ALAN WILSON
ATTORNEY GENERAL

June 4, 2020

The Honorable Gary Watts
Richland County Coroner
P.O. Box 192
Columbia, South Carolina 29202

Dear Mr. Watts:

We understand from your letter addressed to Attorney General Alan Wilson your office receives requests from "various agencies and/or citizens for copies of certain records or reports that we have in our files regarding a decedent." You further explain:

> Richland County specifies the rates that are charged for copies and certain reports by way of county ordinance. Richland County Ordinance 043-01HR, Section 24 states that "a copy charge of five hundred dollars ($500) shall be collected for each copy of an autopsy report. These copy charges shall not apply to family or law enforcement." In compliance with this ordinance, the Coroner's Office charges that rate for a copy of an autopsy report.

In your letter, you explain this charge is being disputed by an attorney who cites to section 44-115-80 of the South Carolina Code. Thus, you ask for an opinion of this Office addressing: "1) how or if this statute applies to records of the Office of the Coroner or is it specific to physicians; and 2) if the statute does apply to Coroner's records, how does that affect our compliance with our county ordinance."

Law/Analysis

We begin with the Richland County ordinance. Ordinance 043-01HR, section 24, adopted by the Richland County Council in 2012 provides as follows:

> SECTION I. A copy charge of five hundred dollars ($500) shall be collected for each copy of an autopsy report. These copy charges shall not apply to family or law enforcement.
>
> SECTION II. Severability. If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

> SECTION III. Conflicting Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.
>
> SECTION IV. Effective Date. This ordinance shall be enforced from and after November 13, 2012.

This Office, just as a court, views an ordinance as a legislative enactment and, therefore, we begin with the presumption that it is valid and enforceable. Op. Att'y Gen., 2008 WL 317752 (S.C.A.G. Jan. 22, 2008). Moreover,

> [w]hile this Office may comment upon constitutional problems or a potential conflict with general law, only a court may declare an ordinance void as unconstitutional, or preempted by or in conflict with state statutes. Thus, we have recognized that an ordinance must continue to be enforced unless and until set aside by a court of competent jurisdiction.

Op. S.C. Atty. Gen., 2003 WL 164476 (S.C.A.G. Jan. 3, 2003).

With these limitations in mind, we will attempt to provide you with some guidance. As the Supreme Court explained in Hospitality Association of South Carolina, Inc. v. County of Charleston, 320 S.C. 219, 224, 464 S.E.2d 113, 116-17 (1995):

> Determining if a local ordinance is valid is essentially a two-step process. The first step is to ascertain whether the county or municipality that enacted the ordinance had the power to do so. If no such power existed, the ordinance is invalid and the inquiry ends. However, if the local government had the power to enact the ordinance, the next step is to ascertain whether the ordinance is inconsistent with the Constitution or general law of this State.

Section 4-9-25 of the South Carolina Code (Supp. 2019), enacted as part of the Home Rule legislation, provides:

> All counties of the State, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them. The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.

We believe a court could find the ordinance setting the fee for copies of autopsy reports as "preserving health, peace, order and good government" in Richland County (the "County"). In addition, section 17-5-100 of the South Carolina Code (2014) directs: "Coroners must execute all lawful orders directed to them by the respective governing bodies of their respective counties, or the chairmen thereof, and must receive the same fees and costs as are allowed in other cases." Accordingly, we also believe a court could find the ordinance within the County's authority to direct coroners.

Next, we consider whether the ordinance in question conflicts with State law. "A local government ordinance conflicts with a State law when its conditions, express or implied, are inconsistent and irreconcilable with the State law." Hosp. Ass'n of S.C., Inc., 320 S.C. at 228, 464 S.E.2d at 119. As you mentioned in your letter, an attorney questioned whether the ordinance conflicts with section 44-115-80 of the South Carolina Code (2018). Section 44-115-80 regulates the fees a physician may charge for the duplication of medical records and states:

> (A) A physician, or other owner of medical records as provided for in Section 44-115-130, may charge a fee for the search and duplication of a paper or electronic medical record, but the fee may not exceed:
>
> (1) Sixty-five cents per page for the first thirty pages provided in an electronic format and fifty cents per page for all other pages provided in an electronic format, plus a clerical fee not to exceed twenty-five dollars for searching and handling, which combined with the per page costs may not exceed one hundred fifty dollars per request, but to which may be added actual postage and applicable sales tax. The search and handling fee is permitted even though no medical record is found as a result of the search, except where the request is made by the patient.
>
> (2) Sixty-five cents per page for the first thirty printed pages and fifty cents per page for all other printed pages, plus a clerical fee not to exceed twenty-five dollars for searching and handling, which combined with the per page print costs may not exceed two hundred dollars per request, and to which handling fee is permitted even though no medical record is found as a result of the search, except where the request is made by the patient.
>
> (3) All fees allowed by this section, including the maximum, must be adjusted annually in accordance with the Consumer Price Index for all Urban Consumers, South Region (CPI-U), published by the U.S. Department of Labor. The Department of Health and Environmental Control is responsible for calculating this annual adjustment, which is effective on July first of each year, starting July 1, 2015.

> (B) A physician, health care provider, or other owner of medical records must provide a patient's medical records at no charge when the patient is referred by the physician, health care provider, or an employee, agent, or contractor of the owner of the record to another physician or health care provider for continuation of treatment for a specific condition or conditions.
>
> (C) The physician may charge a patient or the patient's legal representative no more than the actual cost of reproduction of an X-ray. Actual cost means the cost of materials and supplies used to duplicate the X-ray and the labor and overhead costs associated with the duplication.

In Perry v. Bullock, 409 S.C. 137, 761 S.E.2d 251 (2014), our Supreme Court determined autopsy reports are "medical records" for purposes of section 30-4-20(c) of the South Carolina Code and thereby exempt from disclosure under the South Carolina Freedom of Information Act ("FOIA"). In that opinion, the Court noted the term "medical records" is not defined under FOIA. Id. at 141, 761 S.E.2d at 253. Thus, employing the normal and customary meaning of the term, the Court concluded "plainly stated, medical records are those records containing medical information." Id.

> We find autopsy reports fit neatly within that general understanding of medical records. Section 17-5-5(1) of the South Carolina Code (2014) defines an autopsy as "the dissection of a dead body and the removal and examination of bone, tissue, organs, and foreign objects for the purpose of determining the cause of death and manner of death." Although the objective of an autopsy is to determine the cause of death, as the statute indicates, the actual examination is comprehensive. Thus, the medical information gained from the autopsy and indicated in the report is not confined to how the decedent died. Instead, an autopsy, which is performed by a medical doctor, is a thorough and invasive inquiry into the body of the decedent which reveals extensive medical information, such as the presence of any diseases or medications and any evidence of treatments received, regardless of whether that information pertained to the cause of death. Accordingly, we find an autopsy report falls within the definition of a medical record as that term is commonly understood.
>
> The reference to "medical records" in other portions of the Code supports that conclusion by indicating the General Assembly considered autopsy reports to be included within that term. Section 17-5-120 of the South Carolina Code (2014), entitled "Availability of *medical records* to coroner of another state," allows for "Records, papers, or reports *concerning the death of a person* on file at any . . . medical facility in this State are available to a coroner of another state . . . ." (emphasis added). The title refers to "medical records" and the statute only mentions reports about the death of an individual, which encompasses autopsy reports. See Garner v. Houck, 312 S.C. 481, 486, 435

> S.E.2d 847, 849 (1993) (holding the title of a statute and heading of a section can be used to clarify ambiguity or doubt in a statute provided the interpretation does not undo or limit the plain meaning of the text). Section 17–5–120 also specifically notes: "The release of these records to the coroner of another state is not prohibited by [the FOIA] or any other provision of law." The reference to the FOIA as a law of exclusion indicates the General Assembly assumed the FOIA barred dissemination of these types of reports.

Id. at 141-42, 761 S.E.2d at 253-54.

Section 44-115-80, as quoted above, pertains the duplication of "medical records." The Court specified in Perry an autopsy report is a medical record for purposes of FOIA under the common meaning of term. Therefore, we appreciate the argument that the fees charged for copies of autopsy reports are governed by section 44-115-80. However, we do not believe the Legislature intended for section 44-115-80 to govern the duplication of autopsy reports held by coroners.

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "'What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.'" Id. (quoting Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992)). "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." Bass v. Isochem, 365 S.C. 454, 469, 617 S.E.2d 369, 377 (Ct. App. 2005).

The Legislature originally enacted section 44-115-80 as part of the Physicians' Patients Record Act in 1992 (the "Act"). 1992 S.C. Acts 480. The Act established physicians as owners of medical records, but prohibited physicians from withholding a patient's records. Id. Section 44-115-80, limiting what a physician could charge a patient for a copy of their records, originally stated: "A physician may charge a fee of fifty cents a page or a minimum fee ten dollars, plus actual postage costs, for making copies of existing medical records." Id.

The Legislature amended section 44-115-80 several times since the passage of the Act. In 1994, the Legislature increased the allowable fee, allowed physicians to charge a clerical fee for searching for the records, set forth the charge for copies of x-rays, and provided an exemption for "records copied at the request of a health care provider or for records sent to a health care provider at the request of the patient for the purpose of continuing medical care." 1994 S.C. Acts 468.

In 1999, the Legislature expanded the application of section 44-115-80 to "other owner of medical records as provided for in Section 44–115–130" in addition to physicians and required copies of records be provided at no charge when the patient is referred by the physician for continued treatment. 1999 S.C. Acts 85.

The most recent amendment to section 44-115-80 occurred in 2014 and resulted in the statute as it stands today. Through the initial enactment and the subsequent amendments to this provision, we observe the Legislature's intent to establish a framework for physicians and other healthcare providers to handle their patients' records. Neither this provision, nor any other provision under the Physicians' Patients Record Act, appear to contemplate medical records held and produced outside of an established provider-patient relationship. Presumably, the autopsy reports maintained by your office are not produced through a traditional physician/healthcare provider relationship, but rather out of the public duties placed on coroners and medical examiners. Therefore, we do not believed the Legislature intended for section 44-115-80 to apply to autopsy reports maintained by your office. As such, we are of the opinion that the ordinance does not conflict with section 44-115-80.

Furthermore, as we cited above, section 17-5-100 requires coroners to "execute all lawful orders directed to them by the respective governing bodies of their respective counties, or the chairmen thereof, and must receive the same fees and costs as are allowed in other cases." Thus, the Legislature specifically spoke to the duty of coroners to follow the direction given to them by their respective county governing bodies both generally and specifically in regard to fees. Therefore, the ordinance not only appears to not to conflict with state law, but is in furtherance of section 17-5-100.

Conclusion

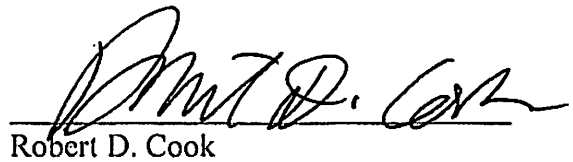
In Perry, our Supreme Court determined autopsy reports are medical records for purpose of FOIA. Therefore, we understand the argument that autopsy reports are governed by the Physicians' Patients Record Act under which section 44-115-80 restricts the charges a physician or healthcare provider may charge for medical records. However, we do not believe the Legislature intended for this provision to apply to autopsy reports obtained and held by coroners. Therefore, we believe section 44-115-80 does not preempt the county from passing an ordinance setting a fee for copies of autopsy reports in your possession. Moreover, section 17-5-100 specifically requires coroners to follow lawful orders given to them by their respective county governing bodies and "receive the same fees and costs as are allowed in other cases." As such, we believe the ordinance is within the County's authority and is not preempted by state law.

Sincerely,

Cydney Milling

Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General