

## Opinion No. 69-145

December 16, 1969

**BY:** OPINION OF JAMES A. MALONEY, Attorney General James C. Compton, Jr.,  
Assistant Attorney General

**TO:** Honorable E. H. Williams, Jr., District Attorney, Third Judicial District County  
Courthouse, Room 207, Las Cruces, New Mexico 88001

### QUESTIONS

1. Under what circumstances is an autopsy mandatory?
2. Who may request that an autopsy be performed?
3. Who must pay for an autopsy when it is performed?
4. What is the procedure for paying for an autopsy if its costs exceed available monies?

### CONCLUSIONS

1. See Analysis.
2. See Analysis.
3. See Analysis.
4. See Analysis.

### OPINION

#### {\*231} ANALYSIS

1. Section 15-43-46, N.M.S.A., 1953 Compilation, provides in part:

"When the coroner **suspects** a death was caused by a criminal act or omission of if the cause of death is obscure, he **shall** order an autopsy . . ." (Emphasis added)

Use of the word "shall" indicates a legislative intention that to the extent that the coroner may suspect that a death was caused by a criminal act or omission or the cause of death is obscure, the coroner is under a mandatory duty to order an autopsy. Where the district attorney has directed that an autopsy be performed in a criminal investigation, Section 12-7-9(C), N.M.S.A., 1953 Compilation, the coroner should suspect that the death may have been caused by a criminal act. Under such a direction by the district attorney, therefore, an autopsy would be mandatory. Under any other circumstances,

however, an autopsy would not be mandatory but would be merely permissive. Compare Section 12-7-9, N.M.S.A., 1953 Compilation.

2. Whenever a coroner suspects that a death was caused by a criminal act or omission or that the cause of death is obscure, he must order that an autopsy be performed. Section 15-43-46, supra. Whenever the district attorney is conducting a criminal investigation, he may direct that an autopsy be performed. Section 12-7-9 (C), supra.

3. Each county is required to {232} have either an official coroner or an acting coroner. Section 15-43-43, N.M.S.A., 1953 Compilation (1969 P.S.). The coroner is in charge of autopsies and examinations to show the condition of the body and the cause of death in cases where the death may have been caused by a criminal act or if the cause of death is obscure. Section 15-43-46, supra. Opinion of the Attorney General No. 66-85, issued June 29, 1966. Section 15-43-49, N.M.S.A., 1953 Compilation, provides in part that:

"All necessary expenses of the office of the coroner shall be paid by the board of county commissioners."

Use of the word "necessary" in Section 15-43-49, supra, is a legislative reference to those circumstances under which the coroner has acted under his mandatory duty to order an autopsy. Whenever such an autopsy has been ordered by the coroner or directed by the district attorney, therefore, the expenses are paid by the board of county commissioners as necessary expenses of the coroner's office. As indicated above, the performance of an autopsy is not always mandatory but may be permitted under certain conditions. If the autopsy is not mandatory, the expenses are not necessary to the coroner's office and should be paid by the requesting party rather than by the board of county commissioners.

In passing, it should be noted that before 1969, when Section 15-43-43, supra, was enacted, not every county was required to have an official coroner. Before that date it was conceivable for a district attorney to request an autopsy that would not have been performed by a coroner. See Section 12-7-9(C), supra. Under such conditions, the expenses of such an autopsy would have been incurred by the district attorney and paid accordingly. Since the date when each county was required to have a coroner, however, the coroner has been in charge of autopsies. Opinion of the Attorney General No. 66-85, supra, and the performance of those autopsies requested by the district attorney in a criminal investigation is a necessary expense of the coroner's office to be paid by the board of county commissioners.

4. If the autopsy is performed by the coroner under his mandatory duties, the coroner's necessary expenses are to be paid by the board of county commissioners. Section 15-43-49, supra. Such a payment by the board of county commissioners is made out of the county salary fund as provided in Section 15-43-24 and as set up in Section 15-43-20, N.M.S.A., 1953 Compilation. If the county salary fund at any time should be insufficient to pay the necessary expenses incurred by the coroner, Section 15-43-25, N.M.S.A., 1953 Compilation, provides that the deficiency shall be paid from the current expense

fund of the county. If there is still a deficiency when the county has turned to the current expense fund, the available salary fund should be apportioned pro rata among all of the county officers as provided in Section 11-6-8, N.M.S.A., 1953 Compilation.