

1982 WL 189363 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 12, 1982

***1 Re: Ronald Eugene Ray**

Mrs. Lyn Howell Hensel
Associate Legal Counsel
University of South Carolina
104 Osborne Building
Columbia, South Carolina 29208

Dear Mrs. Hensel:

You have recently asked the opinion of this Office as to whether or not the University of South Carolina School of Medicine may legally retain the body of Ronald Eugene Ray for medical research purposes, under the Uniform Anatomical Gift Act, [§ 44-43-310 et seq., of the Code of Laws of South Carolina \(1976\)](#). You have additionally, asked for an opinion as to the proper disposition of Mr. Jay's remains once such research has been completed.

A. BACKGROUND

Ronald E. Ray, a resident of Santee, died on April 8, 1981, in Providence Hospital. That day a woman claiming to be his wife, Jackie Ray, released his body to the USC School of Medicine. She later signed a donation form and then requested by telephone that the cremated remains be delivered to her for burial, once the University had completed its research.

In October 1981 the decedent's sister began a series of contacts with the School of Medicine, alleging that Ronald and Jackie were never actually married. If this were true, Jackie would not have had the authority to donate the body under [Code § 44-43-330\(b\) \(1\)](#). In addition, the sister requested that Ronald's uncremated remains be returned to Ronald's next of kin (i.e., blood relatives).

Personnel at the School of Medicine contacted Jackie Ray to settle the disputed issues and thought the matter was closed. However, Ronald's sister persisted to request possession of the body and no one could find Jackie to get further information. It was at that time that our two Offices became involved.

B. INVESTIGATION

An interview with Mrs. Frances Craddock, Jackie Ray's former employer in Santee, enabled us to locate a marriage license for Ronald Eugene Ray and Jackie Kay Tolbert Overnig in the State of Illinois. Mrs. Craddock stated that Ronald had at least twice expressed to her a desire that his body be donated to a medical school for research purposes, in hopes that such research would help others with heart problems similar to his. Also, she said that Ronald and Jackie Ray had lived together and held themselves out to be man and wife. At the same time, investigation indicated that Jackie Ray had left the Santee area without leaving any forwarding address.

C. THE UNIFORM ANATOMICAL GIFT ACT

[Code § 44-43-330](#) ranks a deceased's relatives to establish who has authority to donate a body. Under that section a surviving spouse has sole discretion concerning donation of a decedent's body, though a donee cannot accept such a gift if it has actual notice of contrary indications by the decedent. The statute also establishes that the rights of the donee created by the gift are

paramount to the rights of others except when the body is needed for an autopsy. The Act does not specify the manner of disposition of remains, nor does it specify whether a person who donates an entire body may retain an interest in the remains, for burial purposes.

D. VALIDITY OF THE GIFT

*2 It is the opinion of this Office that the University has accepted a valid donation of Ronald Ray's body. First, there is no 'actual notice' that Ronald would have objected to the gift; in fact, there is testimony that he specifically desired that the gift be made. Second, there is strong evidence that Jackie was married to and living with Ronald at the time of his death. A marriage certificate is admissible as evidence to prove marriage (see 52 Am. Jur.2d, Marriage §§ 154 and 155), as is testimony of cohabitation and social reputation. [Jeanes v. Jeanes](#), 255 S.C. 161, 177 S.E.2d 537 (1970).

The Illinois marriage license indicates that this was the groom's second marriage and the bride's third. This could raise the hypothetical question of whether there were valid divorces in the three preceding marriages. However, there is a strong presumption that, in a series of marriages, the latest marriage is valid. 52 Am. Jur.2d, Marriage §§ 140-143. Given such prima facie evidence of a valid marriage, a party challenging the validity of the marriage bears the burden of proof.

The evidence and presumptions outlined above allow the University and individuals involved in this matter to retain Ronald Ray's body in good faith. [Code § 44-43-380\(c\)](#) states that a person who acts in good faith under the Act is not liable for civil damages or criminal prosecution for such actions.

E. DISPOSITION OF THE REMAINS

There appear to be two questions raised as to what the University can do with this body after it is through with its research. First, the decedent's sister raises an objection to cremation as a method of disposition. Second, both the spouse (whose present whereabouts are unknown) and the next of kin have requested ultimate possession of the remains.

Cremation has become an acceptable method of disposition of a human body and any decent method of disposal is acceptable under the common law. Therefore, the University's standard disposal by cremation is acceptable unless contrary to statute. 52 Am. Jur.2d, Dead Bodies § 49. The Uniform Anatomical Gift Act does not specify a particular method of disposal of bodies. [Code §§ 44-43-510](#) through [44-43-590](#), governing the distribution of unclaimed dead bodies for scientific purposes does require in [Code § 44-43-560](#) that bodies be interred. However, it is the opinion of this Office that the two Acts are separate and distinct and the requirements of [Code § 44-43-560](#) therefore do not carry over into the Uniform Anatomical Gift Act.

There is an old New York state case that is worthy of the University's attention, even though it is not precedent in South Carolina. In that case, the Court held that the cremation of a body was wrongful after it was dissected by a university to which it had been delivered for such purpose, in view of a statutory provision that after dissection of a body it should be buried. [Burke v. New York University](#), 196 App. Div. 491, 188 NYS 123 (1921). On the other hand, cremation and interment are not mutually exclusive: a body can be cremated and then buried. [In re Dixon](#), (1892) Prob. (Eng.) 386, as cited in [113 ALR 1128](#). It is the opinion of this Office that the [Burke](#) case above was too narrow a holding and would not be followed today.

*3 It is the opinion of this Office that the present practice of cremating bodies after research and prior to burial may continue. However, in light of this New York case and the fact that the Uniform Anatomical Gift Act does not specify any method of disposition, it is suggested, to avoid any future questions such as this one, that the donation form be amended to include an understanding between the donor and the School of Medicine that the remains will ultimately be cremated. (As a side note, the University should be sure that it always acquires cremation permits, as required by [Code § 17-5-310](#).)

The question of ultimate possession of the remains must be resolved in favor of the wife, whether or not she ever returns to claim the remains. South Carolina law is clear that a corpse is not 'property' and so is not subject to the sort of ownership associated

with personal property. Rather, a corpse is 'quasiproperty' that is subject to some degree of control by the decedent's relatives. [Simkins v. Lumberman's Mutual Casualty Co.](#), 200 S.C. 228, 20 S.E.2d 733 (1942). The [Simkins](#) case cited with approval the case of [Larson v. Chase](#), 50 N.W. 237 (Minn), quoting as follows:

(T)he right of the surviving wife (if living with her husband at the time of his death) is paramount to that of the next of kin But this right is in the nature of a sacred trust, in the performance of which all are interested who were allied to the deceased by the ties of family or friendship, and, if she should neglect or misuse it, of course the courts would have the power to regulate and control its exercise.

Code § 44-43-380(a) states that, when only part of a body is donated, the remainder of the body is returned to relatives for disposition. That Code Section is not as clear concerning disposition when the gift is of the entire body, but it does use the phrase 'subject to terms of the gift'. This wording implies that conditions may be attached to such a gift, such as the donor retaining rights to the remains after dissection. Since Jackie Ray's request for the ashes was accepted by the University the matter can be viewed as a condition of the gift.

A problem arises when such a conditional gift is made but the donor-spouse does not return in a reasonable time to claim the remains. The [Larson](#) case; adopted by the [Simpkins](#) court, [supra](#), gives sole discretion to a surviving spouse, subject only to judicial regulation. Therefore, now that the University has accepted the donation of Ronald Ray's body on the condition that the ashes be returned to his spouse, the University must retain the ashes for a reasonable time, after which it should bury them. South Carolina law is not clear on whether, once the urn has been buried, the wife could have it dug up and transferred to another cemetery. However, it is very clear that no other relatives or next of kin could claim the ashes and make such a transfer until a court declared that the wife had waived or abandoned her rights to the remains and that such a transfer was proper.

F. SUMMARY

*4 It is therefore the opinion of this Office that the Medical School of the University of South Carolina has accepted a valid donation of Ronald Ray's body, conditioned on his ashes ultimately being returned to his spouse, Jackie Ray. If Mrs. Ray has not claimed those ashes within a reasonable time, the urn should be interred in a suitable manner by the University, but the University cannot release those ashes to any other person, unless ordered to do so by a court of proper jurisdiction.

Sincerely,

Frank L. Valenta, Jr.
State Attorney

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