

1983 S.C. Op. Atty. Gen. 134 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-83, 1983 WL 142752

Office of the Attorney General

State of South Carolina

Opinion No. 83-83

November 2, 1983

*1 The Honorable Dick Elliott
Member
House of Representatives
Box 3165
North Myrtle Beach, South Carolina 29582

Dear Representative Elliott:

You have asked (1) whether a coroner's inquest is open to the public, and (2) whether the coroner's records must be disclosed to the public upon request.

I.

In a previous opinion, this office concluded that 'the public must be admitted to a coroner's inquest in South Carolina.' 1970 Op. Atty. Gen., No. 2962, pp. 222 at 223 (copy enclosed). This conclusion was based upon the South Carolina case, [State v. Griffin](#), 98 S.C. 105, 82 S.E. 254 (1914). In [Griffin](#), the South Carolina Supreme Court addressed the question . . . whether a coroner is authorized by law to refuse the public the right or privilege of attending an inquest and to hold it in secret, if he should be so advised.

98 S.C., [supra](#) at 110. The Court concluded:

Section 15, Article I of the [South Carolina] Constitution [now Art. I, § 9] provides that 'all Courts shall be public'; and a coroner's inquest comes within the spirit of that provision.

98 S.C., [supra](#) at 111. Thus, we would advise that, as a general matter, a coroner's inquest, although primarily investigative in its purpose, [State v. Griffin](#), [supra](#), nevertheless possesses many of the attributes of a judicial proceeding, [see, Giles v. Brown](#), 1 Mills Const. 230, 231–232 (1818) and thus, based upon Art. I, § 9 must remain open to the public.¹ This conclusion is consistent with the idea that the

. . . right of access to places traditionally open to the public [as judicial proceedings generally are] . . . may be seen as assured by the amalgam of the First Amendment guarantees of speech and press.

[Richmond Newspapers, Inc. v. Virginia](#), 448 U.S. 555, 577, 65 L.Ed.2d 973 (1980); [Gannett v. Depasquale](#), 443 U.S. 368, 379–98, 61 L.Ed.2d 608 (1979) [Powell, J. concurring].²

II.

The answer to your second inquiry would depend upon the nature of the specific records requested, but as a general matter coroner's records are open to public inspection.

A coroner in South Carolina is a public officer of the particular county he serves. 18 C.J.S., Coroners, § 1. A coroner possesses judicial as well as ministerial powers, Giles v. Brown, *supra*; and, as noted, for purposes of Art. I, § 9, a coroner's inquest is deemed a 'court'. A coroner's records however, are certainly not those of a judicial body in every sense of the word.

Even assuming however that certain of the records maintained by the coroner are considered those of a court, nevertheless they are generally open to public inspection under the common law. The coroner is required by law to keep and maintain a number of books and records. See e.g., § 17-5-60; § 17-7-30; § 17-7-230; § 17-7-330. And, Generally speaking, it is the right of every person to inspect the records of judicial proceedings at least after such proceedings are completed and entered on the journal of the court.

*2 76 C.J.S., Records, § 36, p. 140; State v. O'Connell, (N.D.), 151 N.W.2d 758, 763 (1967). See also, Op. Atty. Gen. (June 24, 1966). Moreover, there exists at common law a right to inspect public records generally, subject to certain limitations. 76 C.J.S., Records, § 35; see also, 66 Am.Jur.2d, Records, §§ 12-30.

In addition to the common law, the Freedom of Information Act, § 30-4-10 et seq. probably also extends a general right to inspect coroner's records, including those which encompass the coroner's judicial functions. See, § 30-4-30. As noted, the coroner is a county officer and the FOIA defines a 'public body' to include records of a political subdivision, including a county. See, § 30-4-10(a). In addition, this office has previously concluded that certain local court records are subject to the FOIA. See, Op. Atty. Gen. (May 27, 1980). Since the FOIA must be broadly construed, Op. Atty. Gen. (August 8, 1983), it is probable that a court would conclude that coroner's records are generally subject to the Act. See, § 30-4-10; Cohen v. Poelker, (Mo.), 520 S.W.2d 50, 53 (1975); cf., State ex rel. O'Leary v. State Board of Medication, (Mo.), 509 S.W.2d 84, 89 (1974); cf., Amalgamated Meat Cutters v. Fairlawn Meats, 353 U.S. 20, 1 L.Ed.2d 613, 77 S.Ct. 604 (1957); cf., U.S. v. Stephens, 315 F.Supp. 1008, 1010 (W.D. Okla. 1970); but see, Grand Forks Herald, Inc. v. Lyons, (N.D.), 101 N.W.2d 543 (1960).³

We would caution however that whether coroners' records are considered public for purposes of the common law or the FOIA, each particular record would have to be examined in light of those exemptions from public inspection authorized by law. See, § 30-4-40; 66 Am.Jur.2d, Records, § 27-30. For example, in a prior opinion, this office concluded that while the results of an autopsy report may be disclosed (i.e. cause of death), the detailed autopsy report would not be subject to disclosure due to public policy considerations of privacy. 1981 Op. Atty. Gen. No. 81-87, p. 113 (copy enclosed). Also law enforcement investigation files may be exempted from disclosure under certain circumstances. § 30-4-30(3); see also, 1976-77 Op. Atty. Gen. No. 77-193, p. 146. Other records or documents maintained by the coroner would also have to be scrutinized on an individual basis in light of other exemptions from disclosure recognized under the law. See, 76 C.J.S., Records, § 36, p. 140. However, if the exemption is claimed under the FOIA, it must be remembered that such exemptions are to be narrowly construed. See, Op. Atty. Gen. (August 8, 1983).

Conclusion

As a general matter, a coroner's inquest must be open to the public and as a general rule a coroner's records probably are open to the public for inspection. Both of these conclusions may be subject to qualification, however, depending upon the circumstances and the nature of the records sought.

*3 I hope this adequately responds to your inquiry and if I can be of further assistance please let me know.
Sincerely,

T. Travis Medlock
Attorney General

Footnotes

- 1 It should be noted that in [State v. Sinclair](#), 275 S.C. 608, 612, 274 S.E.2d 411 (1981), the South Carolina Supreme Court recognized with respect to a criminal trial, that under certain ‘closely scrutinized’ conditions, the right to have courts conducted in public might be qualified in order to protect other rights. And only recently in [Steinle and Multimedia, Inc. v. Lollis](#), Op. No. 21989 (Sept. 15, 1983), the Court reaffirmed its holding in [Sinclair](#). We note also that a coroner's inquest is primarily criminal in nature, [Acker v. Anderson Co.](#), 77 S.C. 478, 58 S.E. 337 (1906), but is a preliminary investigation, not a trial. [State v. Griffin](#), *supra*. The question whether under any circumstances the coroner may qualify the right to have an inquest conducted in public has, to our knowledge, never been addressed in South Carolina.
- 2 In [Lollis](#), *supra*, however, the Court stated that ‘To date there does not exist any federally recognized constitutional right of access to preliminary hearings.’ To our knowledge, the specific question of the applicability of the First Amendment to coroner's inquests has not been addressed. There have been suggestions by certain Justices of the United States Supreme Court that the First Amendment guarantees a right of public access, although not unlimited, to governmental information. See, [Saxbe v. Washington Post Co.](#), 417 U.S. 843, 850, 41 L.Ed.2d 514, 94 S.Ct. 2811 (1974) (Powell, J., dissenting). And our Court in [Lollis](#) did state that ‘Exclusion of the press and public from judicial proceedings is a drastic measure calling for careful weighing of interests affected.’ Since Art. I, § 9 covers a coroner's inquest under [State v. Griffin](#), this question need not be addressed.
- 3 This conclusion is not without doubt as to those records of the coroner which might be characterized as ‘judicial’ records. Therefore, legislative clarification may be advisable.

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