

## **Opinion No. 58-133**

June 20, 1958

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,  
Assistant Attorney General

**TO:** Earl M. Coffee, Administrator, Miners' Hospital of New Mexico, Raton, New Mexico

### **QUESTION**

#### QUESTION

May the body of a person who has died in a hospital or institution be released to a member of the family at the family's request rather than to a funeral director?

#### CONCLUSION

Yes.

### **OPINION**

#### ANALYSIS

The factual situation raised in the request is a simple one. If a person dies in a hospital or institution, can the body be delivered to a member of the family rather than a funeral director for care and interment.

Under § 12-1-4, N.M.S.A., 1953 Compilation, the New Mexico State Health Department is vested with the responsibility of administering public health activities in the State. Subsection 12 of the foregoing section states that the Health Department shall:

"Regulate the disposal, transportation, interment and disinterment of the dead, to such extent as may be reasonable and necessary for the protection of the public health and safety."

Pursuant to the said subsection, the Department of Health on March 6, 1948 issued certain regulations governing the preservation, disposition, transportation, interment and disinterment of dead human bodies. Section 3 of the said regulations relates to the hospital responsibility regarding a person dying in a hospital or institution. This section is stated as follows:

"The body of any person dying in a hospital, institution, public place or private premise shall not be released to any funeral director not licensed to practice in the state of New Mexico. It shall be necessary for any such unlicensed funeral director to obtain said

body from a New Mexico licensed funeral director. It then becomes incumbent upon the latter to comply with the regulations as set forth.

Hospital and institutional records shall be made available to provide items of information necessary to complete death certificates."

Regulations promulgated by a state agency must possess some reasonableness and we construe the above section to state this proposition and this proposition only. If a body is released to any funeral director, said funeral director must be licensed to practice in the State of New Mexico. This section however, does not mandatorily require that a body be delivered to funeral directors only. Should the family of a deceased person wish to make the necessary arrangements for the burial of a dead relative, they may do so subject, of course, to other public health regulations relating to time of burial, place of burial etc. In any event, the body may be delivered to relatives for burial.