



ALAN WILSON  
ATTORNEY GENERAL

October 2, 2018

The Honorable Richard M. Harvey  
Colleton County Coroner  
PO Box 2264  
Walterboro, SC 29488

Dear Coroner Harvey:

You have requested an opinion from this Office regarding whether a South Carolina coroner or a deputy coroner meets the definition of a public safety officer for purposes of federal law. In your letter, you state:

The purpose of this correspondence is to humbly request your opinion regarding the role and definition of the coroner's office as it relates to public safety. My office has submitted a benefit request to the Department of Justice on behalf of the family of Deputy Coroner Isaac Levine who was tragically killed while performing his duty as a volunteer deputy coroner, Section 17-5-70 [of the South Carolina Code]. On the morning of December 5, 2014 Isaac was on his way back from MUSC after delivering a body from a possible homicide in Colleton County. He was driving the coroner's office van when he wrecked and was killed. This benefit covers public safety officials.

My office has submitted a request to the Department of Justice for death benefits for Deputy Coroner Levine's family. They are questioning whether a coroner or deputy coroner falls under the definition of public safety officer. I have sent them statutes that say a deputy coroner may also be a class 3 police if they so desire, **SECTION 17-5-115, Deputy coroners; training and law enforcement status.**<sup>1</sup>

I also showed them a statute that allows us to carry firearms in performing our duties and to utilize a blue light while performing our duties, Section 56-5-170. I also stated that in the event that the sheriff is indicted, the coroner makes the arrest and serves as sheriff until the governor appoints their replacement, Section 23-11-50. In case of vacancy, the coroner is required to assume the office of sheriff until the office is filled. Thus, I told them we do have arrest powers too.

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<sup>1</sup> The title of section 17-5-115 is "Deputy coroners; training and law enforcement status."

**LAW/ANALYSIS:**

You are referring in your letter to the Public Safety Officers' Benefits Act ("PSOBA"), provided for in 34 U.S.C.A § 10281 et seq. The program includes federal, state, and local public safety officers and is administered by the Department of Justice, Bureau of Justice Assistance's PSOB Office. It "provides a one-time lump sum death benefit to eligible survivors of public safety officers whose deaths are the direct and proximate result of a traumatic injury sustained in the line of duty or from certain line-of-duty heart attacks, strokes, and vascular ruptures."<sup>2</sup> "Public Safety Officers' Benefits (PSOB) Program: In Brief," EveryCRSReport.com, *available at* [www.everycrsreport.com/reports/RL34413.html](http://www.everycrsreport.com/reports/RL34413.html)

After examining the legislative history, the Federal Claims Court explained the rationale for the program as follows:

the overall purpose of the PSOBA is not only to compensate the survivors of officers killed while on duty, but also to recognize the extraordinary risks those officers face and provide an incentive to become and remain a public safety officer. . . .

Davis v. United States, 50 Fed. Cl. 192, 207 (2001); see also Hawkins v. U.S., 469 F.3d 993 (Fed. Cir.) (2006).

You are asking this Office for our interpretation of federal law. Unfortunately, your question is beyond the scope of our opinions. We have a policy of not interpreting federal statutes and regulations because we defer to the federal agency that has the authority to interpret the federal law. See Op. S.C. Atty. Gen., 2008 WL 903964 (March 6, 2008) ("consistent with the policy of this Office, we do not interpret federal statutory law or regulations."); Op. S.C. Atty. Gen., 2017 WL 1368245 (April 3, 2017) ([t]his Office defers to the federal agency charged with the interpretation of the federal statute or regulation in question.")

Our understanding from our telephone conversation with your office is that the Bureau of Justice Assistance, as permitted by PSOBA,<sup>3</sup> has requested assistance from the State of South Carolina in this matter. While we cannot interpret federal law, we can review South Carolina law to determine whether the powers and duties of a South Carolina coroner and deputy coroner are consistent with those of a public safety officer as defined by PSOBA.

Pursuant to PSOBA, a "public safety officer" means:

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<sup>2</sup> PSOBA also provides for disability benefits to incapacitated public safety officers and for education benefits to the families of deceased or disabled public safety officers.

<sup>3</sup> See 34 U.S.C.A. § 10285(b)(1), which states:

(1) In making determinations. . . , the Bureau may utilize such administrative and investigative assistance as may be available from State and local agencies. Responsibility for making final determinations shall rest with the Bureau.

(A) an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, as a firefighter, or as a chaplain. . . .

34 U.S.C.A. § 10284(9).

Since we believe that a South Carolina coroner or deputy coroner would probably not have the duties and responsibilities of a firefighter or a chaplain, we will consider whether they resemble a “law enforcement officer.” A “law enforcement officer” is defined as:

an individual involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws (including juvenile delinquency).<sup>4</sup>, including, but not limited to, police, corrections, probation, parole, and judicial officers; . . . .

34 U.S.C.A. § 10284(6) (emphasis added).

Furthermore, the regulations regarding PSOBA provide that:

[I]aw enforcement means enforcement of the criminal laws, including –

- (1) Control or reduction of crime or of juvenile delinquency;
- (2) Prosecution or adjudication of individuals who are alleged or found to have violated such laws. . . .

28 C.F.R. § 32.3.

The regulations also describe “[i]nvolvement” as meaning:

[a]n individual is involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws (including juvenile delinquency), only if he is an officer of a public agency and, in that capacity, has legal authority and responsibility to arrest, apprehend, prosecute, adjudicate, correct or detain (in a prison or other detention or confinement facility), or supervise (as a parole or probation officer), persons who are alleged or found to have violated the criminal laws, and is recognized by such agency, or the relevant government (or, at a minimum, not denied by such agency, or the relevant government), to have such authority and responsibility.

28 C.F.R. § 32.3 (emphasis added).

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<sup>4</sup> A footnote to the statute declares “[s]o in original. The period probably should not appear.” See footnote 1, 34 U.S.C.A. § 10284(6).

A criteria for being a public safety officer or a law enforcement officer under PSOBA is serving a public agency as an officer or in an official capacity. 34 U.S.C.A. § 10284(9); 28 C.F.R. § 32.3; supra. In a February 16, 1983 opinion, this Office determined that both a coroner and a deputy coroner held a public office:

The position of county coroner is provided for in §§ 17-5-10 through 17-5-110 and 17-7-10 through 17-7-670, Code of Laws of South Carolina, 1976. This Office has issued numerous opinions concluding that coroners and deputy coroners hold offices within the meaning of the South Carolina Constitution.<sup>5</sup> See, e.g., 1968 Op. Att'y. Gen. No. 2555; and Op. Att'y. Gen. dated January 2, 1980. . . This conclusion is based upon the fact that coroners are elected public officials, who perform a public function involving an exercise of the sovereign power of the State on a continuing basis.

Op. S.C. Atty. Gen., 1983 WL 181752 (Feb. 16, 1983).

We have also opined that a coroner “is a public officer of the particular county he serves.” Op. S.C. Atty. Gen., 1983 WL 142752 (Nov. 2, 1983). Since a “public agency” as defined by PSOBA includes “any unit of local government, department, agency, or instrumentality. . . .,”<sup>6</sup> a county coroner’s office would most likely be a public agency.

In respect to a deputy coroner being a public officer, our Office has “noted that the position is established by statute, requires an oath, and is authorized by statute to perform any of the duties of the office of coroner.”<sup>7</sup> Op. S.C. Atty. Gen., 2012 WL 4836949 (Oct. 2, 2012). We have concluded that since deputy coroners can statutorily perform all of the duties of the coroner, “there appears to be no justification for differentiating between the two positions. . . .” Op. S.C. Atty. Gen., 1980 WL 121037 (Jan. 2, 1980).

As a result of a coroner and a deputy coroner being public officers of a county coroner’s office, they appear to serve in an “official capacity” as required and defined by PSOBA. See 28 C.F.R. § 32.3. They are officially recognized as being part of the coroner’s office and their acts and omissions are legally those of their agency, which includes a county and its departments under PSOBA.

Pursuant to PSOBA, a public safety officer can serve as a law enforcement officer. 34 U.S.C.A. § 10284(9), supra. As you stated in your letter, some of the duties of a coroner and deputy coroner are similar to those of a law enforcement officer, such as the right to carry a handgun and to use a blue light

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<sup>5</sup> The South Carolina Constitution prohibits a person from holding “two offices of honor or profit at the same time,” with certain exceptions. S.C. Const, art. XVII § 1 A.

<sup>6</sup> 34 U.S.C.A. § 10284(8).

<sup>7</sup> See S.C. Code Ann. § 17-5-70 (1976 Code, as amended):

A county coroner shall appoint one or more deputies or investigators to be approved by the judge of the circuit or by any circuit judge presiding therein, who must take and subscribe the oath prescribed by the constitution before entering upon the duties of appointment as a deputy coroner. . . . When duly qualified, as herein required, the deputy coroner may do and perform any or all of the duties appertaining to the office of the coroner.

in their vehicle while performing their duties (S.C. Code Ann. §§ 17- 5-110; 56-5-170); and if the sheriff is indicted, act as sheriff until the office is filled (S.C. Code Ann. § 23-11-50).

A law enforcement officer can also be involved in crime control and reduction as a judicial officer. 34 U.S.C.A. § 10284(6); 28 C.F.R. § 32.3; supra. In a March 27, 2006 opinion, our Office reviewed our prior opinions and concluded that coroners were judicial officials. Op. S.C. Atty. Gen., 2006 WL 981691 (March 27, 2006). We began our analysis with a review of a coroner's duties:

[c]onsideration should be given as to whether a coroner would be considered a "judicial official". In examining this question, reference must be had to the duties and responsibilities of a coroner as outlined by S.C. Code Ann. §§ 17-7-10 et seq. Such include ordering an autopsy (Section 17-7-10); conducting an inquest (Section 17-7-20 and 17-7-70); investigating motor vehicle, swimming or boating accident deaths (Section 17-7-80); swearing in and charging the jurors at an inquest (Section 17-7-140 and 17-7-150); issuing warrants, summoning witnesses and examining those witnesses before a jury at an inquest (Section 17-7-170); issuing a subpoena duces tecum (Section 17-7-175); fining and committing to jail those persons who when summoned disregard the summons and refuse to testify (Section 17-7-180); punishing for contempt at an inquest (Section 17-7-190); taking testimony at an inquest (Section 17-7-230); issuing warrants depending on the finding of an inquest (Sections 17-7-610 and 17-7-620); committing individuals to jail (Section 17-7-630); binding over individuals on bond (Section 17-7-650).

Id. at \*2.

We discussed how the duties of a coroner are quasi-judicial:

An opinion of this office dated August 18, 1971<sup>8</sup> stated that:

[t]he constitutional office of coroner is quasi-judicial in nature and, although some investigative duties are attached, the duties are closer to the judicial branch than that of the executive.

The . . .February 12, 1996 opinion also stated that "[t]he view that a coroner's office is principally judicial in nature is in accord with the ancient common law and the provisions of an ancient English statute said to be declaratory of the common law." The opinion further stated that

Our own Supreme Court has tended to view the duties of a coroner as primarily quasi-judicial as well...(I)n State v. Griffin, 98 S.C. 105, 82 S.E. 254 (1914), the Court stated that, for purposes of the Constitutional

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<sup>8</sup> Citations for prior opinions of this Office were not provided in the March 27, 2006 opinion.

requirement that 'all courts shall be public', a coroner's inquest 'comes within the spirit of that provision.'

Reference was made in the April 20, 1960 opinion to the decision the South Carolina case of Giles v. Brown, 1 Mills Constitution 230 (1817) stating:

... at common law the powers and duties of a coroner are both judicial and ministerial. His judicial authority relates to inquiries into cases of certain deaths.

Id. at \*2, 3.

We explained in the opinion how a coroner acts as a judicial officer:

The . . . January 10, 1991 opinion also noted that "(t)he constitutional office of coroner is quasi-judicial in nature and, although some investigative duties are attached, the duties are closer to the judicial branch than that of the executive (law enforcement)." An opinion of this office dated July 11, 1984 stated

A coroner, in investigating cause of death and conducting an inquest, is acting as a judicial officer...A coroner's powers may be judicial or ministerial, depending on the particular functions involved...(W)hen a coroner is inquiring into the cause of death or conducting an inquest, he is engaged in a judicial function and must be considered a judicial officer...(T)he coroner is vested with reasonable discretion in choosing between two possible courses of action...A judicial officer has the discretion to decide what is fair and equitable under the circumstances of a particular case...The coroner, as a judicial officer, has the authority to exercise discretion in deciding whether it is appropriate in any given case for an individual to be bound over to General Sessions court after a verdict....

Id. at \* 3.

Finally, we stated that a coroner's inquest and investigation of cause of death are similar to a court:

An opinion dated November 2, 1983 also noted that "...a coroner's inquest, although primarily investigative in its purpose...nevertheless possesses many of the attributes of a judicial proceeding." An opinion of this office dated March 25, 1997 stated that "...we have concluded elsewhere that in the investigation of a death, a coroner is akin to that of a court in conducting a judicial investigation."

Id. at \* 3.

Based on our prior opinions, we determined in the March 27, 2006 opinion that a coroner was a judicial official. Since a deputy coroner can statutorily perform the same duties as a coroner, we believe that a deputy coroner also qualifies as a judicial official.

**CONCLUSION:**

We hope that this discussion of South Carolina law is helpful to you in shedding light on the role and duties of a deputy coroner in our State as you pursue this application. We must reiterate that this Office cannot opine on questions of federal law, and that this opinion should not be read as offering any conclusion or opinion on the merits of this or any other application for PSOBA benefits. In this opinion, we merely have discussed ways in which the powers and duties of a South Carolina coroner and deputy coroner appear to be consistent with those of a public safety officer as defined by PSOBA while leaving the final determination for the US Department of Justice. Our discussion has revolved around the PSOBA definition of a “public safety officer” as an “individual serving a public agency in an official capacity . . . as a law enforcement officer. . . .” 34 U.S.C.A. § 10284(9), supra.

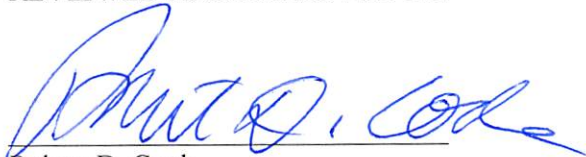
We also must note that our Office has concluded repeatedly that a coroner is not a law enforcement officer for purposes of South Carolina law, and nothing contained in this opinion should be construed to contradict that prior conclusion. See Op. S.C. Atty. Gen., 2006 WL 981691 (March 27, 2006); Op. S.C. Atty. Gen., 1996 WL 94018 (Feb. 12, 1996); Op. S.C. Atty. Gen., 2016 WL 2607247 (April 25, 2016).

Sincerely,



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REVIEWED AND APPROVED BY:



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