

May 18, 2007

Larry C. Smith, Esquire  
Richland County Attorney  
P. O. Box 192  
Columbia, South Carolina 29202

Dear Mr. Smith:

In a letter to this office you raised several questions regarding autopsies. You first asked when, if ever, is a coroner or other official required to order than an autopsy be performed. You also questioned “when, under South Carolina law, may a coroner or other official order that an autopsy be performed in cases where one is not required to be performed (i.e., do certain officials have discretionary authority to order the performance of an autopsy, and if so, under what circumstances)?

S.C. Code Ann. § 17-5-520 states that “[i]n addition to the powers vested in other law enforcement officials to order an autopsy, the coroner or medical examiner is authorized to determine that an autopsy be made.” S.C. Code Ann. § 17-7-10 provides that:

The coroner of the county in which a body is found dead or the solicitor of the judicial circuit in which the county lies shall order an autopsy or post-mortem examination to be conducted to ascertain the cause of death.

Therefore, such statute is quite broad in authorizing an autopsy “to ascertain the cause of death”.

An opinion of this office dated December 16, 1996 noted the provisions of Section 17-7-10 authorizing the coroner to order an autopsy to be conducted to ascertain the cause of death. That opinion referenced that generally it is the recognized duty of a coroner

...to determine and certify causes of death for proper classification, whenever a body is found...and to investigate and determine whether decedent has died from violent, unexplained causes or under suspicious circumstances.

Reference was made to an earlier opinion of this office dated April 22, 1968 which noted that “[t]he coroner is not required to hold an inquest in the case of every case, but only in those cases where he decides initially whether there ought to be a trial or whether blame probably attaches to any living person for the death.”

Mr. Smith  
Page 2  
May 18, 2007

As to the need for any special circumstances to authorize an autopsy, an opinion of this office dated January 29, 1996 referred to a previous opinion of this office dated September 17, 1957 which stated that

[w]here an inquest is held by...(a coroner)...to determine the cause of death of the deceased person, it is my opinion that you, as coroner, would be authorized to order an autopsy....

The 1996 opinion also referred to “the coroner’s inherent right to order an autopsy”.

Another opinion of this office dated June 21, 1995 referenced a prior opinion of this office dated June 8, 1993 which concluded that “a decision whether to perform an autopsy is left to the coroner’s professional judgment.” The 1995 opinion further stated that

the prime responsibility of the coroner is to determine the cause of an individual’s death...In addition, we have noted that a coroner has the legal right to order an autopsy even without the consent of the family of the deceased...(However)...we have further advised coroners that where the coroner has determined that a death was due to natural causes...based upon the findings of a physician or other competent authority,...(the coroner)...would not be authorized to order an autopsy at the county’s expense merely upon the request of the deceased.

The opinion additionally noted that

[a]n autopsy has been said to be an integral part of the inquest. The right to order the making of an autopsy is incident to the coroner’s official duty, and he may, subject to statutory limitations, so order when in his judgment, it is the appropriate means of ascertaining the cause of a person’s death, as where he suspects that the death was the result of a criminal or violent conduct or if the cause of death is obscure.

Another opinion of this office dated September 20, 1965 similarly referenced that

...a coroner has the right, subject to statutory limitations, to order an autopsy when it, in his judgment, is the appropriate means of determining the cause of a person’s death. In South Carolina, there is no specific statutory authorization as to when a coroner must hold an autopsy,...(Section 17-7-10)...providing only that one may be performed to ascertain the cause of death and obviously contemplates the ordering of an autopsy only when the cause of death is unknown.

Based upon the foregoing, it is our opinion that where you have determined the death was due to natural causes, based upon the findings of a physician or other competent

Mr. Smith  
Page 3  
May 18, 2007

authority, you would not be authorized to order an autopsy at the county's expense merely upon the request of the family of the deceased.

As stated in an opinion of this office dated June 8, 1983, "[t]here is no South Carolina statute which mandates an autopsy in all homicide and suicide cases." As noted previously, that opinion further states that "a decision whether to perform an autopsy is left to the coroner's professional judgment." Another opinion of this office dated October 24, 1968 concluded that

...an autopsy is not mandatory under the laws of South Carolina in the case of violent death, including suicide. A coroner or a solicitor (prosecuting officer) has authority, in his discretion, to order an autopsy, but it is not mandatory that he order that it be performed.

In addition to the authority of a coroner to order an autopsy in the situations addressed above, several other statutes also provide for the ordering of an autopsy. Section 17-7-10 noted above also provides that the solicitor of the judicial circuit which includes the county where a body is found dead is authorized to order an autopsy "to ascertain the cause of death." Such provision also states that

If any person dies while detained, incarcerated, or under the jurisdiction of a municipal, county, or regional holdover facility, holding cell, overnight lockup or jail, a county or regional prison camp, or a state correctional facility, the coroner of the county in which the death occurs or, should that be unknown, the county in which the institution is located shall order an autopsy immediately upon notification of the death. However, if the official in charge of the institution is unable to arrange an autopsy within the State of South Carolina, he shall provide the coroner with an affidavit attesting to this inability.

In this event, the coroner shall consult with the physician who pronounced death, and, if not the same, with any other physician who is known to have treated the person within twelve months prior to his death. If the deceased person had a previously diagnosed contagious, terminal illness or condition which is considered to be the reason for death, written confirmation must be obtained from at least two physicians who attended him prior to his death, and at least one of these physicians may not have been employed by or under contract with the institution or agency which was responsible for custody of the deceased person.

The coroner may then determine that an autopsy is not required, and shall so certify in writing. Nevertheless, if the coroner decides that an autopsy is appropriate, he may order that one be arranged outside the State of South Carolina. Documentation of the death, the circumstances surrounding it, and all subsequent actions and decisions

Mr. Smith  
Page 4  
May 18, 2007

regarding the autopsy must be filed with the Jail and Prison Inspection Division of the Department of Corrections according to Section 24-9-35.

Therefore, it is specifically provided that if an individual dies while incarcerated, the coroner "...shall order an autopsy immediately upon notification of the death." However, such provision further states that upon consultation with a physician where it is learned that the deceased had a physical condition which is considered the cause of death, "the coroner may then determine that an autopsy is not required."

S.C. Code Ann. §§ 20-7-5900 et seq. provide for the establishment in this State of a Department of Child Fatalities within SLED. S.C. Code Ann. § 20-7-5915 states that:

(A) The purpose of the department is to expeditiously investigate child deaths in all counties of the State.

(B) To achieve its purpose, the department shall:

(1) upon receipt of a report of a child death from the county coroner or medical examiner, as required by Section 17-5-540, investigate and gather all information on the child fatality. The coroner or medical examiner immediately must request an autopsy if SLED determines that an autopsy is necessary. The autopsy must be performed by a pathologist with forensic training as soon as possible. The forensic pathologist must inform the department of the findings within forty-eight hours of completion of the autopsy. If the autopsy reveals the cause of death to be pathological or an unavoidable accident, the case must be closed by the department. If the autopsy reveals physical or sexual trauma, suspicious markings, or other findings that are questionable or yields no conclusion to the cause of death, the department immediately must begin an investigation;.... (emphasis added).

Therefore, SLED makes the initial determination regarding the necessity of an autopsy.

As to vulnerable adults<sup>1</sup>, S.C. Code Ann. § 43-35-35 provides that:

---

<sup>1</sup>The term "vulnerable adult" is defined by S.C. Code Ann. § 43-35-10(11) as "...a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. This includes a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction. A resident of a facility is a vulnerable adult."

Mr. Smith  
Page 5  
May 18, 2007

(A) A person required to report or investigate cases under this chapter who has reasonable suspicion to believe that a vulnerable adult died as a result of abuse or neglect shall report the death and suspected cause of death to the coroner or medical examiner. The coroner or medical examiner shall conduct an investigation and may conduct or order an autopsy. The coroner or medical examiner must report the investigative findings to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division. (emphasis added).

S.C. Code Ann. § 43-35-530 states that:

[u]pon receipt of a report of a vulnerable adult death, as required by Section 17-5-555 or Section 43-35-35, the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division shall:

(1) investigate and gather all information on the vulnerable adult fatality pursuant to Section 43-35-520. The coroner or medical examiner immediately must request an autopsy if the unit determines that an autopsy is necessary. The autopsy must be performed by a pathologist with forensic training as soon as possible. The forensic pathologist must inform the unit of the findings within forty-eight hours of completion of the autopsy. If the autopsy reveals the cause of death to be pathological or an unavoidable accident, the case must be closed by the unit. If the autopsy reveals physical or sexual trauma, suspicious markings, or other findings that are questionable or yields no conclusion to the cause of death, the unit immediately must begin an investigation;

(2) request assistance of any other local, county, or state agency to aid in the investigation;

(3) upon receipt of additional investigative information, reopen a case for another coroner's inquest;....(emphasis added).

Therefore, in such circumstances, the Vulnerable Adults Unit of SLED makes the initial determination as to the necessity of an autopsy.

As referenced, you first asked when, if ever, is a coroner or other official required to order than an autopsy be performed. You also questioned “when, under South Carolina law, may a coroner or other official order that an autopsy be performed in cases where one is not required to be performed (i.e., do certain officials have discretionary authority to order the performance of an autopsy, and if so, under what circumstances)?

Consistent with the above, it is apparent that a coroner has wide discretion in ordering that an autopsy be conducted. Certain provisions, such as Section 20-7-5900 which requires that a

Mr. Smith  
Page 6  
May 18, 2007

coroner “must request an autopsy if SLED determines that an autopsy is necessary” in circumstances such as a child’s death and Section 43-35-530 which requires that a coroner request an autopsy if the Vulnerable Adults Investigations Unit of SLED determines that an autopsy is necessary, mandate the necessity of an autopsy. However, generally, there are no absolute provisions set forth in the statutes as to when a coroner should or should not order an autopsy. It appears that, simply stated, a coroner may order an autopsy in circumstances where such would assist him in determining the cause of death. As set forth by Section 17-5-520, a coroner “is authorized to determine that an autopsy be made.” However, the prior opinions noted above appear to indicate that when the cause of death is apparent, such as death from natural causes, a coroner should not routinely order an autopsy. Also, as set forth by Section 17-7-10, a solicitor is also authorized to order an autopsy in order to ascertain the cause of death.

You also referenced that S.C. Code Ann. § 17-5-330 provides that “[t]he annual budget for the operation of the county medical examiner system must be submitted to and approved by the county governing body.” Referencing such, you have questioned whether a county is “required to fund a coroner’s office, a medical examiner’s system or any other entity at such a level as to allow for the performance of an indefinite number of autopsies, including autopsies that may not be required under South Carolina law, but may be ordered in the discretion of the coroner, medical examiner or other official authorized to order the performance of an autopsy.”

In an opinion of this office dated February 7, 1978 a county’s ability to decrease appropriations to a specific county office was discussed. That opinion stated that

With reference to budgetary matters, while it is true that the Council exercises totally the budgetary authority of...(a county)...and, consequently, can decrease, increase or otherwise alter appropriations for specific county offices and functions [§ 4-9-140, CODE OF LAWS OF SOUTH CAROLINA, 1976], nevertheless, it cannot so decrease the appropriations of an elected official's office as to prevent the proper functioning thereof and, thus, indirectly, to abolish that official's office. See generally, 20 C.J.S. Counties §§ 100(a), (b) and (c) (1940); 56 AM.JUR.2d Municipal Corporations §§ 237 through 239 (1971); 3 MCQUILLIN MUNICIPAL CORPORATIONS § 12.118 (3rd ed. 1973); cf., Hayes v. Brockton, (Mass.) 48 N.E.2d 683. Whether or not the Council has, in any particular instance, exercised its budgetary authority so as to interfere with or prevent the proper functioning of an elected official's office is a factual matter which cannot be determined by this office. Cf., Bubier v. State, (Fla.) 299 So.2d 830; McCoy v. Mayor, 342 N.Y.S.2d 83; South Tiverton Volunteer Fire Dept. v. Cook, (R.I.) 125 A.2d 190 (disbursements could be made from fund appropriated by town council to fire department without council's preliminary approval of each expenditure).Id.

An opinion of this office dated January 8, 2007 concluded that consistent with the prior 1978 opinion, “...a county government's ability to decrease appropriations to the office of an elected

Mr. Smith  
Page 7  
May 18, 2007

official is limited in that the appropriations cannot be decreased to the extent that they prevent the office from functioning properly or abolish the office.”

Consistent with such prior opinions, a county is required to fund a coroner’s office to the extent that it may function properly. However, it would be a factual matter that cannot be resolved by this office as to whether an “indefinite number of autopsies” may be ordered in the discretion of the coroner. I can only refer you to the conclusions set forth above as to the authority of a coroner to order an autopsy generally.

With kind regards, I am,

Sincerely,

Henry McMaster  
Attorney General

By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

---

Robert D. Cook  
Assistant Deputy Attorney General