

1976 S.C. Op. Atty. Gen. 20 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4235, 1976 WL 22855

Office of the Attorney General

State of South Carolina

Opinion No. 4235

January 15, 1976

*1 A crematory which limits its operations to reducing dead human bodies to ashes by means of fire is not subject to licensing by the State Board of Funeral Service.

TO: STATE BOARD OF FUNERAL SERVICE

QUESTIONS PRESENTED:

Is the operation of a crematory subject to the regulations of the State Board of Funeral Service?

AUTHORITIES:

South Carolina Code Sections 56–651 et seq. (1962) as amended.

Black's Law Dictionary: 'Cremation'

10A Words and Phrases, 33: 'Cremator' and 'Crematory'

[State Record Publishing Company vs. S. C. Employment Security Commission](#), 254 S.C. 1, 173 S.E.(2d) 144 (1970)

DISCUSSION:

This question arises at the inquiry of an individual who seeks to establish a crematory within South Carolina. This individual has sought the advice of the Board as to its jurisdiction over his proposed establishment.

The State Board of Funeral Service is a creation of the General Assembly and as such must find its authority within the statutes creating it and amendments thereto. These statutes are set forth in South Carolina Code Sections 56–651, et seq., (1962) as amended.

Code Section 56–658 provides in part: 'In furtherance of its purposes of regulating the practice of embalming and funeral directing in this State, the Board shall have the power and it shall be its duty to prescribe rules and regulations governing . . . the qualifications, fitness, and practices of those engaged in and who may engage in embalming and funeral directing and the care and disposition of dead human bodies . . .' (Emphasis added)

Although this latter term 'care and disposition of dead human bodies' may be broader in its impact than 'embalming' or 'funeral directing', the entire chapter dealing with the Board when read in pari materia suggests that the legislative intent was for the Board to regulate only those practices named—embalming and funeral directing.

This is evident by the fact that the Board is given specific authority to issue permits for the operation of funeral establishments, and licenses for practicing funeral directing and embalming. aspects of the 'care and disposition of dead human bodies' are to

be licensed by the Board. Indeed the regulation of perpetual care cemeteries, a form of disposition of corpses, is within the State Cemetery Board. See South Carolina Code Sections 9-556, et seq.

The primary intent of statutory construction is to give effect to legislative intent. State Record Publishing Company v. S.C. Employment Security Commission, supra. Hence, in order for the Board to regulate 'cremation', this practice must come within the practices the Board does regulate.

Cremation is defined as the act or practice of reducing a corpse to ashes by means of fire. See Black's Law Dictionary. See also Words and Phrases, supra. This definition must come within the statutory definition of those practices which the Board regulates.

*2 South Carolina Code, Section 56-651, defines certain terms as they are to be used in the Code chapter dealing with the Board. Section 56-651 provides in part:

(1) 'Embalmer' means a person who disinfects and preserves, or attempts to disinfect and preserve, the dead human body, entirely or in part, by the use of application of chemicals, fluids or gases, externally or internally, or both, either by their introduction into the body by vascular or hypodermic injections or by direct application into the organs or cavities or by any other method, or who by restorative art restores or attempts to restore the appearance of the dead human body;

(3) 'Funeral director' means a person engaged for hire or profit in the profession of directing or supervising funerals, or the preparing of dead human bodies for burial, including the preparation of all external aspects of the human body, other than by the act of embalming, or the disposition of dead human bodies; (Emphasis added)

(7) 'Funeral Establishment' means a place of business used in the care and preparation for burial or transportation or other disposal of dead human bodies, or any place or premises at or from which any person or persons shall represent himself or themselves or hold out himself or themselves as being engaged in the profession of funeral directing or of embalming, or both; and'

Cremation does not fall into any of these definitions as it is a type of disposition of a dead human body, which is not embalming.

SUMMARY:

Therefore, it is the opinion of this Office, that so long as a person operating a crematory limits his practice to the burning of dead human bodies, and does not engage in those acts defined above as being performed by a funeral director or an embalmer, he is not subject to the regulation of the State Board of Funeral Service. This opinion is limited to the question as it relates to the State Board of Funeral Service, and should in no way be construed as expressing opinion on the jurisdiction of other state agencies, or local governments.

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