

**OPINION
70-84**

April 6, 1970(OPINION)

Mr. Robert Q. Price
State's Attorney
Cavalier County

RE: Counties - County Coroner - Assistants

This is in response to your letter in which you call our attention to Section 11-19A-05. You then ask an opinion on the question, "Does the law of the State require that an assistant coroner be a citizen of the United States?" Section 11-19A-05 provides as follows:

"11-19A-05. APPOINTMENT OF ASSISTANT. The coroner may appoint in writing an assistant coroner or coroners who shall be licensed physicians of good standing in their profession and/or pathologists, who shall assist in doing autopsies and making such pathological and chemical examinations, and performing such other duties required and directed by the county coroner or recommended by the state's attorney."

We note that the assistant coroner is to assist in doing autopsies and making such pathological and chemical examinations, and performing such other duties required and directed by the county coroner or recommended by the state's attorney.

We also notice that Section 11-19A-06, in part, provides that the sheriff shall call upon the nearest physician coroner or deputy coroner from an adjacent county if there is no coroner within the county. In Section 11-19A-11, we find that the Legislature used the term coroner or his medical deputy. These various terms seem to suggest that the assistant coroner mentioned in Section 11-19A-05 is not the equivalent of a deputy coroner but is more in the nature of a medical assistant or a technical assistant.

We note that Chapter 11-19 does not provide for a deputy coroner. Neither is the deputy for a coroner included in Section 11-10-11. Yet the term deputy coroner is used.

A coroner is an officer and as such performs prerogatives of the sovereignty. A deputy, as generally understood, is also an officer who is authorized to perform functions and prerogatives of the sovereignty under certain conditions. We would thus note that there is a distinction between a deputy and an assistant.

We must also take into account the provision of Section 44-03-04 which provides as follows:

"44-03-04. OFFICIALS TO BE RESIDENTS AND CITIZENS. No person shall be appointed as a deputy in any state, county, or municipal office, nor as a member or officer upon any official board, of any kind, of the state, or of any county or municipality of the state, who is not a citizen of the United States and who shall not be a bona fide resident of the state."
(emphasis ours.)

The above provision does not pertain only to deputies but also pertains to any member or officer upon any official board which implies that it applies to any officer.

There are some courts who have held that even in the absence of a constitutional and statutory provision a person must be a citizen in order to hold an office. This proposition is logical when it is remembered that an officer is authorized to perform some prerogatives of the sovereignty.

We do not find any language in Chapter 11-19A which would reject the provisions of Section 44-03-04.

The provisions of Section 11-19A-05 authorizing the appointment of an assistant coroner do not indicate that such assistant coroner would necessarily be an officer who may function independently of his principal.

It is, therefore, our opinion that assistants, or an assistant coroner, may be appointed and that such person receiving the appointment need not be a citizen of the United States provided that such assistant merely assists the coroner in doing autopsies and making such pathological or chemical examinations as are directed by the coroner. It is our further opinion that the assistant coroner may only act in the name of his principal, the coroner, and has no independent standing as an officer.

HELGI JOHANNESON
Attorney General