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OPINION 13-0002

8-A-3 CEMETERIES
13 CORONERS

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La. C.C. Art. 11; 880, *et seq.*
La. R.S. 8:1; 8:655; 9:1551; 13:5715; 37:831; 37:848; 37:876
La. Atty. Gen. Op. Nos. 80-1536; 09-0144; 10-0240

The coroner with custody over abandoned human remains of someone who died insolvent has the authority, in the absence of a declaration by the deceased or the express wishes of the family, under La. R.S. 9:1551 to dispose of such an individual's remains pursuant to La. R.S. 13:5715 when those with the right to control the remains refuse to assume such control. Cremation is a permissible mode of disposition for such human remains. The reimbursement for costs for coroners is set forth in La. R.S. 9:1551. The reimbursement for costs for funeral homes is not covered by the law and is dependent on general tort and contract theories.

Dear Dr. Coe:

You have requested an opinion from this office related to what obligations coroners and funeral homes have in situations in which they are left with "abandoned" human remains. Such a scenario, as you relate it in your opinion request, unfolds when a funeral home is requested to collect someone's remains or a coroner collects someone's remains and the requesting family later refuses to pay or cannot afford the costs of disposition of the remains. Under this unfortunate scenario, the funeral home or the coroner is left with human remains, but with no direction regarding the disposition of and no authority to dispose of those remains. Within this framework, you ask the following specific questions:

1. Whose responsibility is it for [the] burial or cremation of an "abandoned" body in this scenario?
2. If [the] family refuses to make arrangement[s] for a funeral and refuses to sign (agree on) consent for cremation, how should [the] body be disposed of and who bears the cost?
3. If [the] body [is] not "abandoned," but all children of [the] decedent [will] not give consent for cremation, can a cremation still be performed with only the consent of some of the children?

Questions substantially similar to those that you ask were presented to this office recently.¹ In that opinion, we opined that La. R.S. 9:1551 – which explicitly provides for the disposition of unclaimed human remains by coroners – was inapplicable to scenarios such as those raised in your current request. That statute provides (in pertinent part) that:

¹ La. Atty. Gen. Op. No. 10-0240.

A. (1) Upon oral or written refusal by next of kin, as provided in R.S. 8:655, to bury a decedent, the coroner is authorized to immediately release the remains of the decedent to any interested party who will claim the remains and provide interment for the remains.

(2) The coroner shall have custody of the bodies of all persons who die within the parish and whose bodies are not claimed by friends or relatives....

That opinion relied on the assumption that, once descendants or friends had positively identified a deceased individual, those remains were no longer "unclaimed" within the meaning of the statute. However, upon careful review of the applicable law and the circumstances surrounding these scenarios, it is our opinion that the conclusion in La. Atty. Gen. Op. No. 10-0240 regarding the applicability of La. R.S. 9:1551 is incorrect. In this regard, we note that the term "claimed," when examined in its common meaning,² is not synonymous with the term "identified."³ Rather, the term "claimed" implies that someone (in this case, a family member or friend) has asserted a right to control something (in this case, human remains). Simply identifying the remains is not an assertion of a right to control the remains. Thus, La. R.S. 9:1551 would apply to situations such as those noted in your request wherein a coroner has custody of remains and the family or friends refuse to take control of those remains pursuant to La. R.S. 8:655.⁴

We do not here rescind La. Atty. Gen. Op. No. 10-0240, as the observations contained therein are appropriate and correct with regard to the law related to how remains are to be kept under La. R.S. 37:848. However, the conclusion that La. R.S. 9:1551 does not apply to this situation is incorrect and is hereby repudiated. It is with the foregoing in mind that we address your specific questions.

1. Whose responsibility is it for [the] burial or cremation of an "abandoned" body in this scenario?

The term "abandoned" is not found in Title 8 or Title 37 of the Revised Statutes with regard to human remains. To abandon means to "desert or leave permanently."⁵ The scenario that you present fits precisely within the meaning of this term: family or friends are made aware of the presence of their loved one's remains, but refuse to deal with

² La. C.C. Art. 11 mandates that "[t]he words of a law must be given their generally prevailing meaning."

³ See Catherine Soanes and Angus Stevenson, CONCISE OXFORD ENGLISH DICTIONARY, 11th ed., 262, 707 (Oxford 2006).

⁴ Indeed, this reading and interpretation (i.e., that La. R.S. 9:1551 does, in fact, apply to these situations) is supported by a contextual reading of that law. An identified, but unclaimed, individual is precisely what was envisioned with regard to the portions of this law that deal with who is responsible for the costs of burial. Thus, clearly, the term "identified," in this context, is inapposite when considering whether human remains are "claimed" within the meaning of La. R.S. 9:1551 and, thus, the reasoning in La. Atty. Gen. Op. No. 10-0240 is erroneous in its interpretation of La. R.S. 9:1551.

⁵ Soanes and Stevenson, *supra*, at 2.

final disposition of those remains (i.e., they leave permanently to others the obligation to arrange and pay for the final disposition of those remains). It is our opinion that, with regard to abandoned human remains in the custody of a coroner, La. R.S. 9:1551 provides the proper course of action for the disposal of those remains. For such scenarios, La. R.S. 9:1551 provides (in pertinent part) that:

A. (2) ...If the decedent had no known property or assets of a sufficient value to defray the expenses of burial, the coroner shall make such disposition of the body of the decedent as is otherwise provided by law for indigents.

B. If a decedent's body is unclaimed by friends or relatives and the decedent had known assets or property of a sufficient value to defray the expenses of burial, the coroner shall cause the body to be interred within thirty days, preferably by a recognized funeral home. The invoices for the expenses of the burial shall be forwarded to the public administrator if there is one in the parish or to the clerk of the district court if there is no public administrator, and the person or official authorized by law to be appointed administrator of the succession of the decedent shall provide for the payment of the burial expenses out of the assets of the decedent in accordance with the existing provisions of law for the administration of successions and in accordance with the provisions of this Part.

Thus, the coroner with custody over abandoned human remains of someone who essentially died insolvent has the authority, under La. R.S. 9:1551(A)(2), to dispose of such an individual's remains under the law that sets forth the disposition of paupers remains – La. R.S. 13:5715. That latter law provides, in pertinent part, that:

The coroner shall arrange for the burial of paupers, preferably by a Louisiana licensed funeral home. The burial expenses shall not exceed the actual cost of the service, and shall be paid by the parish or municipality in which the death occurred. However, such expenses for patients or residents of any state-operated health care or treatment facility shall not be paid by the parish or municipality in which the death occurred, but shall be paid by the state. The state or any municipality or parish may establish a maximum amount which it shall pay for individual burial expenses.⁶

Clearly, in indigent or pauper situations, Louisiana law charges the coroner with the duty to bury such individuals. In this regard, our office has opined that the costs of such burials are to be minimal and do not include the costs of a funeral service.⁷ Further, although the coroner is charged with making arrangements for the burial, the costs of

⁶ La. R.S. 13:5715(A)(2).

⁷ La. Atty. Gen. Op. No. 09-0144.

the burial, itself, are to be borne by the parish or municipality in which the death occurred.

Under La. R.S. 9:1551(B), the interment of someone who dies solvent (i.e., not an indigent or a pauper) is handled differently than that of an indigent. This provision charges the coroner with an unclaimed body in his care to make burial arrangements similar to the coroner's obligations under La. R.S. 13:5715. However, rather than the local government covering the costs of the burial, the costs, when dealing with someone who is not an indigent, are to be, through the process outlined in La. R.S. 9:1551, taxed against the decedent's estate.

2. If [the] family refuses to make arrangement[s] for a funeral and refuses to sign (agree on) consent for cremation, how should [the] body be disposed of and who bears the cost?

The answer to this question is largely considered in the previous portion of this opinion. As to coroners, La. R.S. 9:1551 and La. R.S. 13:5715 set forth the law for how the costs of interment are to be borne. As noted above, La. R.S. 9:1551(B) provides for the burial of nonindigents who are unclaimed. The burial of indigents is provided for under a combined reading of La. R.S. 9:1551(A) and La. R.S. 13:5715. Although the logistics of the burial in both scenarios (i.e., indigent and nonindigent) must be handled by the coroner, the costs for nonindigents are taxed against the estate and the costs for indigents must be borne by the local government.

In order to determine whether the parish or the municipality shall bear these costs, our office has opined that:

As to the question of which entity, the parish or the municipality of death, is responsible for the costs of the burial of paupers, it is the opinion of this Office that it is reasonable to interpret La. R.S. 33:1565 [(now La. R.S. 13:5715)] thus: for those who have died within the legal geographic limits of an incorporated municipality, it is the municipality's responsibility to bear the costs of the burial of the remains. For those who have died outside of the legal geographic limits of any incorporated municipality, it is the parish's responsibility to bear the costs of the burial of the remains.⁸

Thus, for indigents, the costs of the burial of unclaimed human remains are to be borne by the local government and not by a coroner or by a funeral home.

In this question, you also ask in what manner the unclaimed human remains may be disposed: by burial or by cremation. Both La. R.S. 9:1551 and La. R.S. 13:5715 provide only for burial and not for cremation. This is important, as these terms carry different legal and common-sense definitions. A burial is defined, in La. R.S. 8:1(2), as "the placement of human remains in a grave." Cremation is defined in La. R.S. 8:1(16) as,

⁸ *Id.* See also La. Atty. Gen. Op. No. 80-1536.

“the reduction of the body of a deceased person to cremated remains in a crematory.” However, the inquiry does not stop there. Subsequent to the enactment of both La. R.S. 9:1551 and La. R.S. 13:5715,⁹ the Louisiana Legislature enacted La. R.S. 37:876.¹⁰ This provision provides that:

A. The following persons, in the priority listed, shall have the right to serve as an authorizing agent for cremation unless other specific directions have been given by the decedent in the form of a written and notarized declaration:

(1) The surviving spouse, if no petition for divorce has been filed by either spouse prior to the death of the decedent spouse.

(2) All of the surviving adult children of the decedent, not including grandchildren or other more remote descendants.

(3) The surviving parents of the decedent.

(4) All of the surviving adult siblings of the decedent.

(5) All of the surviving adult persons respectively in the next degree of kindred as provided in Civil Code Articles 880 *et seq.*

B. If the required authorization cannot be obtained, a final judgment of a district court shall be required.

C. In the case of those individuals whose disposition is the responsibility of the state or any of its instrumentalities, a public administrator, medical examiner, coroner, state-appointed guardian, or any other public official charged with arranging the disposition of the decedent may serve as the authorizing agent.

D. No person shall be allowed to serve as an authorizing agent when a decedent has left written instructions in a notarized declaration that he does not wish to be cremated.

E. In the event that the decedent has made multiple notarized declarations of disposition, the last notarized declaration shall control.

As with La. R.S. 8:655(A), La. R.S. 37:876(A) provides a list of individuals who may authorize the cremation of a deceased individual. What is present in La. R.S. 37:876

⁹ La. R.S. 9:1551 was, for the purposes of this opinion, enacted in its present form by Acts 2001, No. 326 and La. R.S. 13:5715(A)(2) was enacted by Acts 1987, No. 55.

¹⁰ Acts 2003, No. 1243.

that is not present in La. R.S. 8:655 are two procedures for the disposition of human remains by way of cremation that are particularly applicable to this opinion request.

Under La. R.S. 37:876(C), for human remains that are unclaimed but for which the "disposition is the responsibility of the state or any of its instrumentalities," a coroner (among listed others) may authorize the cremation of such remains. Because La. R.S. 13:5715 charges coroners with the disposition of the remains of paupers and because La. R.S. 9:1551 charges State officials with the disposition of the remains of those who die while in certain State institutions, it is our opinion that the disposition of the remains of such individuals "is the responsibility of the state or any of its instrumentalities" such that a coroner (or other individual authorized by La. R.S. 37:876(C)) may authorize cremation without the consent of the family members listed in La. R.S. 37:876(A) when no declaration exists or when the family refuses to provide otherwise.

In any event, any party (including a funeral home) may, under La. R.S. 37:876(B), apply to a court of competent jurisdiction for the authorization to cremate human remains. Thus, cremation is also an available option, subject to a court order, when the deceased does not meet the classification of being someone the disposition of whose remains "is the responsibility of the state or any of its instrumentalities."¹¹ Therefore, although La. R.S. 9:1551 and La. R.S. 13:5715 appear only to authorize burial, the later-enacted La. R.S. 37:876 clearly supplements the authority in those former laws with cremation authority.

It is essential to note that although La. R.S. 37:876 does provide for certain cremation authority that may be exercised by both coroners and funeral homes, it does not provide for a mechanism for the reimbursement of the costs associated with such cremations. La. R.S. 9:1551 explicitly provides for the funding of burials. However, as noted above, "burials" do not necessarily include "cremations" under Louisiana law.¹² Nonetheless, we here opine that, as to reimbursements for both burials and cremations under La. R.S. 9:1551, "burials" are to be defined according to La. R.S. 37:831(6),¹³ which includes cremation, thus meaning that reimbursement for cremations accomplished by coroners pursuant to La. R.S. 9:1551 and La. R.S. 13:5715 is to be borne by the appropriate parish or municipal governing authority.¹⁴ Funeral homes are not included under either La. R.S. 9:1551 or La. R.S. 13:5715 and thus cannot seek reimbursement in the same manner as coroners.

¹¹ La. R.S. 37:876(B).

¹² See La. R.S. 8:1(2) and La. R.S. 8:1(16). Cf. La. R.S. 37:831(6) and La. R.S. 37:831(16).

¹³ Importantly, regarding which definition of "burial" applies to this situation, we also note that La. R.S. 37:831(6) was specifically reenacted in 1983. Acts 1983, No. 454. La. R.S. 8:1(2) was enacted and has not been amended or reenacted since 1974. Acts 1974, No. 417. Although we here opine that, as to the specific law impacted by Titles 8 and 37, the respective definitions of "burial" would apply, when dealing with matters outside of those titles (as here), the later-enacted law must prevail.

¹⁴ La. Atty. Gen. Op. No. 09-0144.

3. If [the] body [is] not “abandoned,” but all children of [the] decedent [will] not giv[e] consent for cremation, can a cremation still be performed with only the consent of some of the children?

The answer to this question lies within La. R.S. 37:876, *supra*. That law mandates that, “[a]ll of the surviving adult children of the decedent, not including grandchildren or other more remote descendants” must consent to a cremation.¹⁵ Based upon the scheme set forth by La. R.S. 37:876, *supra*, it is our opinion that, if there is no declaration and no surviving spouse, agreement among all of the surviving adult children of the deceased is necessary to make decisions regarding cremation (subject to the exceptions set forth in La. R.S. 37:876(B) and La. R.S. 37:876(C)).

One matter that we have not yet addressed in this opinion, but one that is part of your request, is whether the conclusions above apply equally to coroners and to funeral homes. The law analyzed above, specifically La. R.S. 9:1551 and La. R.S. 13:5715, only mentions coroners with regard to who has the authority to dispose of unclaimed human remains.¹⁶ It is our opinion that these explicit laws cannot be extended by inference to apply to funeral homes that may be in possession of unclaimed human remains. However, it is further our opinion that La. R.S. 37:876(B) provides a mechanism that funeral homes may employ to obtain the authorization, by way of a court order, to cremate unclaimed human remains.

With regard to the rights and duties of funeral homes for reimbursement purposes, there is no positive law that provides for the reimbursement of the costs of burial or cremation accomplished by funeral homes. Although, as noted above, we repudiated a portion of La. Atty. Gen. Op. No. 10-0240, we also remain convinced that that opinion does set forth some valid and practical guidance with regard to this situation and, in the absence of specific legislation on this topic, we here provide that guidance for your consideration. In La. Atty. Gen. Op. No. 10-0240 (internal citations omitted), we observed that,

when a funeral director is authorized by a family member or friend to retrieve the decedent’s body, our Office would suggest that, at a minimum, an implied contract exists between the family or friend of the decedent and the funeral director. “In addition, when dealing with implied contracts, there is a general presumption in American jurisprudence that when a person renders services to another under circumstances which suggest an expectation of payment, a contract will be implied and the person rendering the services is entitled to recover the value of those services.” Therefore, it is our opinion that the funeral home may seek payment from the relative or friend that authorized the retrieval of the remains. As an

¹⁵ La. R.S. 37:876(A)(2). *Cf.*, La. R.S. 8:655, which provides for the right of disposing of remains in general. This law, which is superceded by La. R.S. 37:876 as to cremation scenarios, allows for the will of a majority of the surviving adult children to control disposition rather than requiring agreement among all of the children.

¹⁶ Further, La. R.S. 37:876(C) only authorizes certain enumerated government officials to authorize cremations.

alternative, the funeral director may attempt to recover costs from such relative or friend for services rendered under the theory of unjust enrichment.

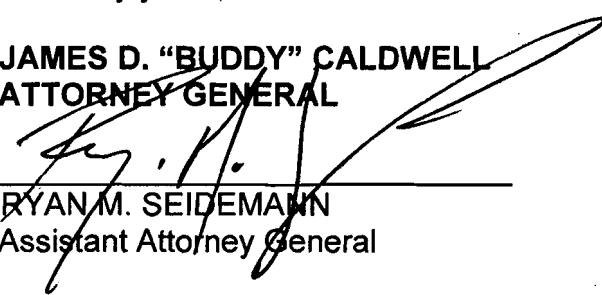
In other words, although no specific law exists to direct the funeral industry as to how to handle such situations, general tort and obligations theories may be applicable in this scenario, and we encourage the funeral industry to consider these options.

By way of summary, we offer the following recapitulation of this opinion. If a coroner holds the unclaimed human remains of a pauper, the coroner may make arrangements for the burial of those remains and have the remains so buried. The coroner may also authorize the cremation of human remains of those "individuals whose disposition is the responsibility of the state or any of its instrumentalities"¹⁷ or he may seek permission to cremate from a court of competent jurisdiction. The costs of so disposing of human remains of a pauper are to be borne by the appropriate local government. In the case of individuals that do not qualify as paupers, the costs of burial or cremation are to be taxed against the decedent's estate. Funeral homes that hold unclaimed human remains do not have the same authority as do coroners. Funeral homes must follow the provisions of La. R.S. 8:655 for the burial of human remains or La. R.S. 37:876 for the cremation of human remains. The law does not explicitly provide reimbursement provisions for funeral homes that dispose of human remains. In such cases, the funeral homes must resort to general tort and obligations theories.

We hope this sufficiently answers your inquiry; however, if we may be of further assistance please do not hesitate to contact our office.

Sincerely yours,

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¹⁷ La. R.S. 37:876(C).