

073-274—August 14, 1974

STATE

LICENSING REQUIRED FOR STATE HOSPITALS

To: *Richard S. Hodes, Chairman, House Committee on Health and Rehabilitative Services, Tampa*

Prepared by: *Jan Dunn, Assistant Attorney General*

QUESTIONS:

1. Are hospitals owned and operated by the State of Florida subject to the same laws and regulations relative to licensure as other hospitals?
2. If so, is the inspection and enforcement of these laws and regulations required of the Division of Health?

SUMMARY:

Hospitals owned and operated by the State of Florida are subject to the laws and regulations relative to licensure provided by Ch. 395, F. S. The duty of inspection and enforcement of these laws and regulations is vested in the Division of Health of the Department of Health and Rehabilitative Services.

The licensing statute in question is §395.03, F. S., which provides that:

After December 31, 1947, no person or governmental unit acting severally or jointly with any other person or governmental unit shall establish, conduct or maintain a hospital in this state without a license under this law.

A governmental unit is defined as "the state, or any county, municipality, or other political subdivision or any department, division, board or other agency of any of the foregoing." Section 395.01(3), *id.* "Severally" means "distinctly, separately, apart from others." Black's Law Dictionary, 4th ed. "Jointly" is defined as "not separately; in conjunction," *id.* Therefore, under §395.03, *supra*, the state, including the Department of Health and Rehabilitative Services, the Department of Education, or any other governmental unit establishing or operating a hospital by itself or in conjunction with any other governmental unit or private person must have a license to operate. Since there are no distinctions in any of the hospital licensing statutes (Ch. 395, F. S.) between public and private hospitals, it follows that all hospitals are subject to the same laws and regulations relative to licensure. Your first question is thus answered in the affirmative.

Under Ch. 395, F. S., the duties of inspection and enforcement of licensing laws and regulations are given to the "licensing agency." Sections 395.07-395.09. "Licensing Agency" is defined in §395.01(4) as the Division of Health of the Department of Health and Rehabilitative Services.

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DECEDENTS

DISPOSITION OF REMAINS

To: *Jon C. Thomas, Representative, 86th District, Fort Lauderdale*

Prepared by: *Jan Dunn, Assistant Attorney General*

## QUESTIONS:

1. Who has the legal right over the remains of a decedent?
2. Does the person who finances the funeral arrangements have the right to decide the disposition of the deceased?
3. If there is no next of kin, who decides the disposition of the remains (burial or cremation)?

## SUMMARY:

The surviving spouse followed by the decedent's next of kin in order of their relationship to the decedent have the legal right over the remains. Generally, the person who has the right of burial decides the disposition of the deceased although this right can be waived. If there is no next of kin, the body is generally sent to the Division of Universities of the Department of Education. If there are relatives who claim the body but who cannot pay for the funeral expenses, such expenses should probably be borne by the state which would then decide the disposition of the remains. Friends, fraternal organization members, or representatives of a charitable or religious organization may, or the executor of the decedent's estate must, claim the body for burial in which case such person would decide on the disposition of the remains.

It seems to be well settled in Florida that the legal right over the remains rests in surviving relatives. According to Florida Jurisprudence,

. . . [I]n the absence of testamentary disposition to the contrary, and subject to the provisions of the Uniform Anatomical Gift Act, a surviving spouse or next of kin has the right to the possession of the body of a deceased person for the purpose of burial . . . . The personal right to bury a body falls on the person or persons who are in closest relationship to the deceased. [9A Fla. Jur. *Dead Bodies* §12.]

*See also*, Jackson v. Rupp, 228 So.2d 916 (1 D.C.A. Fla., 1969); Kirksey v. Jernigan, 45 So.2d 188 (Fla. 1950); Dunahoo v. Bess, 200 So. 541 (Fla. 1941). In the case of *Dunahoo v. Bess, supra*, at 542, the court said that "[t]he right of the surviving spouse to have, protect and dispose of the remains of the other is a right recognized by law." Therefore, in light of these authorities, it must be held that the surviving spouse, followed by the next of kin in order of their relation to the deceased, has the legal rights over the remains.

Generally, the person who has the right of burial is entitled to select the burial site or otherwise to decide on the disposition of the deceased. However, the right to control the burial "is dependent on the peculiar circumstances of each case, and may be waived by consent or otherwise." [See] 22 Am. Jur. *Dead Bodies* §§9 and 10. *See also*, Teasley v. Thompson, 165 S.W.2d 940 (Ark. 1942). The payment of funeral expenses may in certain cases be such a circumstance which would shift the burial decision from the spouse or next of kin to another party. The method of disposition of the deceased may also have been requested by the deceased himself either by will or by some other informal arrangement. According to Florida Jurisprudence,

While courts have generally agreed that a person's wish or direction as to the disposal of his body after death, whether orally expressed or in writing, is entitled to respectful consideration and will be accorded substantial weight, how far the desire of the decedent as to the disposition of his remains should prevail against those of a surviving spouse or next of kin would appear to depend upon the particular circumstances of each case . . . . [9A Fla. Jur. *Dead Bodies* §11.]

It is possible, therefore, that the wishes of the deceased on the subject of the

disposal of his body might have an effect on this decision regardless of who finances the funeral arrangements. Note also that Florida has adopted the Uniform Anatomical Gift Act, Ch. 736, F. S., which would take precedence over relatives with regard to the legal right to the remains of the deceased.

If there is no next of kin, or if the body is unclaimed or is required to be buried at public expense, then such body is to be sent to the Division of Universities of the Department of Education, under the authority of §245.06, F. S. This section seems to cover bodies to be buried at public expense even though there are existing relatives who might desire to claim such body. In AGO 056-303, one of my predecessors in office said that:

Although this act does make a reference to bodies to be buried at public expense, it is my opinion that the legislature did not intend this to be the governing factor in determining which bodies are to be turned over to the anatomical board [now the Division of Universities of the Department of Education].

The principal and governing factor in such cases is, in my opinion, that the body be unclaimed and the relatives unknown . . . .

Based on this opinion, it would seem that in a situation where a person claims a body but is unable to pay for funeral expenses, the state, or political subdivision thereof, is responsible for burial and would decide the disposition of the remains. If the deceased was indigent and there are no next of kin, there is a provision in §245.08, F. S., for the body to be claimed by a friend or any representative of a fraternal society of which the deceased was a member, or a representative of any charitable or religious organization, which person would then decide the disposition of the remains. If there are no next of kin but the deceased is not indigent, disposal of the remains may, in appropriate cases, be decided by the executor of the decedent's estate.

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### MUNICIPALITIES

#### REGULATION OF SALARIES OF MAYOR AND COUNCILMEN BY ORDINANCE

*To: R. W. "Smokey" Peaden, Representative, 2nd District, Pensacola*

*Prepared by: Jan Dunn, Assistant Attorney General*

#### QUESTION:

May a city council raise or lower the compensation for the offices of mayor and city councilmen?

#### SUMMARY:

When compensation and expense allowances of the mayor and councilmen of a municipality are set by its charter act, the governing body thereof cannot by ordinance change them. Upon the effective date of the Municipal Home Rule Powers Act (Ch. 73-129, Laws of Florida), October 1, 1973, the governing body may by ordinance establish or alter the compensation and expenses of such officials.

Section 76 of the Charter of the City of Pensacola (Ch. 15425, 1931, Laws of Florida, as amended by Ch. 26135, 1949, Laws of Florida, and Ch. 59-1731, Laws of Florida; §76 of the city code) determines and sets the compensation of the city councilmen and the mayor of Pensacola. Chapter 2, Art. 3, §2-22.1 of the city ordinances contains the same provisions. The compensation and expense