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State of California

EDMUND G. BROWN JR.
Attorney General

OPINION	:	No. 07-201
	:	
of	:	November 7, 2007
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EDMUND G. BROWN JR.	:	
Attorney General	:	
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TAYLOR S. CAREY	:	
Deputy Attorney General	:	
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THE HONORABLE BRUCE S. ALPERT, COUNTY COUNSEL, COUNTY OF BUTTE, has requested an opinion on the following question:

Under what circumstances may a funeral director require the coroner of a county to take possession of the remains of a decedent?

CONCLUSION

A funeral director may require the coroner of a county to take possession of the remains of a decedent after the funeral director has determined that no provision has been made by the decedent, or that the estate is insufficient to provide for interment, and has further determined that either (1) the duty of interment does not devolve upon any other person residing in the state or (2) the person upon whom such duty of interment devolves cannot after reasonable diligence be found within the state.

ANALYSIS

The question presented for resolution concerns the conditions under which a funeral director may require the coroner of a county to take possession of the remains of a decedent. We conclude that a funeral director may require a coroner to take possession after the funeral director has made certain determinations specified by statute.

Health and Safety Code section 7104¹ is the primary statute requiring our interpretation. Subdivision (a) of section 7104 provides:

When no provision is made by the decedent, or where the estate is insufficient to provide for interment and the duty of interment does not devolve upon any other person residing in the state or if such person can not after reasonable diligence be found within the state the person who has custody of the remains may require the coroner of the county where the decedent resides at the time of death to take possession of the remains and the coroner shall inter the remains in the manner provided for the interment of indigent dead.

Before examining the language of section 7104 in detail, we note that a county coroner has numerous statutory duties (§§ 27460-27530), including performing autopsies (§§ 27520-27521.1) and holding inquests (§§ 27490-27512). In particular, a coroner is required to “determine the circumstances, manner, and cause of all violent, sudden, or unusual deaths” (§ 27491.) A funeral director must notify the coroner of any unusual deaths or circumstances requiring investigation by the coroner. (*Ibid.*) We do not have that situation here. Rather, the issue presented concerns the circumstances under which a funeral director may require the coroner to take custody of the remains of the decedent. The answer to that question is found in section 7104.

In examining the language of section 7104, we apply well recognized principles of statutory interpretation. Our “fundamental task in construing a statute is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. [Citation.]” (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.) The analysis starts by examining the actual words of the statute, giving them their usual, ordinary meaning. (*Garcia v. Mc Cutchen* (1997) 16 Cal.4th 469, 476.) “If there is no ambiguity in the language, we presume the Legislature meant what it said, and the plain meaning of the statute governs. [Citations.]” (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 1000.)

¹All further references to the Health and Safety Code are by section number only.

Applying these rules of construction, we find that the phrase “[w]hen no provision is made by the decedent” contained in section 7104 refers to the situation where the decedent does not have a prepaid burial plan or burial insurance or does not leave instructions regarding the disposition of the remains. (See §§ 7100, subd. (a), 7100.1; *Spates v. Dameron Hospital Assn.* (2003) 114 Cal.App.4th 208, 211, 217.)

Whether “the estate is insufficient to provide for interment” as specified in section 7104 presents a question of fact to be determined in light of all the circumstances. If the estate is sufficient, section 7101 provides that interment expenses shall be charged against the estate:

When any decedent leaves an estate in this state, the reasonable cost of interment and an interment plot of sufficient size to constitute a family plot and memorial including reasonable sums for either, or both general and special endowment care of the plot proportionate to the value of the estate and in keeping with the standard of living adopted by the decedent prior to his demise, together with interest thereon from 60 days after the date of death, shall be considered as a part of the funeral expenses of the decedent and shall be paid as a preferred charge against his estate as provided in the Probate Code.

Reasonable costs of funeral services, together with interest thereon from 60 days after the date of death, shall be considered as a part of the funeral expenses of the decedent and shall be paid as a preferred charge against his estate as provided in the Probate Code.

If a claim for mortuary and funeral services, an interment plot or memorial is rejected the burden of proving that the cost of the funeral service, interment plot or memorial is disproportionate to the value of the estate and the standard of living adopted by the decedent while living shall be upon the executor or administrator rejecting the claim. This chapter does not prohibit any relative or friend of a decedent from assuming the duty or paying the expense of interment or the funeral services.

The “duty of interment” specified in section 7104 is determined by applying the terms of section 7100. (See *Spates v. Dameron Hospital Assn.*, *supra*, 114 Cal.App.4th at pp. 216-217.) Subdivision (a) of section 7100 provides:

The right to control the disposition of the remains of a deceased person, the location and conditions of interment, and arrangement for funeral goods and services to be provided, unless other directions have been given by the

decedent pursuant to Section 7100.1, vests in, and the duty of disposition and the liability for the reasonable cost of disposition of the remains devolves upon, the following in the order named:

- (1) An agent under a power of attorney for health care who has the right and duty of disposition
- (2) The competent surviving spouse.
- (3) The sole surviving competent adult child of the decedent
- (4) The surviving competent parent or parents of the decedent. . . .
- (5) The sole surviving competent adult sibling of the decedent
- (6) The surviving competent adult person or persons respectively in the next degrees of kinship
- (7) The public administrator when the deceased has sufficient assets.

Accordingly, under the terms of section 7100, a determination must be made whether a relative of the decedent resides within the state. If so, the funeral director may not require the coroner to take custody of the decedent's remains. If a relative does not reside in the state, or if no such person can, after reasonable diligence, be found, and the other conditions of section 7104, subdivision (a), are met, the funeral director may require the coroner to take possession of the remains.

A funeral director has the authority to investigate the circumstances leading to the decedent's burial and to make the determinations required by section 7104. Subdivision (c) of section 7100 provides:

A funeral director or cemetery authority shall have complete authority to control the disposition of the remains, and to proceed under this chapter to recover usual and customary charges for the disposition, when both of the following apply:

- (1) Either of the following applies:
 - (A) The funeral director or cemetery authority has knowledge that none of the persons described in paragraphs (1) to (6), inclusive, of subdivision (a) exists.

(B) None of the persons described in paragraphs (1) to (6), inclusive, of subdivision (a) can be found after reasonable inquiry, or contacted by reasonable means.

(2) The public administrator fails to assume responsibility for disposition of the remains within seven days after having been given written notice of the facts. Written notice may be delivered by hand, U.S. mail, facsimile transmission, or telegraph.

As the person who has lawful custody of the remains, the funeral director must “have knowledge” or make “reasonable inquiry” regarding the conditions specified in section 7104 before being able to require the coroner to take custody. (See *Spates v. Dameron Hospital Assn.*, *supra*, 114 Cal.App.4th at pp. 217-220; *Aguirre-Alvarez v. Regents of University of California* (1998) 67 Cal.App.4th 1058, 1065-1066; *Davila v. County of Los Angeles* (1996) 50 Cal.App.4th 137, 141-142.)

We conclude that a funeral director may require the coroner of a county to take possession of the remains of a decedent after the funeral director has determined that no provision has been made by the decedent, or that the estate is insufficient to provide for interment, and has further determined that either (1) the duty of interment does not devolve upon any other person residing in the state, or (2) the person upon whom such duty of interment devolves cannot after reasonable diligence be found within the state.
