



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Mark R. Herring
Attorney General

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900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

Colonel W.S. Flaherty
Superintendent, Department of State Police
Post Office Box 27472
Richmond, Virginia 23261-7472

Dear Superintendent Flaherty:

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

Issues Presented

You ask whether it is the responsibility of the Office of the Chief Medical Examiner (“OCME”) to take charge of a dead body upon notification of death from trauma or accident. If it is not the responsibility of OCME, you ask what agency bears that responsibility. You further ask which agency should bear the cost of removing a body upon death from trauma or accident in the event that OCME does not assume charge of the body at the scene.

Applicable Law and Discussion

Section 32.1-283 of the *Code of Virginia* provides that:

A. 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 the Office of the Chief Medical Examiner shall be notified by the physician in attendance, hospital, law-enforcement officer, funeral director, or any other person having knowledge of such death. . . .

B. Upon being notified of a death as provided in subsection A, the Office of the Chief Medical Examiner *shall* take charge of the dead body and the Chief Medical Examiner shall cause an investigation into the cause and manner of death to be made and a full report, which shall include written findings, to be prepared.^[1]

“It is elementary that the primary object in the interpretation of a statute is to ascertain and give effect to the intention of the legislature.”² “In interpreting [a] statute, ‘courts apply the plain meaning . . .

¹ VA. CODE ANN. § 32.1- 283 (Supp. 2015) (emphasis added).

² *Andrews v. Shepherd*, 201 Va. 412, 414 (1959); *see also Cuccinelli v. Rector & Visitors of the Univ. of Va.*, 283 Va. 420, 425 (2012).

unless the terms are ambiguous or applying the plain language would lead to an absurd result.”³

“[T]he word ‘shall’ is primarily mandatory in its effect and the word ‘may’ is primarily permissive.”⁴ This is especially true in cases involving the use of “shall” in statutory language.⁵ “When the word ‘shall’ appears in a statute, it is generally used in an imperative or mandatory sense.”⁶

When the death of a person has resulted from any of the circumstances listed in § 32.1-283(A) and OCME is notified, the plain language of § 32.1-283(B) clearly directs OCME to take charge of the dead body.⁷ No other agency bears the responsibility for or costs of doing so,⁸ and there is no statutory framework by which any other agency is required to do so or to bear the cost of doing so.

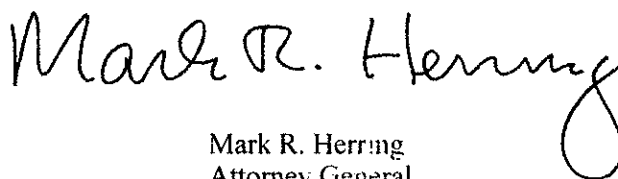
This opinion does not address the responsibility for dead bodies where death results from some cause other than trauma or accident,⁹ or when a state of emergency has been declared by the Governor.¹⁰

Conclusion

Accordingly, it is my opinion that § 32.1-283 places sole responsibility on OCME, once it is notified, to take charge of a dead body upon death from any of the circumstances specified in § 32.1-283(A). No other agency is required to take charge of such a dead body or bear the cost of doing so once OCME has been notified, as that responsibility is placed exclusively on OCME by statute.

With kindest regards, I am

Very truly yours,



Mark R. Herring
Attorney General

³ Baker v. Commonwealth, 284 Va. 572, 576 (2012) (quoting Boynton v. Kilgore, 271 Va. 220, 227 (2006)).

⁴ Ross v. Craw, 231 Va. 206, 212 (1986); see also Pettus v. Hendricks, 113 Va. 326, 330 (1912).

⁵ Ross, 231 Va. at 212; see also, e.g., Price v. Commonwealth, 209 Va. 383, 387 (1968) (discussing the term “may”); Schmidt v. City of Richmond, 206 Va. 211, 218 (1965) (discussing the term “shall”); Creteau v. Phoenix Assurance Co., 202 Va. 641, 643-44 (1961) (“shall”); Spindel v. Jamison, 199 Va. 954, 957 (1958) (“may”); Huffman v. Kite, 198 Va. 196, 202 (1956) (“shall”); Bd. of Supvrs. v. Weems, 194 Va. 10, 15 (1952) (“may”); Masters v. Hart, 189 Va. 969, 979 (1949) (“may”); Bryant v. Tunstall, 177 Va. 1, 6 (1941) (“shall”); Bd. of Supvrs v. Cahoon, 121 Va. 768, 773 (1917) (“may”); Meade v. Meade, 111 Va. 451, 453 (1910) (“shall”).

⁶ Schmidt, 206 Va. at 218; accord City of Waynesboro Sheriff’s Dep’t v. Harter, 222 Va. 564, 566 (1981).

⁷ Section 32.1-283(B).

⁸ Once OCME has completed its investigation, costs for the disposition of a dead body shall be borne in accordance with § 32.1-309.2 of the Code of Virginia. See § 32.1-309.2 (Supp. 2015). There is no comparable statute allocating the costs of taking charge and removal of a dead body.

⁹ See, e.g., §§ 32.1-309.1 (Supp. 2015) (notification of next of kin; disposition of claimed dead body); 32.1-309.2 (dead bodies where death is from some cause other than trauma or accident); 32.1-309.3 (Supp. 2015) (cremations and burials at sea); 32.1-309.4 (Supp. 2015) (special procedure for hazardous human remains).

¹⁰ See, e.g., VA. CODE ANN. § 44-146.17 (2013) (Governor may declare state of emergency, take actions related to the safety of the Commonwealth, and issue certain executive orders relating thereto).