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ATTORNEY GENERAL OPINION NO. 92- 138

The Honorable Norma Daniels
State Senator, 13th District
P.O. Box 128
Valley Center, Kansas 67147

Re: District Officers and Employees -- District
Coroners -- District Coroner; Notification of Death
to Coroner or Deputy, When; Duties of Coroner

Synopsis: Upon receipt of notice of a death from other than
natural causes, a coroner is required to take
charge of a dead body within a period of time which
is reasonable under the circumstances. The type of
notice and the time frame for notifying the coroner
should also be reasonable under the circumstances.
Since a search warrant may be the preferable course
of action in some situations, coroners are
counseled to seek the advice of the district or
county attorney in specific cases. Cited herein:
K.S.A. 22a-231, as amended by L. 1992, ch. 312,
§ 35; K.S.A. 1991 Supp. 22a-232.

* * *

Dear Senator Daniels:

As state senator for the 13th district, you request our
opinion regarding the responsibilities and duties of coroners
pursuant to K.S.A. 22a-231, as amended, and K.S.A. 1991 Supp.
22a-232.

In relation to those statutes you pose the following questions:

"1. Are there any circumstances under which anyone may prohibit the coroner from taking charge of the dead body as provided under K.S.A. 1991 Supp. 22a-232?

"2. As a public officer acting under authority of K.S.A. 1991 Supp. 22a-232, does the coroner have the right of immediate access to the dead body after receiving notice and upon the coroner's arrival at the place where the dead body is located?

"3. If the dead body is located in a house or other residence and has been examined by emergency medical service personnel, is it necessary for the coroner or someone on behalf of the coroner to obtain a search warrant before the coroner may take charge of the dead body under K.S.A. 1991 Supp. 22a-232?

"4. Under what circumstances, if any, would a coroner need to obtain a search warrant to take charge of the dead body under K.S.A. 1991 Supp. 22a-232?

"5. Since the coroner's authority to take charge of the dead body is conditioned upon receipt of notice pursuant to K.S.A. 22a-231, and the coroner may be notified under that statute by the physician in attendance, by any law enforcement officer, by the embalmer, by any person who is or may in the future be required to notify the coroner or by any other person, what type of notice (oral, written, telefacsimile or other) must the coroner receive to have received notice contemplated under 22a-232?

"6. Under K.S.A. 22a-231, the statute requires that when any person dies or human body is found dead where death occurs under suspicious or other circumstances as specified in 22a-231, the coroner shall be notified. Does this statutory mandate to notify the coroner when a person dies under such circumstances allow a person charged with notifying the coroner (i.e., the physician in attendance, . . . any law enforcement officer, . . . the embalmer, . . . any person who is or may in the future be required to notify the coroner or . . . any other person) to delay that notification or is the notification to be given as soon as the person who has a duty to notify under K.S.A. 22a-231 realizes that the circumstances of the death are such that the coroner must be notified?"
(Emphasis original).

The role of the coroner was summarized in State v. Gordon, 219 Kan. 643 (1976):

"A deputy district coroner is a public officer whose primary duty is to determine the cause of death of a person dying from other than natural causes. K.S.A. 19-1031 [now K.S.A. 22a-231]; See 18 C.J.S. Coroners, §§ 1, 12. Whenever a person dies under conditions specified by statute, the coroner is to be notified (K.S.A. 19-1031) [now K.S.A. 22a-231]. Upon such notification, the coroner is to take charge of the dead body, make inquires regarding cause of death and reduce his findings to a written report. (K.S.A. 19-1032) [now K.S.A. 1991 Supp. 22a-232]. It is within his discretion to conduct an autopsy. (K.S.A. 19-1033) [now K.S.A. 1991 Supp. 22a-233]." 219 Kan. at 648-649.

Specifically, K.S.A. 22a-231, as amended by L. 1992, ch. 312, § 35 provides:

"When any person dies, or human body is found dead in any county of the state, and the death is suspected to have been the result of violence, caused by unlawful means or by suicide, or by casualty, or suddenly when the decedent was in apparent health, or when decedent was not regularly attended by a licensed physician, or in any suspicious or unusual manner, or when in police custody, or when in a jail or correctional institution, or in any circumstances specified under section 32 or when the determination of the cause of a death is held to be in the public interest, the coroner or deputy coroner of the county in which such death occurred or dead body was found, shall be notified by the physician in attendance, by any law enforcement officer, by the embalmer, by any person who is or may in the future be required to notify the coroner or by any other person."

K.S.A. 1991 Supp. 22a-232 provides:

"Upon receipt of notice pursuant to K.S.A. 22a-231 and amendments thereto, the coroner shall take charge of the dead body, make inquiries regarding the cause of death and reduce the findings to a report in writing."

In your first question you ask whether there are any circumstances under which anyone may prohibit the coroner from taking charge of the dead body as provided by K.S.A. 1991 Supp. 22a-232. The plain language of the statute clearly requires the coroner to "take charge of the dead body" once the coroner has been notified. There is no statutory authority which would permit anyone to prohibit a coroner from complying with his or her statutory duties. We are, however, mindful of the distinction between prohibiting a coroner from taking charge of a dead body and requiring a coroner to respect any necessary law enforcement crime scene activities. The former would be unlawful; the latter a reasonable exercise of discretion.

In your second question you ask if the coroner has the right to immediate access to the dead body after receiving notice. We note that K.S.A. 1991 Supp. 22a-232 is framed in terms of the responsibilities of the coroner ("take charge of the dead body, make inquiries regarding the cause of death and reduce the findings to a report in writing"), not in terms of any "rights" of the coroner. In our opinion, K.S.A. 1991 Supp. 22a-232 does not confer any enforceable "rights" on a coroner.

K.S.A. 1991 Supp. 22a-232 is silent regarding the exact moment the coroner is to "take charge of the dead body." Instead, the time frame of taking charge of the dead body is phrased in terms of "upon receipt of notice." Since the statute does not specify the exact time at which the coroner is to take charge of the dead body, the standard clearly must be in terms of what is reasonable under the circumstances. Statutes must be construed with reason considering the practicalities of the subject matter addressed. Anderson v. Overland Park Credit Union, 231 Kan. 97 (1982).

In your third and fourth questions you inquire about the necessity of the coroner obtaining a search warrant prior to taking charge of the dead body. The Kansas Supreme Court has addressed this issue in the context of an arson-homicide case in which the defendant contended any evidence obtained as a result of the autopsy on the body of his wife was

inadmissible. He argued that he had a property interest in the corpse of his wife, and, therefore, a search warrant was required before the body could lawfully be removed from the premises. The court reviewed the statutory sections concerning the office of district coroner, and then held:

"Under the foregoing statutes defendant's argument with respect to . . . the necessity of a search warrant for removal of the corpse, must be rejected. By directing his neighbor to call the police and fire departments, defendant consented to their presence in his residence. Even had defendant objected to their entry, authorized firemen have authority to enter a house and investigate if there is any reason to believe that the fire was of an incendiary origin. (K.S.A. 31-127). The officers were lawfully within the premises when they became suspicious about the death and the fire. Therefore, evidence, including the dead body, which was in plain view of the officers, was subject to the seizure without a warrant. (State v. Huff, 220 Kan. 162, 5512 P.2d 880; and State v. Frizzel, supra.)" State v. Miller, 222 Kan. 405, 413 (1977).

Under the circumstances presented in State v. Miller, supra, autopsy evidence obtained without a search warrant was held admissible. However, other circumstances may dictate that the more prudent course of action is to obtain a search warrant in order to secure the admissibility of evidence. Questions relating to the wisdom or necessity of obtaining a search warrant are so fact specific that it is impossible to give one inclusive answer. Accordingly, our response must be that the coroner should seek the advice of the appropriate district or county attorney for a determination based on the circumstances of the particular case.

In your fifth question you ask what type of notice is required or contemplated by K.S.A. 22a-231, as amended. Since the statute is silent regarding any specific type of notice, in our opinion notice which is reasonable under the circumstances would satisfy the statutory requirement.

In your sixth question you ask specifically when the notice requirement of K.S.A. 22a-231 is triggered, i.e. immediately

or after some period of delay. Again, since the statute is silent regarding any exact time of notification, in our opinion notice to the coroner within a reasonable period of time would satisfy the statutory requirement.

In relation to your fifth and sixth questions, we refer to Mahone v. Mahone, 213 Kan. 346, Syl. ¶ 1 (1973):

"A statute is not to be given an arbitrary construction, according to the strict letter, but one that will advance the sense and meaning fairly deductible from the context."

In conclusion, upon receipt of notice of a death from other than natural causes, a coroner is required to take charge of a dead body within a period of time which is reasonable under the circumstances. The type of notice and the time frame for notifying the coroner should also be reasonable under the circumstances. Since a search warrant may be the preferable course of action in some situations, coroners are counseled to seek the advice of the district or county attorney in specific cases.

Very truly yours,



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