



7072 *L. L. Smith*

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

January 19, 2001

The Honorable Doug Smith
Member, House of Representatives
519-C Blatt Building
Columbia, South Carolina

RE: Informal Opinion

Dear Representative Smith:

By your letter of January 11, 2001, you have requested an opinion of this Office concerning the scattering of cremated remains in a church courtyard. By way of background you provide the following information:

A suburban ... church has a courtyard/garden area enclosed on three sides by church building walls and open on the fourth side to a church parking area beyond a covered walkway. Several members of the congregation whose deceased family members have been cremated have requested permission to place the remains in the courtyard area and mount a memorial marker at a central location in the garden to be established by the church.

You also inform us that the church would like to accommodate the requests but does not intend to establish a cemetery within the meaning of statutory or common law. You ask if the church's accommodation of the requests would establish the area as a cemetery under South Carolina law.

The South Carolina Cemetery Act of 1984, codified at S.C. Code Ann. § 39-55-15 et seq., places restrictions and regulations on cemeteries "to ensure that sound business practices are followed by all entities subject to the provisions of this chapter." S.C. CODE ANN. § 39-55-25. This purpose provision suggests consumer-protective nature of the Act. For example, the Act requires the establishment of trust funds for the merchandise sold in connection with a future burial of remains and mandates minimum unencumbered acreage to be set aside for cemetery use. See S.C. CODE ANN. §§ 39-55-185, 39-55-215. As you correctly point out, with two exemptions, the provisions of the South Carolina Cemetery Act do not apply to church cemeteries. See S.C. CODE ANN. § 39-55-295.

Request Letter

Representative Smith
January 19, 2001
Page 2 of 3

Of course, before the South Carolina Cemetery Act, including its exemptions, becomes applicable, the land in question must fall within the definition of cemetery as intended by the Act. Section 39-55-35(2), the definitions provision, states in part:

“Cemetery” means a place used, dedicated, or designated for cemetery purposes including any one or combination of: (a) perpetual care cemeteries; (b) burial parks for earth interment; (c) mausoleums; (d) columbariums.

Of particular relevance in this case, “columbarium” is defined as “a structure or building substantially exposed aboveground intended to be used for the interment of the cremated remains of a deceased person.” S.C. CODE ANN. § 39-55-35(4).

The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. Bankers Trust of S.C. v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). A statutory provision should be given a reasonable and practical construction which is consistent with the purpose and policy expressed therein. Jones v. S.C. State Highway Dept., 247 S.C. 132, 146 S.E.2d 166 (1966). And words used in an enactment should be given their plain and ordinary meaning. Smith v. Eagle Const. Co., 282 S.C. 140, 318 S.E.2d 8 (1984). Although it is not particularly helpful to use “cemetery purpose” to aid in the definition of “cemetery,” the examples indicated in the provision may provide some illumination of the legislative intent. Only columbariums concern the disposition of cremated remains, and the definition of columbarium anticipates a structure or building be used for the interment of the remains. Thus, a church courtyard in which periodically cremated remains are scattered would neither fit within the definition of columbarium, nor in our opinion, be used for cemetery purposes. To conclude otherwise could inadvertently classify as cemeteries other locations where ashes are scattered. Again, considering the consumer-protective nature of the Act, we do not believe the General Assembly intended to encompass this activity.

Furthermore, South Carolina’s Safe Cremation Act, codified at S. C. Code Ann. § 32-8-300 et seq., would not prohibit the scattering of cremated remains in the church courtyard. The Safe Cremation Act primarily sets forth requirements for authorization for a cremation, the crematory’s procedures during the cremation, and the crematory’s licensing and record-keeping duties. See S.C. CODE ANN. §§ 32-8-315; 32-8-330; 32-8-385. The Act does address the final disposition of the remains. Section 32-8-345(B) states:

Cremated remains may be disposed of by placing in a grave, crypt, niche, by scattering them in a scattering area, or in any manner on the private property of a consenting owner. If cremated remains are disposed of on public lands or water, all state and federal laws apply.

Under this provision, the church could allow for the disposition of the remains not only in the

Representative Smith
January 19, 2001
Page 3 of 3

traditional grave, crypt, or niche, but also in a "scattering area," or more importantly, "in any manner on the private property of a consenting owner." For the purposes of this Act, "scattering area" is defined as an area "which may be designated by a cemetery and located on dedicated cemetery property..." S. C. CODE ANN. § 32-8-305 (26).

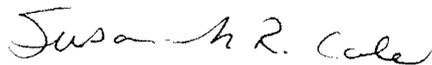
In the circumstances you describe, the church has no intention of establishing any area in the church courtyard for cemetery use. Thus, the courtyard would not be designated as a "scattering area" as defined by the statute. However, because the church owns the courtyard, and as the private property owner consents to the disposition of the cremated remains therein, the scattering of the remains is permissible under the Act.

"Cremation is a safe, sanitary, and generally accepted alternative to burial." 6 SOUTH CAROLINA JURISPRUDENCE *Cremation* § 22 (1991). It appears that neither public health nor consumer protection would be jeopardized by the scattering of ashes on the church's property. In our opinion, solely the scattering of cremated remains in the church courtyard would not establish a cemetery under the South Carolina Cemetery Act. Moreover, South Carolina's Safe Cremation Act specifically allows the disposition of cremated remains in any manner allowed by the owner of the private property. Thus, it is the opinion of this Office that the church's accommodation of family members' requests to scatter cremated remains in the church courtyard is not prohibited by South Carolina law.

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

With kind regards, I remain

Very truly yours,



Susannah Cole
Assistant Attorney General