance with Section 32-8-345(D); (emphasis added).

As indicated above, pursuant to Section 32-8-320 a public administrator or coroner may serve as an agent and may authorize a decedent's cremation. S.C. Code Ann. § 32-8-305(2) defines "agent" or "decedent's agent" for purposes of the "Safe Cremation Act", S.C. Code Ann. §§ 32-8-300 et seq., which includes Sections 32-8-320, 32-8-325 and 32-8-345 referenced in this opinion, as "...a person legally entitled under this chapter to order the cremation and final disposition of specific human remains." The emphasized portion of Section 32-8-325 states that if at the end of thirty days, if final disposition arrangements have not been made, the crematory authority may return the cremated remains to the agent, which, consistent with Section 32-8-320, would include a public administrator or coroner.

Pursuant to S.C. Code Ann. § 32-8-345,

- (A) The agent or a licensed funeral establishment or crematory authority is responsible for the final disposition of the cremated remains.
- (B) Cremated remains may be disposed of by placing in a grave, crypt, niche, by scattering them in a scattering area, or in any manner on the private property of a consenting owner. If cremated remains are disposed of on public lands or water, all state and federal laws apply.
- (C) Upon completion of the cremation process, if the crematory authority has not been instructed to arrange for the mailing, interment, inurnment, or scattering of the cremated remains, the crematory authority shall deliver in person or mail the cremated remains accompanied by the cremation certificate to the designee specified on the cremation authorization form. If no designee is specified, the cremated remains must be delivered in person or mailed to the decedent's agent. The cremated remains must be delivered in person or delivered to the United States Post Office or to a bonded licensed courier service to be sent by registered and return receipt requested mail. Upon receipt of the cremated remains accompanied by a photocopy of the Burial Transit Permit and Cremation Certificate, the individual receiving them may transport and dispose of them in any manner in accordance with this section. After delivery in person or to the United States Post Office or to a bonded, licensed courier service, the crematory authority is discharged from any legal obligation or liability concerning the cremated remains.
- (D) If after a period of sixty days from the date of cremation the decedent's agent has not instructed the funeral establishment or crematory authority to arrange for final disposition of the cremated remains or claimed the cremated remains, the funeral establishment or crematory authority may dispose of the cremated remains in any

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manner permitted by this section. The funeral establishment or crematory authority shall keep a permanent record identifying the site of final disposition. The agent is responsible for reimbursing all expenses incurred in disposing of the cremated remains. Upon disposing the cremated remains, the funeral establishment or crematory authority is discharged from any legal obligation or liability concerning the cremated remains. A funeral establishment or crematory authority in possession of remains cremated before July 1, 1994, may dispose of them in accordance with this section.

(E) Except with the express written permission of the decedent's agent, no person may:

(1) dispose of cremated remains in a manner or in a location so that the cremated remains are commingled with those of another. This does not apply to the scattering of cremated remains at sea, by air, or in an area located in a dedicated cemetery and used exclusively for the purpose of disposing of cremated remains;

(2) place cremated remains of more than one person in the same temporary container or urn. (emphasis added).

Therefore, there is apparent authority for the agent, who again may be a public administrator or coroner, to dispose of the remains. There apparently is no limitation as to where the remains may be disposed. Subsection (D) allows for the disposal by the funeral home of cremated remains.

You also asked whether in regard to the disposition of remains, does the County have to maintain a pauper's burial ground and/or have a contractual relationship for the burial of the remains of paupers in a cemetery? I am unaware of any State statutes or prior opinions of this office which comment upon the absolute necessity of a county maintaining a pauper's burial ground or contractual responsibility to bury paupers in a cemetery. The only statute somewhat relevant is S.C. Code Ann. § 40-19-310(A), a provision of the chapter dealing with the licensing of embalmers and funeral directors, which states that "[t]he provisions of this chapter do not apply to the preparation and burial of dead bodies of paupers or of inmates of state institutions when the paupers or inmates are buried at the expense of the State." While reference is made to the burial at the expense of the State, no reference is made to the burial at the expense of a county.

You next questioned with regard to determining the indigent status of a deceased, can the County require an application process whereby a family member or acquaintance verifies that the individual has no assets and makes application for disposition of the body as a pauper? You questioned whether this office was aware of any such policies adopted by other counties in this State?

As referenced previously, Section 17-5-570 states that

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(A) [a]fter the post-mortem examination, autopsy, or inquest has been completed, the dead body must be released to the person lawfully entitled to it for burial. If no person claims the body, the coroner or medical examiner must notify the board created pursuant to Section 44-43-510....("the Board for Distribution of Dead Bodies for Scientific Purposes)...If the board does not accept the body, the body must be turned over to the coroner of the county where death occurred for disposition as provided by law. If the deceased has an estate out of which burial expenses can be paid either in whole or in part, the estate must be taken for that purpose before an expense under this section is imposed upon a county.

As noted previously, the prior opinion of this office dated June 25, 2001 stated that county governments were authorized to appropriate and expend funds for the disposal of the bodies of indigent individuals as such constitutes a public purpose. Additionally, Section 46-1-130 provides that in circumstances where the estate of a deceased agricultural worker is unable to pay or the body is unclaimed, DHEC is authorized to allocate three hundred fifty dollars for the burial of such worker. Beyond such, I am unaware of any authority for a county to require an application process whereby a family member or acquaintance verifies that the individual has no assets or makes application for disposition of the body as a pauper. Of course, this office does not typically deal in matters of probate and you may wish to contact the local probate office for any guidance they may provide in this area. I am unaware of any such policies having been adopted by other counties in this State.

You asked whether in determining the indigent's status of a deceased, does the County have to accept the application and the representations made thereon or should the County wait until an estate is opened and make some determination at that point? Again, I am unaware of any State statutes responsive to your questions. As I stated previously, this office does not typically deal with probate matters and such question would be a matter where assistance from others more knowledgeable in this area would be helpful.

In your final question, you asked whether in circumstances where the County pays for the cremation of the remains of an alleged indigent individual, can the County collect any social security death benefits? Can the County assert a lien/ and or place a claim against any estate assets?

As specified above, Section 46-1-130(d) specifically authorizes DHEC to file a claim with the Social Security Administration for reimbursement of the maximum amount allowed on behalf of a deceased agricultural worker and "to use such funds or any assets belonging to the deceased to defray the burial or transportation expenses." Beyond such, I am unaware of any State or federal statutes responsive to your question regarding social security death benefits. I can only suggest that you contact the Social Security Administration for their assistance as to such question. As to your question regarding whether the County can assert a lien and or place a claim against any assets, generally, Section 62-3-805 states that

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(a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

- (1) costs and expenses of administration, including attorney's fees, and reasonable funeral expenses;
- (2)(i) reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent;
- (ii) medical assistance paid under Title XIX State Plan for Medical Assistance as provided for in Section 43-7-460;
- (3) debts and taxes with preference under federal law;
- (4) debts and taxes with preference under other laws of this State, in the order of their priority;
- (5) all other claims.

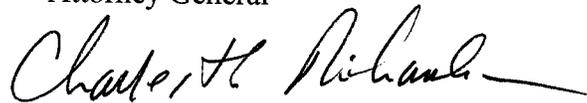
(b) Except as is provided under subsection (a)(4) above, no preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

Such provision appears to allow for a lien or claim to be placed against assets. Again, however, this office does not typically deal with probate matters and this is an area where advice from an individual with expertise would be helpful.

With kind regards, I am,

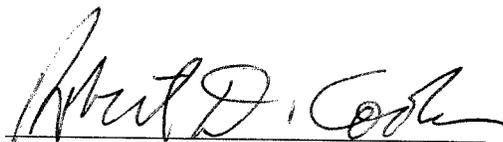
Very truly yours,

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