

1981 WL 158009 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 8, 1981

***1 Re: Section 23(d) of Regulation 61-19**

The Honorable Irene K. Rudnick
South Carolina House of Representatives
224 Park Avenue S.W.
P.O. Box 544
Aiken, South Carolina 29801

Dear Representative Rudnick:

You have requested an opinion of this Office regarding the application of Section 23(d) of Regulation 61-19 of the 1976 Code of laws of S.C., as amended, as administered by the Department of Health and Environmental Control (DHEC). Section 23(d) provides that, in cases where a body is to be disposed of by cremation or burial at sea, the burial-transit permit must be accompanied by a certified copy of the death certificate, and when required by law, authorization by the medical examiner. Your request expressed in particular four questions.

First, you have asked whether, for example, it would be a violation of [Regulation 61-19](#) for a funeral director to pick up a body on Friday, obtain the doctor's signature on the original death certificate, and send the body for cremation on Saturday, without obtaining the certified copy of the death certificate until Monday or the earliest date on which the Department is open.

The manifest purpose of Section 23(d) is to ensure that the cause of death has been determined in each case prior to any irrevocable disposition of a body, such as by cremation or burial at sea. The mechanism chosen under the regulation to ensure compliance is the requirement that a certified copy of the death certificate be attached to the burial-transit permit which accompanies the body. Therefore, it appears certain that the failure to attach such a certificate in the manner specifically required would be a violation of the terms of Section 23(d).

Second, you have asked what the penalty would be for such a violation. Section 44-63-50 of the amended Code prescribes the penalty for violations of DHEC regulations relative to recording, reporting, and filing information for the Bureau of Vital Statistics. That section provides that a violator 'shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five dollars nor more than one hundred dollars or be imprisoned in the county jail not exceeding thirty days, or suffer both fine and imprisonment, in the discretion of the court.'

Third, you have asked whether there is any exception made in the regulations to the requirement of Section 23(d). Our research has found no exceptions to that section.

Finally, you have asked whether there is any conflict between the DHEC regulation and regulations of the Federal Trade Commission (FTC). The proposed FTC rule on funeral industry practices would declare it a deceptive act or practice for a funeral director to represent that a casket is required for cremation, or to fail to disclose that alternative containers can be used for cremations. [46 Fed. Reg. 6976 \(Jan. 22, 1981\)](#). That proposed provision of federal law present no apparent conflict with [Regulation 61-19](#).

***2** In conclusion, it is the opinion of this Office that:

- (1) Section 23(d) of R. 61-19 requires that a certified copy of the death certificate be obtained and accompany the burial-transit permit before final disposition of a body is made by cremation or burial at sea;
- (2) Violations of R. 61-19 are punishable by a fine of up to \$100 or 30 days imprisonment, or both;
- (3) There appear to be no exceptions provided to excuse compliance in Section 23(d) of R. 61-19; and
- (4) [Regulation 61-19](#), Section 23(d), presents no apparent conflict with proposed Federal Trade Commission rules regarding funeral industry practices.

I trust the preceding discussion adequately answers your questions, however, should any further explanation or assistance be necessary, please do not hesitate to contact me.

Yours very truly,

Richard P. Wilson
Assistant Attorney General

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