



ALAN WILSON  
ATTORNEY GENERAL

March 25, 2021

The Honorable Danny B. Verdin, III  
Chairman, Medical Affairs Committee  
South Carolina Senate  
Post Office Box 142  
Columbia, South Carolina 29202-0142

Dear Senator Verdin:

We received your letter requesting an opinion concerning the South Carolina Uniform Anatomical Gift Act (the "Act"). Although, you do not have a specific question related to the Act, you ask that we clarify the intent of the Act especially in regard to coroners and the organizations that procure anatomical gifts.

#### Law/Analysis

The Act is contained in chapter 43 of tile 44 of the South Carolina Code and describes who may make anatomical gifts and how they may be made and amended or revoked. S.C. Code Ann. §§ 44-43-300 *et seq.* (2018). The Act also sets forth who may receive anatomical gifts and the circumstances under which a procurement organization may obtain an anatomical gift. *Id.* You inquire as to the Legislature's intent under the Act in regard to coroners and procurement organizations. As our Supreme Court stated in Charleston County Parents for Public Schools, Inc. v. Moseley, 343 S.C. 509, 515, 541 S.E.2d 533, 536 (2001), "where a statute is complete, plain, and unambiguous, legislative intent must be determined from the language of the statute itself."

Initially, we note, in section 44-73-410 of the South Carolina Code (2018), the Legislature instructs in regard to the Act: "In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. This article must be liberally construed to effectuate the wishes of the donor." Accordingly, we keep this statement of the Legislature's intent in mind as we read the Act.

In reviewing the Act, we found two provisions specifically pertaining to coroners. Section 44-43-400 of the South Carolina Code (2018) pertains to bodies under the jurisdiction of a coroner. This provision states:

(A) A coroner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

(B) A part may not be removed from the body of a decedent under the jurisdiction of a coroner for transplantation, therapy, research, or education unless the part is the subject of an anatomical gift. The body of a decedent under the jurisdiction of the coroner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection does not preclude a coroner from performing the medicolegal investigation upon the body or parts of a decedent under the jurisdiction of the coroner.

S.C. Code Ann. § 44-43-400.

Section 44-43-400 highlights the role coroners play in the process of anatomical gifts. First, this provision calls for coroners to cooperate with procurement organizations. The Legislature chose to use the word “shall” in this particular provision, which courts generally recognize as an indication the provision is mandatory. Charleston Cty. Parents for Pub. Sch., Inc., 343 S.C. at 519, 541 S.E.2d at 538. As such, this provision requires coroners cooperate with procurement organizations “to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.” Section 44-43-400(B) also instructs coroners not to remove parts of the body unless they are subject to an anatomical gift and clarifies this provision does not preclude the coroner from performing his or her medicolegal investigation.

Section 44-43-405 of the South Carolina Code (2018) governs anatomical gifts from bodies under the jurisdiction of coroners.

(A) Upon request of a procurement organization, a coroner shall release to the procurement organization the name, contact information, and available medical and social history of a decedent whose body is under the jurisdiction of the coroner. If the decedent’s body or part is medically suitable for transplantation, therapy, research, or education, the coroner shall release post-mortem examination results to the procurement organization. The procurement organization may make a subsequent disclosure of the post-mortem examination results or other information received from the coroner only if relevant to transplantation or therapy.

(B) The coroner may conduct a medicolegal examination by reviewing all medical records, laboratory test results, x-rays, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the jurisdiction of the coroner which the coroner determines may be relevant to the investigation.

(C) A person that has any information requested by a coroner pursuant to subsection (B) shall provide that information as expeditiously as possible to allow the coroner to conduct the medicolegal investigation within a period compatible with the preservation of parts for the purpose of transplantation, therapy, research, or education.

(D) If an anatomical gift has been or might be made of a part of a decedent whose body is under the jurisdiction of the coroner and a post-mortem examination is not required, or the coroner determines that a post-mortem examination is required but that the recovery of the part that is the subject of an anatomical gift will not interfere with the examination, the coroner and procurement organization shall cooperate in the timely removal of the part from the decedent for the purpose of transplantation, therapy, research, or education.

(E) If an anatomical gift of a part from the decedent under the jurisdiction of the coroner has been or might be made, but the coroner initially believes that the recovery of the part could interfere with the post-mortem investigation into the decedent's cause or manner of death, the coroner shall consult with the forensic pathologist and the procurement organization about the proposed recovery. After consultation, the coroner may allow the recovery.

(F) If the coroner or designee allows recovery of a part under subsection (D), or (E), the procurement organization, upon request, shall cause the physician or technician who removes the part to provide the coroner with a record describing the condition of the part, a biopsy, a photograph, and any other information and observations that would assist in the post-mortem examination.

S.C. Code Ann. § 44-43-405.

In section 44-43-405(A), the Legislature again uses the term “shall” to express its intent to require coroners to provide certain information to procurement organizations. Additionally, section 44-43-405(D) requires coroners and procurement organizations to cooperate in the “timely removal of the part from the decedent for the purpose of transplantation, therapy, research, or education.” This provision also gives coroners greater ability collect information in order to conduct their medicolegal examination on a timely basis so as to be “compatible with the preservation of parts for the purpose of transplantation, therapy, research, or education.” Given the intent expressed by the Legislature that the Act be construed with the aim of effectuating the donor's wishes and the plain language used in sections 44-43-400 and 44-43-405, we believe the Legislature intended for coroners to cooperate and coordinate with procurement organizations in a way that maximizes the fulfillment of the anatomical gift.

However, the Act also acknowledges coroners must balance the aim of timely complying with the desire of a donor with their duties as coroners. In a 2010 opinion, we explored the tension between the coroner's responsibilities under the Act and the coroner's responsibility to preserve evidence under the Preservation of Evidence Act. Op. Att'y Gen., 2010 WL 3896175 (S.C.A.G. Sept. 15, 2010). Specifically, we were asked whether a coroner's office could release a body to an organ or tissue procurement agency for organ or tissue donation while still complying with the Preservation of Evidence Act. Id. We considered the two provisions cited above and cited to a Georgia Attorney General opinion interpreting similar statutes. Id. The Georgia Attorney General concluded the Georgia Legislature "sought to encourage organ donation and to also facilitate the organ donation procedure" and "intended for organ donation to be carried out as soon as practically possible." Id. (citing Op. Att'y Gen., 1996 WL 505921(Ga.A.G. Aug. 8, 1996). We similarly found sections 44-43-400 and 44-43-405 "argue in favor of allowing a coroner to release a body to an organ or tissue procurement agency for organ or tissue donation in certain circumstances." Id. Therefore, we concluded so long as the donated tissue or organ was of no consequence to the investigation into the victim's cause of death, the coroner should release it. But, we warned "if a coroner in his role as an investigator of the cause of death has a basis to object to organ or tissue donation such should not be undertaken." Id. Accordingly, we continue to believe coroners must fulfill their duties under the law. But, we also believe to the extent the Act does not conflict with those duties, coroners should make every effort to fulfill the wishes of donors, which includes cooperating with procurement organizations to facilitate organ and tissue donations when possible.

We also note section 44-43-385 of the South Carolina Code (2018) may provide some protection to coroners carrying out their responsibilities under the Act. This provision states:

- (A) A person that acts in good faith in accord with the terms of this article, or under the anatomical gift laws of another state, is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act. However, immunity from civil liability does not extend to cases of provable malpractice on the part of a physician, surgeon, or technician.
- (B) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.
- (C) In determining whether an anatomical gift has been made, amended, or revoked under this article, a person may rely upon representations of an individual listed in Section 44-43-340 (A)(2), (3), (4), (5), (6), (7), or (8) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

S.C. Code Ann. § 44-43-385. Neither a court nor this Office has addressed the application of this provision to coroners. However, we presume a coroner acting in good faith in accordance with provisions in the Act could be afforded protection from liability pursuant to this provision.

The Honorable Danny B. Verdin, III  
Page 5  
March 25, 2021

**Conclusion**

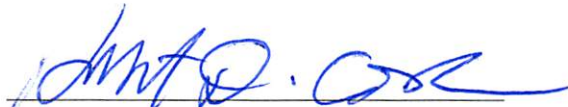
Taking into account the rules of statutory interpretation as espoused by our courts, we believe the Legislature intended for coroners to cooperate with procurement organizations in such a way that maximizes the fulfillment of an anatomical gift while not compromising the duties and responsibilities of the coroner. Moreover, we believe section 44-43-385 may provide immunity to coroners acting in accordance with the Act.

Sincerely,



Cydney Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General