

1997 WL 87952 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 29, 1997

Re: Informal Opinion

*1 The Honorable Sue R. Townsend
Coroner, Aiken County
Post Office Box 1469
Aiken, South Carolina 29801

Dear Coroner Townsend:

This Office is in receipt of your opinion request. Attorney General Condon has forwarded your request to me for reply.

In regards to your first question, you raise a number of issues concerning the applicability of S.C. Code Ann. § 17-5-310 (Supp. 1996). This Section reads in pertinent part as follows: “[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.”

In interpreting any statute, the primary purpose is to ascertain the intent of the Legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988). The court must apply the clear and unambiguous terms of the statute according to their literal meaning. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991).

According to the clear and unambiguous language of § 17-5-310, the coroner, deputy coroner, county medical examiner or the medical examiner’s deputy shall issue a cremation permit for a dead person who died in the county. Thus, the clear language indicates that the coroner, medical examiner or their assistants are only authorized to issue cremation permits for those persons who died in the county.¹

In regards to your second question, you ask who has the power to enforce the criminal provisions of § 17-5-310. This Section reads in pertinent part as follows “... a person who wilfully fails to secure a permit for cremation is guilty of a misdemeanor and, upon conviction, must be fined not less than twenty dollars and not more than five hundred dollars.” Since the penalty for the wilful failure to obtain a cremation permit lies in criminal law, the local solicitor would be the proper party to bring a criminal action pursuant to this Section.

In regards to your third question, you state that pursuant to an Aiken County ordinance, your office charges a \$10.00 fee in order to obtain a cremation permit. It is generally recognized that a county ordinance, just like a state statute, is presumed to be valid as enacted unless or until a court declares it to be invalid. See, Casey v. Richland County Council, 282 S.C. 387, 320 S.E.2d 443 (1984). Only the courts, and not this Office, would have the power to declare such ordinance invalid. Until such time, this ordinance should be followed.

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 questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

*2 With kindest regards, I remain
Very truly yours,

Paul M. Koch
Assistant Attorney General

Footnotes

- 1 You have questioned whether there is a conflict between S.C. Code Ann. § 17-5-310 and § 17-7-70. These two provisions do not conflict in any form or fashion. In fact, the provisions discuss two wholly unrelated subjects. Section 17-7-70 specifically addresses a coroner's power to take inquest while Section 17-5-310 addresses only the coroner's ability to issue a cremation permit.

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