



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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Attorney General

May 3, 2013

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The Honorable C.T. Woody, Jr.
Sheriff of the City of Richmond
Richmond City Jail
1701 Fairfield Way
Richmond, Virginia 23223

Dear Sheriff Woody:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether § 32.1-288 of the *Code of Virginia* mandates Virginia's sheriffs to dispose of all unclaimed human remains in their jurisdictions or only those remains that have been the subject of a death investigation conducted by Virginia's Office of the Chief Medical Examiner (OCME) pursuant to Article 1 of Chapter 8 of Title 32.1 of the *Code of Virginia*.

Response

It is my opinion that, because the requirements set forth in § 32.1-288 apply only to human remains that have been the subject of a death investigation conducted by the OCME pursuant to Article 1 of Chapter 8 of Title 32.1 of the *Code of Virginia*, such requirements do not oblige the sheriff to dispose of other unclaimed remains.

Applicable Law and Discussion

Upon the death of any person as specified in § 32.1-283(A),¹ the medical examiner shall take charge of the dead body and conduct an investigation into the cause and manner of death.² Section 32.1-288 directs how the dead body is to be disposed of after the medical examiner completes the death investigation and specifically provides:

¹ VA. CODE ANN. § 32.1-283(A) (Supp. 2012) provides: "Upon the death of any person from trauma, injury, violence, poisoning, accident, suicide or homicide, or suddenly when in apparent good health, or when unattended by a physician, or in jail, prison, other correctional institution or in police custody, or who is an individual receiving services in a state hospital or training center operated by the Department of Behavioral Health and Developmental Services, or suddenly as an apparent result of fire, or in any suspicious, unusual or unnatural manner, or the sudden death of any infant less than 18 months of age whose death is suspected to be attributable to Sudden Infant Death Syndrome (SIDS), the medical examiner of the county or city in which death occurs shall be notified...."

² Section 32.1-283(B).

A. After any investigation authorized or required pursuant to this article has been completed, including an autopsy if one is performed, the sheriff or other person or institution having initial custody of the dead body shall make good faith efforts, pursuant to § 32.1-283, to identify the next of kin of the decedent, and the dead body may be claimed by the relatives or friends of the deceased person for disposition. The claimant shall bear the expenses of such disposition. However, if the claimant is financially unable to pay the reasonable costs of disposition of the body, the costs shall be borne (i) by the county or city in which the deceased person resided at the time of death if the deceased person was a resident of Virginia or (ii) by the county or city in which the death occurred if the deceased person was not a resident of Virginia or the location of the deceased person's residence cannot reasonably be determined.

B. If no person claims the body of a deceased person, the Commissioner may accept the body for scientific study as provided in Article 3 (§ 32.1-298 et seq.). If the Commissioner refuses to accept the body for scientific study, the dead body shall be accepted by the sheriff of the county or city where death occurred for proper disposition....^[3]

“An important principle of statutory construction is that ‘words in a statute are to be construed according to their ordinary meaning, given the context in which they are used.’”⁴ The statute indicates that after the medical examiner completes the death investigation, the sheriff or other person or institution having initial custody of the dead body shall attempt to identify the decedent's next of kin.⁵ If no person claims the body of the deceased person, the Commissioner of the Department of Health may accept the body for scientific study.⁶ If the Commissioner does not accept the body for study, the sheriff of the city or county where the death occurred is required to accept the body for proper disposition.⁷

By its plain language, § 32.1-288 addresses only the disposition of a body that has been the subject of a death investigation by the medical examiner.⁸ Section 32.1-288 does not concern the disposal of unclaimed remains generally. Moreover, I find no other provision in the *Code of Virginia* that otherwise requires the sheriff to dispose of unclaimed human remains. Therefore, I conclude that the duty of the sheriff to dispose of unclaimed human remains is triggered only when such remains are unclaimed after an examination as provided for pursuant to Article 1 of Chapter 8 of Title 32.1 of the *Code of Virginia*.

³ Section 32.1-288 (A) and (B) (2011). I note that, although 2013 Va. Acts ch. 373, effective July 1, 2013, amends § 32.1-288(B) to give the next of kin thirty days from the date of notice to claim the dead body prior to disposition of the body in accordance with § 32.1-288(B), such amendment does not affect the analysis of your question.

⁴ *City of Va. Beach v. Bd. of Supvrs.*, 246 Va. 233, 236, 435 S.E.2d 382, 384 (1993) (quoting *Grant v. Commonwealth*, 223 Va. 680, 684, 292 S.E.2d 348, 350 (1982)).

⁵ Section 32.1-288(A).

⁶ Section 32.1-288(B).

⁷ *Id.*

⁸ Section 32.1-288.

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Conclusion

Accordingly, it is my opinion that, because the requirements set forth in § 32.1-288 apply only to human remains that have been the subject of a death investigation conducted by the OCME pursuant to Article 1 of Chapter 8 of Title 32.1 of the *Code of Virginia*, such requirements do not oblige the sheriff to dispose of other unclaimed remains.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink that reads "Ken C II". The signature is stylized, with the first name "Ken" written in a cursive script and the last name "C" followed by a Roman numeral "II".

Kenneth T. Cuccinelli, II
Attorney General