

6491 Seymour



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 22, 1998

The Honorable Zack Seymour
Coroner, Laurens County
P. O. Box 666
Laurens, South Carolina 29360

Re: Informal Opinion

Dear Coroner Seymour:

You have asked for an opinion regarding the following situation:

[t]he local Sheriff has taken the stand that when a dead body is found and his office is called to the scene, he is to conduct his investigation, collect evidence, question witnesses and then when ready to move the body he notifies the Coroner.

My duties as defined by the S.C. Code require that [I] ... determine the cause and manner of all deaths that occur in my County without medical supervision. Accordingly [I] ... feel that Section 17-5-260 should apply to this situation.

Law / Analysis

S.C. Code Ann. Sec. 17-5-260 was amended in 1996 by Act No. 419 and provides as follows:

[i]f a person dies as a result of violence, apparent suicide, when in apparent good health, unattended by a physician, or in any suspicious or unusual manner or while an inmate of a penal or correctional institution or stillbirths not attended by a physician, a person having knowledge of the death immediately shall notify the county medical examiner's office.

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This procedure also must be followed upon discovery of anatomical material suspected of being or determined to be a part of a human body.

The county medical examiner shall make immediate inquiry into the cause and manner of death and shall reduce the findings to writing on forms provided for this purpose retaining one copy and forwarding one copy to the coroner. In the case of violent death, one copy must be forwarded to the county solicitor of the county in which the death occurred. The county medical examiner must notify in writing the deceased person's next-of-kin, if known, that, in the course of performing the autopsy, body parts may have been retained for the purpose of investigating the cause and manner of death.

In performing an autopsy or postmortem examination, no body parts, as defined in Section 44-43-320, removed from the body may be used for any purpose other than to determine the cause or manner of death unless the person authorized to consent, as defined in Section 44-43-330, has given informed consent to the procedure. The person giving the informed consent must be given the opportunity to give informed consent and authorize the procedure on a witnessed, written consent form using language understandable to the average lay person after face-to-face communication with a physician, coroner, or medical examiner about the procedure. If the person authorizing the procedure is unable to consent in person, consent may be given through a recorded telephonic communication.

In an Opinion, dated June 8, 1983, this Office construed § 17-5-260 as being inapplicable to counties without a Medical Examiner. As we stated therein,

[t]his statute applies only to the County Medical Examiner as defined in South Carolina Code Section 17-5-210(6). There is no mention in Section 17-5-260 of the County Coroner. Moreover, South Carolina Code Section 17-5-220 mandates a County Medical Examiner Commission only in those counties with a population over 240,000. It is the opinion of this Office that South Carolina Code Section [17-5-260] applies

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only to those counties with a Medical Examiner, and has no applicability to Aiken County.

While § 17-5-260 has been amended since the 1983 Opinion was issued, the fact that the Legislature did not choose to alter the Opinion's conclusion, i.e. that § 17-5-260 is applicable only to counties with a Medical Examiner, indicates legislative acceptance and approval of the Opinion. See, State v. Crescent Cities Jaycees Foundation, 624 A.2d 955 (Md. Ct. App. 1993) [absent changes in statutory language, Legislature is presumed to have acquiesced in the Attorney General's interpretation of the statute]; State v. Son, 4332 A.2d 947 (N.J. 1981) ["The absence of any amendment to a statute following an Attorney General's formal opinion strongly suggests that the views expressed therein were consistent with legislative intent."]. Thus, the 1983 Opinion concluding § 17-5-260 to be applicable only to counties with a Medical Examiner remains in effect.

This Office has addressed on several previous occasions the relationship between the duties of law enforcement officers and coroners at the scene of a death. On October 7, 1976, for example, we considered this question at considerable length, stating as follows:

[t]here is nothing in the law of this State that gives to either coroners or police officers authority to direct or supervise others in such investigation. Coroners are empowered by statute to conduct preliminary investigations into violent or unexplained deaths ... and police officers under the common law are empowered to prosecute those found to be criminally responsible. The situation is akin to that in which SLED officers are conducting an investigation into a crime that is also under investigation by a county sheriff. Both have full authority to investigate, but not to the exclusion of the other. Neither does either have authority to direct the other as to methods of investigation.

Former Attorney General McLeod also addressed the issue of jurisdiction at a crime scene in an opinion, dated October 31, 1973. There, he stated:

[i]t is my opinion that where law enforcement officers are investigating an incident with a view to establishing whether any violation of law has been committed, the coroner in normal circumstances, should, where immediate action by the police officers is indicated, defer to the investigation by

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the police officers, and that where no immediate action by the police officers is required, that the law enforcement officers should defer to the coroner to enable him to carry out his duties. There is no precise answer as to which officials have primary jurisdiction, but the circumstances of each case must determine the priority of investigation. The basic answer to the question can only be that the law enforcement officers and the coroner must work together in cooperation. The findings and determinations of each branch can often materially assist the other in the performance of their respective duties, and therefore the priority of jurisdiction should not arise. If it does arise, the only answer that I can give is that the immediate [investigative] ... needs of each must be weighed in the light of the circumstances existing, and one should defer to the other as those circumstances dictate.

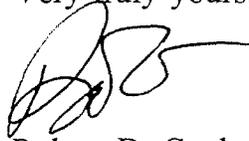
See also Op. Atty. Gen., January 5, 1994 ["ideally there should be cooperation between law enforcement and coroners in investigating a death."]; Op. Atty. Gen., April 26, 1984.

Accordingly, it is the consistent opinion of this Office that no state statute defines or delineates whether a county coroner or law enforcement officers or agencies possess primary jurisdiction in the investigation of a death. Thus, "the circumstances of each case must determine the priority of investigation" and "law enforcement officers and the coroner must work together and in cooperation."

This letter is an informal opinion only. It has been written by a designated Assistant Deputy 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.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an