

4837 Liberty

The State of South Carolina



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July 20, 1992

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

Dear Coroner Townsend:

In a letter to this Office you referenced a situation involving an Indian burial. You asked the following questions:

1. Can a family have a private funeral without a funeral director?
2. Do the State statutes providing for a medical examiner, Sections 17-5-210 et seq. of the Code, refer only to those counties with a medical examiner?
3. Can a family place a corpse on a platform to burn or just decompose?

As to your first question, I am unaware of any statute that comments directly on private funerals. A prior opinion of this Office dated March 2, 1973 commented as to burials on private property "... as long as a proper permit for burial is obtained, there is no law covering private property burial" In examining your question, several statutes dealing with funeral directors must be considered. Section 40-19-10(2) of the Code includes in the definition of "the practice of funeral service":

- (a) engaging in providing shelter, care, and custody of the human dead;

(b) the practice of preparing the human dead by embalming or other methods for burial or other disposition;

(c) arranging for the transportation of the human dead; ...

(d) engaging in the practice or performing any functions of funeral directing or embalming as presently recognized by persons engaged in these functions.

Pursuant to Section 40-19-190 (E) of the Code, "(i)t is unlawful for any person ... who has not been licensed or registered ... (as a funeral director or embalmer) ... to transact, practice or hold himself ... out as transacting or practicing funeral service" A violation of such provision is a criminal misdemeanor subject to a fine of not less than five hundred dollars nor more than twenty-five hundred dollars or a term of imprisonment of six months, or both. See: Section 40-19-220 of the Code.

As referenced, included in "the practice of funeral service" are the acts of "providing shelter, care and custody of the human dead", "preparing the human dead ... for burial or disposition", "arranging for the transportation of the human dead" and "performing any functions of funeral directing." If any of the activities associated with a private funeral would include the above-referenced activities or any other within the definition of "the practice of funeral service", such must be performed by a licensed funeral director or embalmer, depending on the circumstances. Also to be considered is Section 40-19-110 of the Code which states

The practice of funeral service may be engaged in only at the licensed establishment which is listed as the licensee's primary place of business except with written permission by the Board. A licensed funeral director shall make arrangements with clients and must be at the place of the funeral and committal services.

Pursuant to such provision, the location for the "practice of funeral service" is restricted to a licensed establishment and a funeral director must be in attendance at the funeral service and commitment.

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An ambiguity in examining the role of a funeral director in a death is a regulation of the Department of Health and Environmental Control, R.61-19 (18) which provides in part

(b) The funeral director or person acting as such who first assumes custody of a dead body shall file the death certificate. (emphasis added)

See also: R.61-19 (19) dealing with delayed registration of death, R.61-19 (23) dealing with permits for transportation of a dead human body and R.61-19 (25) dealing with removal of a dead body which also refer to "person acting as such." The term "person acting as such" is not further defined.

Therefore, as to your question as to whether a family can have a private funeral without a funeral director, the referenced statutory provisions seem to indicate that if any activities involved come within the definition of "the practice of funeral service" as set forth by Section 40-19-10 (2) a licensed funeral director or embalmer, depending on the circumstances, would have to be involved. If this type situation is a recurring problem, consideration could be given to seeking legislation directly on the matter.

You next asked whether the provisions of Sections 17-5-210 et seq. of the Code are applicable only to counties with a medical examiner. You particularly referenced Section 17-5-310 which requires that a permit for cremation be obtained from the county medical examiner or his deputy prior to cremation. Several of the provisions of Sections 17-5-210 et seq. are specific in making reference only to a "county medical examiner" or a "deputy medical examiner." Section 17-5-310 states

When the body of any dead person who died in the county is to be cremated, whoever required the cremation shall secure a permit for such cremation from the county medical examiner or his deputy

No reference is made to actions by a coroner in such regard.

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Generally, in interpreting a statute the primary purpose is to ascertain the intent of the Legislature. Multi-Cinema Ltd. v. S.C. Tax Commission, 292 S.C. 411, 357 S.E.2d 6 (1987). In construing a statute, words must be given their plain and ordinary meaning without resorting to subtle or forced construction for the purpose of limiting or expanding the statute's operation. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). A prior opinion of this Office dated June 8, 1983 stated that Section 17-5-260 did not apply to counties without a medical examiner. Similarly, an opinion of this Office dated January 14, 1988 determined that Section 17-5-310 is applicable only in situations where the office of county medical examiner has been established. The opinion commented further that this Office was unaware of any statute which requires that a cremation permit be obtained from a coroner.

You also asked whether a family can place a corpse on a platform to burn or just decompose. Included in your letter was a letter from Jacquelyn Dickman, Assistant General Counsel of the Department of Health and Environment Control, who had also been questioned by you as to whether there were prohibitions to burning a deceased human as part of an Indian funeral rite. Ms. Dickman stated:

Although ... (DHEC) ... has prohibitions on open burning, ceremonial burnings are exempt. There is no other applicable prohibition, but parties responsible for the burning ritual would have to ensure that any remains were handled so as not to cause a public health nuisance.

I assume that Ms. Dickman was citing DHEC Regulation 61-62.2 which states

Open burning is prohibited except ...
(C) Campfires and fires used solely for recreational purposes, ceremonial occasions, or human warmth. (emphasis added)

Again, State law does not appear to comment directly on your question. However, even though the General Assembly has not specifically contemplated the type disposition referenced in your letter, we cannot imagine that the General Assembly would expressly permit such a practice by statute. I would note that the General Assembly and DHEC has been

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sensitive to health and safety concerns regarding the handling of dead human bodies. For instance, DHEC Regulation 61-19(28) states that as to transportation of dead bodies,

A dead human body transported by common carrier must be placed in a carrying container adequate to prevent the seepage of fluids and escape of offensive odors ... If embalming is not possible, or if the body is in a state of decomposition, it shall be shipped only after enclosure in a strong tightly sealed shipping case.

See also: Section 44-29-20 of the Code dealing with the transportation of human remains infected with dangerous, contagious or infectious diseases; Sections 44-43-510 et seq. of the Code dealing with the disposition of bodies required to be buried at public expense. Therefore, a strong case could be made that public health and safety would be a major factor in any considerations regarding the disposition of a dead human body. As a result, clarification from the General Assembly would be in order. Pending any such clarification it appears that public health considerations would have to be closely monitored. As a result, you may wish to consult DHEC again as to their review of your question.

With kind regards, I am

Very truly yours,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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