



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

June 2, 1995

The Honorable Harry O. Harman
Coroner, Lexington County
Post Office Box 527
Lexington, South Carolina 29071-0527

Re: Informal Opinion

Dear Coroner Harman:

In a letter to this Office you raised several questions relating to Act No. 435 of 1994, the "Safe Cremation Act", which provides the procedures for and regulates the practice of cremation in this State. You particularly questioned the applicability of provisions of that Act to bodies and/or body parts held by anatomy departments of medical schools in this State.

In construing your question, reference must be made to the definitions set forth in the Act. Section 32-8-305(3) defines the term "body parts" as used in the Act as

...limbs or other portions of the anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research; or human bodies or a portion of bodies that have been donated to science for medical research purposes. (emphasis added)

The term "human remains" is defined by subsection (18) of such provision as "...the body of a deceased person, including any form of body prosthesis that has been permanently attached or implanted in the body."

You referenced that provisions of the Act typically require cremation permits to be issued by coroners' offices for all bodies that are to be cremated. Since medical schools secure bodies from all counties and sometimes the deaths occurred several years prior, you have questioned whether it is necessary for medical schools to obtain a coroner's permit.

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A provision of Act No. 435, Section 32-8-370, states that:

[t]his chapter must be construed and interpreted as a comprehensive cremation statute, and the provisions of the article take precedence over any existing laws containing provisions applicable to cremation but that do not specifically or comprehensively address cremation.

Another provision, Section 17-5-310, states:

[w]hen the body of any dead person who died in the county is to be cremated, whoever required the cremation shall secure a permit for the cremation from the county medical examiner or the medical examiner's deputy or the coroner or the deputy coroner....

A criminal penalty is provided for the violation of such provision. Pursuant to Section 32-8-325, before a crematory authority may cremate human remains the following must be obtained: a copy of the death certificate, a properly executed cremation authorization form, a completed and executed burial transit permit, and a cremation permit obtained in compliance with Section 17-5-310. There are no exceptions provided. Therefore, as to any bodies being held by a medical school, even though these deaths may have occurred years prior, before such may be cremated, a coroner's permit must be obtained pursuant to Section 17-5-310.

As referenced above, apparently for purposes of the Act there is a distinction between "human remains" and "body parts". Again, "human remains" is defined as "the body of a deceased person" while the term "body parts" includes "human bodies or a portion of bodies that have been donated to science for medical research purposes."

The only provision in the Act relevant to the questions you set forth utilizing the term "body parts" is Section 32-8-340(F) which states:

No crematory authority may simultaneously cremate the human remains of more than one person within the same cremation chamber without the prior written consent of the agent. However, nothing in this subsection prevents the simultaneous cremation within the same cremation chamber of body parts that have been used for anatomical study delivered by a licensed hospital or medical facility in this State to the crematory authority from multiple sources or the use of cremation equipment that contains more than one cremation chamber. (emphasis added.)

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I am unaware of any other distinctions in the Act for bodies donated for medical research purposes. I have been informed that legislation has been considered which would exempt medical schools from these requirements but as yet I am unaware of any legislation having been enacted.

You next referenced that Act No. 435 generally requires authorization for cremation by the next of kin. You asked whether it is necessary that medical schools secure authorization by the next of kin just prior to cremation or can authorization be secured months or years in advance.

Pursuant to Section 32-8-315, an individual may authorize his or her cremation by executing a "preneed" cremation authorization form. Section 32-8-320(A) provides that certain individuals, in the priority order prescribed by such provision, "...may serve as a decedent's agent and in the absence of a preneed cremation authorization may authorize cremation of the decedent...." Such provision further states that in the absence of a person serving as a decedent's agent pursuant to Section 32-8-320(A), other individuals, including an executor or legal representative of the decedent's estate and a coroner or medical examiner, may serve as an agent and thereby authorize the cremation of the decedent.

The provisions of Act No.435 do not appear to anticipate the authorization of a cremation prior to a death by any individual other than an individual who would authorize his or her own cremation by the execution of a "preneed" cremation authorization. Therefore, there is no specific timetable established for the authorization of a cremation by recognized individuals other than the reference to the execution of a "preneed" cremation authorization by an individual prior to his or her death. Therefore, as to your question as to whether it is necessary for medical schools to secure authorization by the next of kin just prior to cremation or whether such authorization can be obtained months or years in advance, it appears a medical school may secure such authorization at any time after the death.

You next asked whether a medical school is required to use the same standard authorization for cremation form as prescribed by the Department of Labor and Licensing and which all funeral homes are required to use. Consistent with the responses set forth above, there are no exceptions to the requirements of Act No. 435 for medical schools and therefore, these schools would be required to use the same standard authorization forms as prescribed by the referenced Department and which all funeral homes are required to use.

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You referenced that the Act requires that a certified copy of the death certificate and a burial transit permit must be presented to the crematory before a cremation can occur. You asked whether a medical school must meet this requirement. As referenced above, Section 32-8-325 establishes the documentary requirements that must be met before a crematory authority may cremate human remains. Included in such requirements are a certified copy of the death certificate and a completed and executed burial transit permit. The provision makes no exceptions for medical schools. Therefore, a medical school must similarly meet such requirements and provide such to the crematory facility before a cremation can occur.

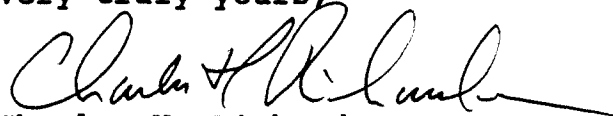
In your final question you asked whether it is necessary for a coroner to issue a permit for cremation when the death occurred months or years prior to time for cremation especially when the deceased was under the direct care and supervision of the medical school. As referenced, Section 17-5-310 specifically requires that a permit be obtained from a coroner or medical examiner in circumstances when the body of a deceased person who died in the county is to be cremated. Again, Act No. 435 makes no exceptions for circumstances where the death occurred months or years prior to the cremation or when the deceased was under the direct care and supervision of a medical school. Therefore, a coroner's permit must be obtained in such circumstances.

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

If there are any further questions, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,



Charles H. Richardson
Senior Assistant Attorney General

CHR/fg