

The State of South Carolina



Office of the Attorney General

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*Harman No 88-27*  
*P77*

March 10, 1988

The Honorable Harry O. Harman  
Coroner, Lexington County  
P. O. Box 527  
Lexington, South Carolina 29072

Dear Coroner Harman:

In a letter to this Office you questioned whether an individual subpoenaed to a coroner's inquest as a witness is bound by law to testify pursuant to Sections 17-7-170 and 17-7-180. Such provisions state:

(t)he coroner may issue warrants, summon witnesses and examine before the jury any person present, whether summoned or not, concerning the death. He shall serve a notice of hearing on any person who has been served with an arrest warrant charging him with causing death of the subject of the inquest. The notice of hearing shall be served at least four days prior to the inquest.

(e)very person summoned or required to give evidence and disregarding such summons or refusing to testify, without such excuse as shall be lawful and sufficient, shall forfeit and pay the sum of twenty dollars and shall be committed to jail by the coroner until the next court of general sessions or until he testifies and is discharged by the coroner such forfeiture to be recovered by indictment, and in addition shall be liable to be indicted at the next court of general sessions for the county and upon conviction

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shall be fined and imprisoned, at the discretion of the court. And the coroner shall bind such witness so appearing, by recognizance, with good and sufficient surety, to appear at the next court of general sessions to stand his trial and a witness refusing to enter into such recognizance shall be forthwith committed to the jail of the county by commitment, under the hand and seal of the coroner, there to be kept until he enters into such recognizance as before required.

You specifically questioned whether a coroner could summon a witness and require him to testify in circumstances where the witness was directly connected to the manner of death whether natural, accidental, homicidal or suicidal.

In State v. Salafia, 284 A.2d 576 (Conn. 1971) it was stated that at common law coroners were authorized to require the attendance of witnesses at inquests, to put them under oath and to examine them. Section 17-1-170 and 17-7-180 appear, therefore, to be codifications of such common law powers of the office of coroner.

According to my research, the referenced provisions have not been construed by courts in this State as to the questions raised by you. Generally, it is held that

(t)he coroner may be authorized by statute to issue subpoenas and to punish for contempt witnesses who refuse to attend or testify. A witness may, however, refuse to answer any question tending to incriminate him.

18 Am.Jur.2d § 13 p. 705. See also: State v. Burnett, 206 S.W.2d 345 (Mo. 1947) (the immunity afforded a witness by the constitutional provision protecting him from self-incrimination is broad enough to protect him against incrimination before any tribunal in any proceeding, including a coroner's inquest); Stone v. State, 534 P.2d 1022 (Wash. 1975); State v. Hutsel, 208 S.W.2d 227 (Mo. 1948).

As to your specific question, a witness directly connected to the manner of death who is subpoenaed to a coroner's inquest may be required to testify pursuant to the referenced provisions. However, of course, as with any other proceeding, the

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witness would have the right to assert any privilege, immunity, exception or defense. The witness' obligation to testify would therefore be dependent on the validity of such privilege, immunity, exception or defense.

If there is anything further, please advise.

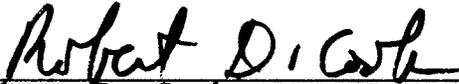
Sincerely,



Charles H. Richardson  
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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