

Reg. 5082



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

September 28, 1995

Honorable Wade C. Arnette
Berkeley County Coroner
Berkeley County Court House
300-B California Avenue
Moncks Corner, South Carolina 29461

Dear Coroner Arnette:

In a letter to this Office you raised several questions regarding the disposal of bodies of indigent individuals. You questioned whether coroners are authorized to cremate a body with or without the permission of the next of kin if there are no family funds, benefits, etc. or if the family members have abandoned relations with the decedent.

S.C. Code Section 17-5-290 (1994, as amended) provides for the identification, preservation and disposition of dead bodies that fall within the jurisdiction of the coroner. Subsection A states that

(a)fter the postmortem examination, autopsy, or inquest has been completed, the dead body must be released to the person legally entitled to it for burial. If no person claims the body, the county medical examiner or his deputy shall notify the board created pursuant to Section 44-43-510 . . . (the Board for Distribution of Dead Bodies for Scientific Purposes). . . . If that board does not accept the body, it 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. [Emphasis added.]

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Subsections B and C of such statute provide for the handling of bodies that cannot be identified.

S.C. Code Sections 32-8-300 et seq. (1994, as amended) were enacted as the "Safe Cremation Act". Included in such provisions are sections which authorize a coroner to arrange a cremation. Section 32-8-320 specifies individuals who may serve as a decedent's agent and authorize a cremation of the decedent. Subsection B of such provision states that

"(i)n the absence of a person serving as a decedent's agent . . . the following may serve as an agent and may authorize a decedent's cremation. . .

(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."
[Emphasis added.]

Therefore, a coroner may authorize a cremation if the deceased is indigent or if the final disposition is the responsibility of the State or a county. All cremations must be performed in strict accordance with the provisions of Sections 32-8-300 et seq. Also, S.C. Code Section 17-5-310 requires that a permit be secured from a coroner before a cremation can occur.

You also asked whether religious or family beliefs would prevent cremation, even if the family would not accept responsibility for the deceased. As referenced, State law expressly authorizes cremations in this State in specified situations and grants certain individuals, including coroners, the authority to order a cremation. No reference is made to requirements for consideration of certain beliefs.

You further questioned whether Berkeley County is responsible for providing funds for disposition of bodies and whether the County has the authority to establish the means of disposition. As stated, Section 17-5-290 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

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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)ach 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, the General Assembly has recognized the responsibility of disposing of bodies at public expense.

In your final question you asked whether there are any laws pertaining to the desecration of bodies. Aside from Section 44-43-580 which prohibits the trafficking in dead bodies, I am unaware of any statutes that expressly comment on such. However, to the extent your question relates to whether the act of cremation could be considered as desecration, as referenced, the General Assembly has expressly authorized the practice of cremation in this State and has specified the manner in which such can be accomplished. Again, I would refer you to this State's "Safe Cremation Act" which sets out the procedural requirements for cremation.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General, nor officially published in the manner of a formal opinion.

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If there is anything further, please advise.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles H. Richardson". The signature is written in black ink and is positioned above the printed name.

Charles H. Richardson
Senior Assistant Attorney General

CHR/fg