

Opinion No. [30-18]

March 5, 1930

BY: J. A. MILLER, Assistant Attorney General

TO: Grace S. Massie, County Clerk, Roswell, New Mexico.

COUNTY COMMISSIONERS -- May pay for autopsies -- May pay physician in insanity hearing -- May not employ county physician.

OPINION

Receipt is acknowledged of two several letters from you under date February 26, 1930 and inasmuch as the matters covered in these letters are related I shall answer both in this one.

First you refer to accounts rendered by physicians for autopsies or post mortems in the sum of \$ 25.00 each. You ask concerning the authority of the Board of County Commissioners to pay such claims.

You do not give any information as to the purpose or purposes of these autopsies, or by whom ordered, or in what connection, consequently I cannot advise very confidently. Such charges may be very appropriate, as, for instance, in connection with inquests. By section 79-1101, Compilation of 1929, Justices of the Peace, within their respective precincts, are required to inquire into and investigate the cause of 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. The justice might very appropriately, in connection with such inquiry, cause an autopsy to be made. He should not, however, do this except upon the advice of the District Attorney or the District Judge. An expense of this kind, incurred by a justice of the peace and approved by the district attorney, could appropriately be paid by the county commissioner.

You ask further whether or not the board of county commissioners has authority to employ a county physician in view of the fact that you have a part time health officer in Chavez County. As our statutes now stand, I know of no authority for the employment of a county physician aside from the employment of the county health officer. By section 22 of chapter 103 of the Laws of 1903, The Territorial Board of Health was authorized to appoint in each county one reputable physician to be the county health officer. In 1909, by section 4 of chapter 99, the board of county commissioners of each county was authorized annually to contract, in writing, with some reputable physician to be the county health officer of the county. This act was repealed in 1919 by chapter 85, section 34, the same being an act concerning the public health and by which were created state, county and municipal health authorities. This chapter was amended in several particulars by chapter 145, Laws of 1921. The county health officer is appointed by the county commissioners, but must be approved by the State Department of Health. If the

county health officer fails, neglects, or refuses to perform certain work, the State Department of Health has the right to perform such work and to charge the same to the county. I find no provision for the employment of a county physician in this connection.

Another question is raised by you in connection with section 5099 of the 1915 Codification, and the fees paid physicians in connection with insanity hearings. As indicated by you, this matter is controlled by section 5099 of the Codification of 1915. In connection with such hearings it is the duty of the district judge to cause to be subpoenaed two or more witnesses and the subpoena shall issue for at least one graduate of medicine, requiring him to attend. The reasonable costs of the hearing, which will include the testimony of the physician, are to be determined by the district judge holding such hearing. I do not see that the county commissioners have much discretion in this matter.

This, I believe, answers the several questions asked in your two letters above referred to.