

## Opinion No. 71-42

March 10, 1971

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Richard T. Whitley Acting Chief Counsel Legal Division State Highway Department  
Santa Fe, New Mexico

### QUESTIONS

#### QUESTION

Does Section 64-22-2.10, NMSA, 1953 Comp. (P.S.), a part of the Implied Consent Law, require the State Highway Department to release copies of coroners' reports on blood-alcohol tests upon demand notwithstanding the provisions of Section 15-43-45 (B), NMSA, 1953 Comp. (P.S.)?

#### CONCLUSION

No.

### OPINION

#### {\*60} ANALYSIS

Section 64-22-2.10 of the 1969 Implied Consent Law provides that "The results of a chemical test performed pursuant to the Implied Consent Act may be introduced into evidence in any civil action . . ." Section 15-43-45(B), NMSA, 1953 Comp. (P.S.) on the other hand provides as follows:

In those cases where the death resulted from a motor vehicle accident on a public highway and the coroner performs or causes to be performed a test or tests to determine the alcoholic content of the deceased's blood, a copy of the report of this test shall be sent to the planning division of the State Highway Department for said department's **use only for statistical purposes**. The copy of the report sent to the planning division of the State Highway Department of the results **shall not contain any identification of the deceased and shall not be subject to judicial process**. (Emphasis added).

The Implied Consent Law (Section 64-22-2.4 et seq., NMSA, 1953 Comp. (P.S.)) and Section 15-43-45 (B), **supra**, were both enacted in the 1969 legislative session; the former was approved on March 13, 1969 and the latter on March 14, 1969. Accordingly, if an irreconcilable conflict existed between these two statutes enacted at the same legislative session, the privileged information one (Section 15-43-45 (B)) would control. It was approved last so in legal contemplation it is the latest expression of the legislative

will. **State v. Marcus**, 34 N.M. 378, 281 P. 454; **Board of County Commissioners of Socorro County v. Leavitt**, 4 N.M. 37, 12 P. 759. Further it is the more specific of the two statutes insofar as the State Highway Department is concerned, and would prevail to the extent of any irreconcilable conflict. **State v. Lujan**, 76 N.M. 111, 412 P.2d 405; **Lopez v. Barreras**, 77 N.M. 52, 419 P.2d 251; **State v. Thompson**, 79 N.M. 748, 449 P.2d 656.

But we do not believe it is necessary to utilize these well recognized rules of statutory construction in order to answer your question. Rather, the rule here applicable is that statutes relating to the same subject matter, **particularly** when enacted at the same legislative session, are to be construed in **pari materia**, with both to be given effect if it is reasonably possible to do so. **State v. Clark**, 80 N.M. 340, 455 P.2d 844; **State v. Fidelity & Deposit Co.**, 36 N.M. 166; 9 P.2d 700.

The Implied Consent Law refers to tests taken to determine alcoholic content of the blood of a **person arrested**. Section 64-22-2.6, **supra**. And even if the provisions of the Implied Consent Law includes blood alcohol tests taken by a coroner from persons who have been killed in an automobile accident (see Section 64-22-2.8), the copies of these test results which have {61} been submitted to the State Highway Department are something quite different and are for a completely different purpose. The Highway Department does not receive the actual tests from the coroner. It only receives a **copy of his report** and is to be used **only** for statistical purposes. It contains no identification of the deceased and, more importantly from the standpoint of the State Highway Department, it is **not** subject to judicial process.

Section 15-43-45(B), **supra** was not modified, amended or repealed, directly or indirectly, by the Implied Consent Law (Section 64-22-2.4, et seq., **supra**]. Even if such coroner **test results** were somehow subject to judicial process, the non-identifying copies which the State Highway Department receives are not, and this legislative proscription against their release should be honored by the State Highway Department.

By: Oliver E. Payne

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