

Honorable Thomas J. S. Waxter, Director, Department of Public Welfare (cont'd)

The new Act like the public local law which it supersedes provides that any relative or friend of the deceased may claim the body for interment. This creates a very broad class of persons entitled to inter a dead body, far beyond the "next of kin" provision of any inheritance or escheat statute. In an opinion of the Attorney General (Volume 22, page 345) it is pointed out that health authorities are not legal custodians of a body but their rights are merely regulatory in nature. The Attorney General citing 17 Corpus Juris, page 1137, said,

"Generally speaking, there is no right of property in the dead body of a human being. However, the right to bury a body and the right to preserve the remains is a legal right which the courts will protect".

From 25 Corpus Juris Secundum under title of "Dead Bodies", at page 1027, discussing dissection by medical schools the general rule is stated that -

"It is necessary that an attempt be made to secure the assent of relatives if they can be found and a reasonable inquiry is necessary."

We therefore feel that if any assistance recipient dies, having a relative of any degree or a friend to arrange his burial, that the Department of Welfare should pay the funeral expenses up to \$100.00 as provided by Article 70A, Section 12. If an assistance recipient should die, having no relatives or friends within the knowledge of the Department, then you will probably be required to promptly notify the Anatomy Board and turn the body over to them. In short, we believe that the test is not lack of funds but lack of any relative or friend who could claim the right of interment, even at public expense.

We suggest, however, that since you are dealing with a public general law affecting the entire state, that an opinion of the Attorney General should be sought by your Department or the Anatomy Board.

Yours very truly,

/s/ THOMAS N. BIDDISON  
City Solicitor

/s/ ALEXANDER STARK  
Assistant City Solicitor

B/S/H