

## Release when spouse does not claim decedent's body

**Number:** INFORMAL

**Date:** November 19, 1996

The Honorable Debra A. Prewitt  
State Representative, District 46  
5623 U.S. Highway 19, Suite 109A  
New Port Richey, Florida 34652-3700

Dear Representative Prewitt:

Thank you for considering this office as a source for assistance regarding the authority of the county to release a decedent's body to a relative when the spouse has not claimed the body. Attorney General Butterworth has asked me to respond to your letter.

In the absence of testamentary disposition to the contrary, 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 or other lawful disposition which they may see fit.[1] The invasion of such right by unlawfully withholding the body from the relative entitled to the body is an actionable wrong, for which damages may be recovered.[2]

As stated in 25A C.J.S., Dead Bodies, s. 3, however,

"There is no universal rule regarding the right of persons to bury the dead, but each case must be considered in equity on its own merits; and, no matter in whom the right of burial rests, it is in the nature of a sacred trust for the benefit of all who may, from family ties or friendship, have an interest in the remains. The right of sepulture is not absolute, but must yield when in conflict with the public good or when the demands of justice require such subordination.

Except where the deceased has expressed a wish as to the disposition of his remains, the right of burial belongs to the surviving spouse or the nearest relative, the surviving spouse having the paramount right as to the custody of the remains of the deceased and its burial, except in special circumstances, as where the surviving spouse is absent or neglects or refuses to act, or where the spouses had separated and were not living together at the time of death, or where there has been a waiver, express or implied. . . . In some jurisdictions the right to burial or to control the disposition of the remains of a deceased person is regulated by statute."

In Attorney General Opinion 93-70, this office considered whether chapter 245, Florida Statutes, relating to the disposition of unclaimed bodies, set forth a specific length of time in which a body must be claimed before the county may direct that it be buried. The opinion also considered whether the above statutes prohibited the county from releasing the body of a decedent to a relative when closer relatives may exist but have not claimed the body.

This office concluded that chapter 245, Florida Statutes, does not specify a set period of time in which a body must be claimed. In addition, this office stated that the above chapter does not

expressly prohibit a county from releasing a body to a relative when closer relatives have been contacted but have not claimed the body. I am enclosing a copy of Attorney General Opinion 93-70 for your review.

I trust that the above informal advisory comments may be of some assistance to you in resolving this matter.

Sincerely,

Robert A. Butterworth  
Attorney General

RAB/tgk

Enclosure

-----

[1] See *Dunahoo v. Bess*, 200 So. 541, 542 (Fla. 1941) ("The right of the surviving spouse to have, protect and dispose of the remains of the other is a right recognized by law"), and cases cited therein.

[2] *Kirksey v. Jernigan*, 45 So. 2d 188 (Fla. 1950).