

## **Opinion No. 62-15**

January 25, 1962

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Marvin Baggett, Jr., Assistant Attorney General

**TO:** Harry E. Stowers, Special Assistant Attorney General, Korber Building, Albuquerque, New Mexico

### **QUESTION**

#### QUESTION

May a Justice of the Peace conduct an inquest at the scene of a mining accident before the State Mine Inspector conducts his on - the - scene investigation?

#### CONCLUSION

No, unless the State Mine Inspector unreasonably delays his own investigation.

### **OPINION**

#### ANALYSIS

The responsibility for inquiring into the causes of deaths has been, until recently, the province of the various Justices of the Peace throughout the state. Their duty, as provided for in Section 36-17-1, N.M.S.A. (1953 Comp.) is to inquire into and

"investigate the cause of the death of any human being that shall be found dead in the precinct of said justice of the peace, when it may appear that said death was caused by violence or any other illegal means, and it is hereby made the duty of every justice of the peace, when required so to do in writing, by any two persons, heads of families and voters in the precinct, to examine and inquire into the cause of the death of any human being, be the cause of death what it may."

This section is almost one hundred years old, having been enacted as part of the Laws of 1866-1867. In 1961, the legislature created, in counties of 100,000 or more population, the office of coroner, to be filled by a licensed physician. The effect, if any, of this legislation upon the statutory duties imposed on the State Mine Inspector we do not consider.

By Chapter 153, Sec. 23, Laws of 1933, the State Mine Inspector is directed to proceed immediately, if possible, to the scene of a fatal mining accident, render whatever assistance necessary, and investigate the causes and responsibilities of the accident. (Sec. 63-4-15 N.M.S.A., 1953 Comp.) That same section provides that his investigation

shall be made "within a reasonable time", and forbids the operator to change the surroundings at the scene until the Inspector has made his investigation.

Even though the cause of death at a mining operation is probably an accident, nevertheless, it is clear that the duty of the justice of the peace, when it exists, is to inquire into the **cause of death** while the duty of the State Mine Inspector is that of inquiring into the **cause of the accident**. The purposes of the two investigations being thus entirely different, the question remains as to whether that procedural steps required by the respective statutes can be reconciled. We conclude that they can and that the State Mine Inspector, if he acts within a reasonable period of time, must be allowed to conduct his investigation first.

The inspector must be, by provisions of Section 63-4-3 an experienced mining man. To the inexperienced, the scene of a fatal mining accident might well appear to show an obvious cause of the accident. The experienced eye, however, may perceive a thousand subtleties, recognize a hundred warnings and save other lives because of the message imparted by the scene as to the cause of the disaster. The legislature deemed the surroundings to be of such vital value to the Mine Inspector's investigation, that it prohibited the operator from changing the surroundings until the Inspector has completed his investigation. (Sec. 63-4-15).

Thus, the details of the surroundings may be of little or no value or concern to a justice of the peace conducting an inquest. An inquest might show that the victim died because of a blow or conclusion caused by a falling slab or a premature blast, whereas the Inspector, if the scene is left undisturbed, might discover the reason for the falling rock or the unplanned detonation.

We have serious doubts that a fatal mining accident is the type of death contemplated by our statutes calling for the justice of the peace to inquire into deaths "appearing" to be caused by "violence or any other illegal means", but, assuming that he may conduct such an inquest on his own initiative, we are compelled to conclude that he may not do so in any manner which would interfere with the duties and responsibilities imposed upon the State Mining Inspector.

In **State v. Herring**, 57 N.M. 600, 261 P. 2d 442, our Court said:

"It is a generally accepted rule, amply sustained by our own authorities, that repeals by implication are not favored, it being the duty of the court, if possible, to so construe different acts that all shall be operative."

And, in **Cox v. City of Albuquerque**, 53 N.M. 334, 207 P. 2d 1017:

"Statutes should be construed in the most beneficial way of which their language is susceptible to prevent absurdity, hardships, or injustice, to favor public convenience, and to oppose all prejudice to public interest."

Believing that any actions which interfere with the State Mine Inspector's duties to investigate fatal mining accidents are prejudicial to the public interests, and believing that both the Inspector and the justice of the peace can properly conduct their respective investigations only so long as the Inspector is allowed first to complete his on-the-scene investigation, subject only to his doing so in a reasonable time, we conclude that the inquest must bow to the priority of the Mine Inspector's Investigation.

As to what constitutes a reasonable length of time, it must be kept in mind that ours is a large state, with mining activities scattered throughout. The Inspector must headquarter somewhere; he cannot be expected to know when and where the next fatal accident will occur, and the distance and travel conditions should be considered in arriving at what constitutes a "reasonable" period of time.

What we have stated concerning the Inspector is, of course, applicable to any Deputy State Mine Inspector appointed by the Inspector.