

8138 Luluany



HENRY McMASTER
ATTORNEY GENERAL

March 27, 2006

Rachel Harper, Associate General Counsel
South Carolina Department of Insurance
P. O. Box 100105
Columbia, South Carolina 29202-3105

Dear Ms. Harper:

In a letter to this office you questioned whether a bondsman licensed pursuant to S.C. Code Ann. § 38-53-10 et seq. may also hold the position of part-time deputy coroner. In the situation addressed in your letter, the deputy coroner has provided a job description outlining his duties and responsibilities as deputy coroner which he asserts do not authorize him to perform statutorily authorized duties of a coroner or deputy coroner. He asserts that with these restricted duties he does not perform any law enforcement or quasi-judicial functions as a deputy coroner.

Section 38-53-190 states that

No sheriff, deputy sheriff, other law enforcement officer, judicial official, attorney, parole officer, probation officer, jailer, assistant jailer, employee of any court of this State, or other public employee assigned to duties relating to the administration of the court may become a surety on a bail bond for any person. No person covered by this section may act as agent for any bonding company or professional bondsman, nor may he have an interest, directly or indirectly, in the financial affairs of any firm or corporation whose principal business is acting as bondsmen. Nothing in this section prohibits any person designated above from being a surety upon the bond of his spouse, parent, brother, sister, child, or descendant. (emphasis added).

As to the question of whether a coroner should be considered a "law enforcement officer" for purposes of Section 38-53-190, an opinion of this office dated February 12, 1996 dealt with the question of whether a coroner is a "law enforcement officer" for purposes of S.C. Code Ann. § 23-1-40 which provides that of the amounts appropriated as salaries for law enforcement officers, the sum of five dollars per day is designated as subsistence for each day of active duty. The opinion concluded that

Request Letter

Ms. Harper
Page 2
March 27, 2006

In interpreting Section 23-1-40, which provides a subsistence allowance for law enforcement officers, we have looked to such criteria in determining whether the person possesses arrest powers,...and was required to receive training.... Clearly, many of the duties of a coroner closely resemble those of law enforcement officers. However, based upon the foregoing, it is my opinion that a court would conclude that coroners and deputy coroners do not fall within the scope of Section 23-1-40 because they are not "law enforcement officers" as that term was intended.

In its review, the opinion cited an opinion dated April 20, 1960 which acknowledged that in certain contingencies, a coroner performs the duties of sheriff. See: S.C. Code Ann. § 23-11-50 [in case of vacancy, the coroner is required to assume the office of sheriff until the office is filled.].

While not a "law enforcement officer" for purposes of Section 23-1-40, as to a review of other indicia for being considered a "law enforcement officer", an opinion of this office dated July 29, 2005 recognized that pursuant to S.C. Code Ann. § 56-5-170, the vehicles of a coroner and a deputy coroner are considered to be an "authorized emergency vehicle". As a result, these individuals are authorized to use or display blue or red lights on the vehicle. Another opinion of this office dated June 27, 1991 also recognized that in certain respects, a coroner possessed limited authority akin to that of a law enforcement officer. That opinion referenced Section 17-5-110 which authorizes a coroner "while engaged in official duties of his office," to carry a handgun or pistol. The opinion also referred to the fact that in going to and returning from his actual duties as coroner, a coroner could also use a blue light in his vehicle. However, in another opinion of this office dated January 10, 1991, it was determined that, for the limited purpose of the Law Enforcement Training Act, a coroner was not a "law enforcement officer" as that term was defined in the Act.

In an opinion dated July 15, 1966, this office interpreted the former statute dealing with the authority to carry a pistol. In that opinion, it was determined that a coroner was neither a "law enforcement officer" nor a "peace officer" for purposes of a statute which permitted marshals, sheriffs, police officers or other law enforcement officers or peace officers to carry a weapon while performing their duties of office. The opinion stated "(a) coroner per se is not a 'peace officer'...." Inasmuch as coroners were not considered "officers of the law" or "peace officers", the opinion concluded that coroners would not fall within the statute authorizing the carrying of a weapon. Of course, as noted above, there is presently specific statutory authority for a coroner to carry a pistol. See: S.C. Code Ann. §17-5-110.

Consistent with such opinions, while a coroner has certain authority similar to that of a law enforcement officer, it is my opinion that a coroner does not possess sufficient law enforcement authority to be considered a "law enforcement officer" for purposes of Section 38-53-190. However, in interpreting other provisions of that statute, consideration should be given as to whether a coroner would be considered a "judicial official". In examining this question, reference must be had to the duties and responsibilities of a coroner as outlined by S.C. Code Ann. §§ 17-7-10 et seq. Such include ordering an autopsy (Section 17-7-10); conducting an inquest (Section 17-7-20 and 17-7-70);

Ms. Harper
Page 3
March 27, 2006

investigating motor vehicle, swimming or boating accident deaths (Section 17-7-80); swearing in and charging the jurors at an inquest (Section 17-7-140 and 17-7-150); issuing warrants, summoning witnesses and examining those witnesses before a jury at an inquest (Section 17-7-170); issuing a subpoena duces tecum (Section 17-7-175); fining and committing to jail those persons who when summoned disregard the summons and refuse to testify (Section 17-7-180); punishing for contempt at an inquest (Section 17-7-190); taking testimony at an inquest (Section 17-7-230); issuing warrants depending on the finding of an inquest (Sections 17-7-610 and 17-7-620); committing individuals to jail (Section 17-7-630); binding over individuals on bond (Section 17-7-650).

An opinion of this office dated August 18, 1971 stated that:

[t]he constitutional office of coroner is quasi-judicial in nature and, although some investigative duties are attached, the duties are closer to the judicial branch than that of the executive.

The previously referenced February 12, 1996 opinion also stated that "[t]he view that a coroner's office is principally judicial in nature is in accord with the ancient common law and the provisions of an ancient English statute said to be declaratory of the common law." The opinion further stated that

Our own Supreme Court has tended to view the duties of a coroner as primarily quasi-judicial as well...(In State v. Griffin, 98 S.C. 105, 82 S.E. 254 (1914), the Court stated that, for purposes of the Constitutional requirement that "all courts shall be public", a coroner's inquest "comes within the spirit of that provision."

Reference was made in the April 20, 1960 opinion to the decision the South Carolina case of Giles v. Brown, 1 Mills Constitution 230 (1817) stating:

... at common law the powers and duties of a coroner are both judicial and ministerial. His judicial authority relates to inquiries into cases of certain deaths.

The referenced January 10, 1991 opinion also noted that "(t)he constitutional office of coroner is quasi-judicial in nature and, although some investigative duties are attached, the duties are closer to the judicial branch than that of the executive (law enforcement)." An opinion of this office dated July 11, 1984 stated

A coroner, in investigating cause of death and conducting an inquest, is acting as a judicial officer...A coroner's powers may be judicial or ministerial, depending on the particular functions involved...(W)hen a coroner is inquiring into the cause of death or conducting an inquest, he is engaged in a judicial function and must be considered a judicial officer...(T)he coroner is vested with reasonable discretion in choosing between two possible courses of action...A judicial officer has the discretion to

Ms. Harper
Page 4
March 27, 2006

decide what is fair and equitable under the circumstances of a particular case...The coroner, as a judicial officer, has the authority to exercise discretion in deciding whether it is appropriate in any given case for an individual to be bound over to General Sessions court after a verdict....

An opinion dated November 2, 1983 also noted that "...a coroner's inquest, although primarily investigative in its purpose...nevertheless possesses many of the attributes of a judicial proceeding." An opinion of this office dated March 25, 1997 stated that "...we have concluded elsewhere that in the investigation of a death, a coroner is akin to that of a court in conducting a judicial investigation."

Consistent with these opinions, it is my opinion that for purposes of Section 38-53-190, a coroner would be considered a "judicial official". As a result, in my opinion, he would be prohibited from the bail bond activities outlined by such provision. However, as to the individual referenced in your request letter, he contends that while serving as a deputy coroner, according to the duties and responsibilities outlined in his job description, he is not authorized to perform the statutorily authorized duties of a coroner or deputy coroner and, therefore, does not perform any law enforcement or quasi-judicial functions as a deputy coroner.

As to the position of deputy coroner generally, S.C. Code Ann. § 17-5-70 provides for the appointment of a deputy coroner by a county coroner stating that

A county coroner may appoint one or more deputies to be approved by the judge of the circuit or by any circuit judge presiding therein, who must take and subscribe the oath prescribed by the Constitution prior to entering upon the duties of appointment as a deputy coroner. The oath may be administered by any officer authorized to administer oaths in the county. The appointment must be evidenced by a certificate thereof, signed by the coroner, and continue at the coroner's pleasure. The coroner may take a bond and surety from his deputy as he considers necessary to secure the faithful discharge of the duties of the appointment, but the coroner must always be answerable for the neglect of duty or misconduct in office of his deputy coroner. When duly qualified, as herein required, the deputy coroner may do and perform any or all of the duties appertaining to the office of the coroner. (emphasis added).

An opinion of this office dated April 20, 1987 noted that a deputy coroner would be authorized to hold an inquest. Another opinion of this office dated November 3, 1983 stated that an appointment as deputy coroner "...allows the deputy coroner to perform all duties of the coroner." See also: Op. Atty. Gen. dated March 12, 1976. An opinion dated June 21, 1993 stated that "...with regard to deputy coroners and deputy clerks of court, individuals in those deputy positions perform all the duties pertaining to the office...(and)...there was no justification for differentiation and that the deputies were public office holders." Prior opinions of this office have recognized that the position of deputy coroner constitutes an office for dual office holding purposes of the State

Ms. Harper
Page 5
March 27, 2006

Constitution noting that a deputy coroner takes an oath and has statutorily authorized duties. See, e.g., Ops. Atty. Gen. dated January 12, 2005; April 20, 2004 and February 5, 2004.

In my opinion, for purposes of Section 38-53-190, an individual serving as a deputy coroner would be prohibited from engaging in the bail bond activities outlined by such provision even though, according to the duties and responsibilities as outlined in his job description, he is not authorized to perform the statutorily authorized duties of a coroner or deputy coroner. As outlined above, a deputy coroner is authorized to perform all the duties of a coroner and even though according to a present job description, certain duties are not presently the responsibility of the deputy coroner, he remains legally authorized to perform such. In my opinion, being legally authorized to act as coroner would prohibit that individual from engaging in the referenced bail bond activities prohibited by Section 38-53-190.

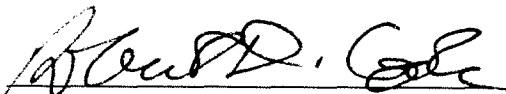
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General