

**OPINION
70-74**

July 16, 1970(OPINION)

Mr. Albert J. Hardy
Assistant State's Attorney
Stark County

RE: Coroners - Autopsy - Consent of Relatives

This is in reply to your inquiry with regard to the legality of a County Coroner conducting an autopsy without the permission of the deceased or next of kin pursuant to statute.

Your questions are stated as:

1. May a coroner conduct an autopsy without the consent of the next of kin when the decedent has not been under doctor's care and upon cursory examination of the body the County Coroner is strongly suspicious of the decedent having died of a communicable disease with the attendant strong possibilities of a subsequent county health problem. More specifically, recently a woman died in Dickinson. She had not been under the doctor's care and upon examination by the County Coroner he was suspicious that the decedent had died of spinal meningitis. The decedent had no relatives who were available at the time and accordingly the coroner proceeded to conduct an autopsy. Is such action on his part when done without the consent of the Sheriff and States Attorney and when the coroner is not concerned about the decedent having died of unlawful means, a legal autopsy?
2. We also have a problem of the decedents attending physician refusing to pronounce the decedent dead and to sign the death certificate giving cause of death. It thus becomes incumbent upon the County Coroner to pronounce the individual dead and he must state cause of death. Without an autopsy the coroner is unable to state under oath the cause of death. Under these circumstances is a coroner permitted?"

The questions you present do present some intriguing aspects of North Dakota's relatively new medical coroner statutes. For general background material, we note 18 Am. Jur.2d. 520-522, Coroners or Medical Examiners Section 7, stating as follows:

Section 7. GENERALLY; CIRCUMSTANCES UNDER WHICH INQUEST MAY BE HELD. The circumstances under which coroners' inquests shall be held are specified in general terms in the statutes relating to the office of coroner. These statutes usually provide for inquests in cases in which death is due, or is supposed to be due, to violence or other unlawful means. The object is to obtain information as to whether death was caused by some criminal act and to obtain evidence to prevent the escape of the guilty, as well as to furnish the foundation for a criminal prosecution in case death is shown to be felonious. The object of an inquest is not only to determine the cause of death but also to exclude other supposable or possible causes.

"It is necessary for a coroner to determine whether a statute contemplates the holding of an inquest in a particular case. When the statute speaks in general terms and does not specify the kind of information on which he is justified in acting, the coroner must necessarily be vested with discretion. Generally speaking, the determination of the question whether an inquest shall be held rests, within certain limits, in the sound discretion of the coroner. If there is reasonable ground to suspect that a death was felonious, it is the duty of the coroner to act; the cause of death may be shrouded in such mystery as to warrant the tentative assumption that death was occasioned in a manner which would justify the holding of an inquest to subserve

the public ends. But the coroner's duty and power to hold an inquest rest on sound reason and are not to be exercised capriciously and arbitrarily. The mere fact that a body lies dead does not give the coroner jurisdiction, even though death was sudden. There ought to be a reasonable suspicion that it was caused by violent or unnatural means. Moreover, a coroner's inquest is required to be held only where the circumstances of the death are suspicious in nature and only where the cause of death is problematical or in doubt; if it is clear and manifest that the death was felonious an inquest is unnecessary and would be superfluous. Further, an inquest is for the purpose of protecting public interest and is not for the protection of an offender suspected of the crime, and is definitely not a necessary ingredient of due process; and a defendant in a murder case is not legally prejudiced by, and has no cause to complain of, the failure to hold an inquest.

"In some jurisdictions the statute prohibits the coroner from holding an inquest unless the cause of death is unknown. Under such a statute, if a person is murdered in the presence of witnesses by one known to the witnesses, there is no authority to hold the inquest. A statute directing the coroner to 'hold an inquest upon the dead bodies of such persons only as are supposed to have died by unlawful means' does not authorize an inquest where it appears that death resulted from suicide or from an accidental cause. A statute, however, which requires an inquest in case of death by 'violence, casualty, or any undue means' embraces cases of death resulting from chance or accident.

Whenever an inquest is held, the law raises a rebuttable presumption that the coroner has acted in good faith and on sufficient cause. It cannot be assumed that he was influenced by improper motives or actuated by malice, revenge, or any desire of gain."

Looking to North Dakota's statutes, we feel it proper to consider both chapter 11-19 and 11-19A of the North Dakota Century Code. The older, basic coroner statute gives the basis of the authority of a coroner to hold an inquest clearly. It provides in section 11-19-02 that:

"WHEN CORONER TO HOLD INQUEST. Except as otherwise specifically provided, the coroner shall hold inquests upon the dead bodies of such persons only as he believes to have died within his county by unlawful means."

No such specific provision is made in chapter 11-19A of the North Dakota Century Code dealing with the medical county coroner, though we note with interest the provisions of sections 11-19A-07, 11-19A-10, and 11-19A-11 of the North Dakota Century Code. Thus, the death is to be reported to the coroner where the person shall have died as a result of abortions criminally or self-induced, or other criminal or violent means, or by casualty, suicide, accidental death or suddenly when in apparent good health in a suspicious or unusual manner. Also, the coroner is required to consult with the state's attorney or police department, or state highway patrolmen, or sheriff in arriving at the decision as to the necessity to hold the dead body to enable him to decide on a diagnosis. Also, the opinion as to whether an autopsy is to be deemed necessary appears to be that of the sheriff or state's attorney.

While the state's attorney does happen to be president of the county board of health, (see section 23-03-02 of the North Dakota Century Code) his duties for the county in this field are basically the prosecutor of crimes committed within the county. The other officers mentioned in said sections of the North Dakota Century Code also may have some interest in health problems of the county, but obviously are also primarily law enforcement officers, interested primarily in the detection of crime and apprehension of criminals. Section 11-19A-07 does perhaps expand the concept of coroner, as set forth in the above quoted section 11-19-02, to include such deaths as those by casualty, suicide, accidental deaths or suddenly when in apparent good health in a suspicious or unusual manner, though we think it obvious that they were not intended to expand them to include deaths by disease or natural causes. Also, we think it obvious that it was not the intention of the legislative assembly to either directly or by implication repeal the provisions of chapter 23-03 of the North Dakota Century Code with respect to the county and township boards of health or the county superintendent of health.

While, we have noted, the quoted provision of the Am. Jur.2d. section, with regard to the rebuttable presumption that the coroner has acted in good faith and on sufficient cause, in view of the North Dakota statutes on the subject, we necessarily must conclude that the determination of the coroner, as to the necessity of becoming involved in the situation, should be orientated towards the question of whether the decedent died by unlawful means, not towards the question of whether he died of communicable disease.

There being no basis for inquest in the circumstances you relate, we would necessarily conclude that there is also no basis for autopsy.

In your second question, we are not able to follow your like of reasoning the commences with the statement that: "It thus becomes incumbent upon the County Coroner to pronounce the individual dead and he must state the cause of death. In the first instance we should point out the provision of section 23-02-33 making it a misdemeanor for the physician in medical attendance upon a deceased person at the time of death, to neglect or refuse to make out and deliver the medical certificate of death.

If the death occurs without medical attendance, section 23-02-35 provides:

DEATH WITHOUT MEDICAL ATTENDANCE - DUTY OF UNDERTAKER AND LOCAL REGISTRAR. If any death occurs without medical attendance, the undertaker shall notify the local registrar of such death. When so notified, the registrar, prior to issuing a burial transit permit, shall inform the local health officer and refer the case to him for immediate investigation and certification. When the local health officer is not a qualified physician, or when there is no such official, the registrar may make the certificate and return from the statements of relatives or other persons having adequate knowledge of the facts. If the circumstances of the case render it probable that death was caused by unlawful or suspicious means, the registrar shall refer the case to the coroner for his investigation and certification."

The clerk of the district court of the county is, of course, the local registrar in and for the county. (See section 23-02-07 of the North Dakota Century Code.)

We do note the provision of subsection 2 of section 23-02-32 of the North Dakota Century Code requiring the undertaker or person acting as such to:

* * *

2. Present the certificate to the attending physician, if any, or to the health officer or coroner as directed by the registrar, for the medical certificate of the cause of death and other particulars necessary to complete the record. * * * "

We would assume, however, that in the usual instance where the cause of death was apparently a communicable disease, rather than unlawful or suspicious means, the proper officer to make out the medical certificate of death would be the health officer rather than the coroner.

While we recognize the importance of the death certificate, we do not find provision in the basic statute prescribing its basic form, section 23-02-30 of the North Dakota Century Code requiring that it be under oath; and we note that the aforementioned section 23-02-35 permits it to contain hearsay testimony of nonmedical personnel. On these bases, assuming that there is no probability that the death was caused by unlawful or suspicious means, it seems doubtful to us that the coroner should be asked to certify as to the cause of death or perform an autopsy in order to determine which communicable disease caused the death.

We hope the within and foregoing will be sufficient for your purposes.

HELGI JOHANNESON
Attorney General