

Opinion No. 42-4102

June 13, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Department of Public Health Santa Fe, New Mexico. Attention: Miss Billy Tober,
State Registrar of Vital Statistics

{*207} This is to acknowledge receipt of your letter of June 11, relative to the issuance of a disinterment permit requested by W. Peter McAtee.

As a general rule, the courts of this State have control over disinterment; however, the New Mexico Legislature has seen fit to grant to the State Health Department certain powers of regulation over disinterment. This power granted to the State Public Health Department is limited, nevertheless, to regulations necessary for the **protection of the public health and safety.**

In view of the general language used in the application for a disinterment permit, submitted by Mr. McAtee, I believe that the {*208} State Department of Public Health should refuse to grant the permit in that the department has no authority to grant disinterment permits for reasons other than public health or safety.

If Mr. McAtee should write to the State Department of Public Health and ask whether there are any objections to disinterment from a public health standpoint, then I believe that the department would be justified in stating to Mr. McAtee that it had no objection, but that the permit so granted would not constitute a waiver by the relatives or other persons as to non-public health objections that they may have to the disinterment.

A disinterment permit by the State Health Department does not give to the applicant an undisputed right to remove a body in the face of objections of third persons. The permit amounts only to a statement by the State Health Department that it has no objection from a public health or safety standpoint to the disinterment of a body.

Trusting that the above will be of some help to you, I remain

By WILLIAM R. FEDERICI,

Asst. Atty. General