

FILE

Subject

*County Officers
Coroner*

Copy to



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

July 15, 1974

Opinion No. 74- 231

H. Scott Beims
Rawlins County Attorney
P.O. Box 295
Atwood, Kansas 67730

Glenn D. Schiffner
Thomas County Attorney
P.O. Box 408
Colby, Kansas

Gentlemen:

You inquire whether either Rawlins or Thomas County is liable for the reasonable costs of an autopsy and pathology services which were ordered and performed under the circumstances detailed in your letter.

Specifically, you state that on October 4, 1973, one Mark Berger was injured in a motorcycle accident in Rawlins County, Kansas, and was taken by ambulance to Rawlins County Hospital in Atwood, Kansas, shortly thereafter. After emergency treatment and examination by Philip D. Walton, M.D., of Atwood, arrangements were made to have him transported to Denver, Colorado, by ambulance plane from Colby, Kansas. He was then transported by ambulance to Colby, and upon his arrival at the airport there, it was determined that he was in very critical condition and should be taken immediately to the Thomas County Hospital. Upon arrival there, Berger was examined by one Asher W. Dahl, M.D., of Colby, who pronounced him dead, and instructed the ambulance driver to return the body to Atwood, which was done.

Upon reaching Atwood, the driver notified C. D. Henneberger, M.D., of Atwood, also Deputy District Coroner for Rawlins County, of the death. Doctor Henneberger performed an autopsy in order to determine the cause of death, and sent certain specimens to a pathologist in North Platte, Nebraska, for evaluation. After receiving that evaluation, Doctor Henneberger filed a claim

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with Rawlins County for his services, including an autopsy fee in the amount of \$35.00 for viewing the body, and the sum of \$25.00 for pathology services. Mr. Beims, Rawlins County Attorney, declined to authorize payment of the claim on the basis of K.S.A. 1973 Supp. 19-1033, which states in pertinent part thus:

"A person performing an autopsy, at the request of a coroner shall be paid a usual and reasonable fee to be allowed by the board of county commissioners when approved by the judge or judges of the district court, the same to be paid by the board of county commissioners of the county in the county in which the death occurred."

Relying upon the undisputed fact that death occurred in Thomas County, Mr. Beims concluded that payment of the claim was beyond the authority of Rawlins County.

Doctor Henneberger then submitted his claim to the Thomas County Commissioners, in the amount of \$125.00, including \$35.00 for viewing the body, \$65.00 for the autopsy, and \$25.00 for pathology services. He fared no better there. The claim was declined on the ground that neither the Thomas County Deputy Coroner nor anyone else in Thomas County had ordered the autopsy, Floyd L. Smith, M.D., the Thomas County Deputy Coroner, never having been notified of the death.

K.S.A. 1973 Supp. 19-1031 requires that the coroner or deputy coroner of a county in which a death occurs or in which a dead body is found be notified thereof under specified conditions. Ordinarily, when an autopsy is performed, it will be at the request of that coroner, i.e., of the county where death occurs or the body is found. However, K.S.A. 1973 Supp. 19-1033 directs that the fee for an autopsy performed "at the request of a coroner" be paid by the board of county commissioners of "the county in which the death occurred." Circumstances may readily be conceived, albeit of infrequent occurrence, in which death occurs in one county and the body is found in another. It is nonetheless the county in which death occurs that is liable for the costs of the autopsy, notwithstanding it may have been ordered, and properly so under K.S.A. 19-1031, by the coroner not of that county but of where the body was discovered.

All this is to suggest that it is not always necessary, in order to authorize payment of autopsy costs by the board of county commissioners of the county in which death occurs, that the autopsy have been requested by the coroner of that county. However, the coroner authorizing the autopsy must do so within the scope of his authority. In this instance, the coroner of Thomas County

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should have been notified, for the death both occurred and was discovered in that county. K.S.A. 1973 Supp. 19-1033 commences thus:

"If, in the opinion of the coroner, it is advisable and in the public interest that an autopsy be made, or if an autopsy is requested in writing by the county attorney, such autopsy shall be made"

The coroner referred to in this section is, in our view, necessarily the coroner who is notified pursuant to K.S.A. 19-1031, as one in whose county a death occurs or is discovered. The death of Mark Berger neither occurred nor was it discovered in Rawlins County, and the Deputy District Coroner in Rawlins County had no authority under these provisions to order an autopsy. The Deputy District Coroner of Thomas County should have been notified before the body was removed to Rawlins. Alternatively, he could have requested the Deputy District Coroner of Rawlins County to have performed an autopsy in his behalf, the body having been returned to Atwood. Neither of these having occurred, we cannot but conclude that Doctor Henneberger is left with a bill which it is the obligation of neither Rawlins nor Thomas County to pay.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm