

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 2000-F-16

Date issued: September 28, 2000

Requested by: Richard C. Wilkes, Burke County State's Attorney

- QUESTIONS PRESENTED -

I.

Whether a county having a population of under 8,000 and without a resident physician may appoint an available physician residing in an adjacent county to be its medical county coroner as provided by N.D.C.C. ch. 11-19.1.

II.

Whether a physician appointed as county coroner in a county with a population of under 8,000 may possess the authority given a medical county coroner under N.D.C.C. ch. 11-19.1.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that a county having a population of under 8,000 may appoint a physician as county coroner but may not appoint a nonresident as county coroner unless that person is county coroner in two or more counties, in which case the officer must reside in one of the appointing counties.

II.

It is my opinion that a county with a population of under 8,000 does not have an office of medical county coroner under N.D.C.C. ch. 11-19.1, but instead has a county coroner under N.D.C.C. ch. 11-19, and may appoint the county coroner under N.D.C.C. § 11-19.1-03. It is my further opinion that a physician appointed in accordance with that section would possess only the general authority of N.D.C.C. ch. 11-19 and not the medical county coroner authority of N.D.C.C. ch. 11-19.1.

- ANALYSES -

I.

The office of county coroner is defined at N.D.C.C. ch. 11-19 and the office of medical county coroner is defined at N.D.C.C. ch. 11-19.1. The question of which chapter applies to which counties is addressed by N.D.C.C. § 11-19.1-17, which provides:

This chapter applies to every county in this state having a population of eight thousand or more, and chapter 11-19 and section 11-10-02 are not applicable to such counties. This chapter does not apply to counties having a population of less than eight thousand and such counties are governed by chapter 11-19 and section 11-10-02, except that coroners shall be appointed in these counties according to section 11-19.1-03, these counties shall pay coroner's fees to other counties under subsection 1 of section 11-19.1-16, and these counties are subject to sections 11-19.1-18 through 11-19.1-20.

N.D.C.C. § 11-19.1-17 provides that coroners in counties of less than 8,000 population, otherwise generally governed by N.D.C.C. ch. 11-19, shall be appointed according to N.D.C.C. § 11-19.1-03. That section provides:

The coroner shall be appointed by the board of county commissioners for a term of two years. If such office shall become vacant by death, resignation, expiration of the term of office, or otherwise, or when the coroner becomes permanently unable to perform the duties of office, the county commissioners shall appoint a person with the qualifications as hereinafter set forth to fill such vacancy, who shall give and take the oath of office as prescribed for coroners. If the duly appointed, qualified, and acting coroner is absent temporarily from the county, or when on duty with the armed services of the United States, or the state militia, or with the American red cross, or when unable to discharge the duties of office for any other reason, such coroner may appoint a person with the qualifications of coroner to act in the coroner's absence, service, or disability, upon taking the prescribed oath for coroners.

N.D.C.C. § 11-19.1-03. This statute implies that the county coroner should be from the appointing county because a replacement is to be named to act as county coroner when the county coroner is "absent temporarily from the county."

Further, a coroner is a county officer. N.D.C.C. § 11-10-02(5). County officers must qualify as electors and they must reside in the county (see N.D.C.C. § 16.1-01-04), except when two or more counties appoint the same person to the same office, and then the officer must reside in one of the appointing counties. N.D.C.C. § 11-10-04.

Medical county coroners are required to be physicians. N.D.C.C. § 11-19.1-04. N.D.C.C. § 11-19.1-17 provides that coroners shall be appointed in counties with less than 8,000 people according to N.D.C.C. § 11-19.1-03. However, both of these statutes and N.D.C.C. ch. 11-19 fail to include the physician requirement of N.D.C.C. § 11-19.1-04. This omission implies that the Legislature did not intend that counties with a population of less than 8,000 would be required to have a physician as county coroner. Although counties with less than 8,000 people are not required to have a physician fill the office of coroner, the North Dakota Supreme Court has stated that such a county may employ a physician as coroner. Brinkman v. Mutual of Omaha Ins. Co., 187 N.W.2d 657, 662 (N.D. 1971). See also N.D.C.C. § 11-19-32(3) (coroner entitled to charge and receive a fee "[f]or physician making a post-mortem examination of a dead body, ten dollars."); 1960-62 N.D. Op. Att'y Gen. 47, 48 (Aug. 11, 1960) (under chapter 11-19 in counties of less than 8,000 persons county coroner may or may not be a medical doctor).

Therefore, it is my opinion that a county having a population of under 8,000 may appoint a physician as county coroner but may not appoint a nonresident as county coroner unless that person is county coroner in two or more counties, in which case the officer must reside in one of the appointing counties.

II.

Although a physician may be appointed as county coroner, N.D.C.C. ch. 11-19 contemplates that a county coroner is not necessarily a physician. Under former law, a county coroner acting under N.D.C.C. ch. 11-19 was authorized to summon one or more physicians or surgeons to make a scientific examination of the deceased bodies, but in 1995 the state Legislature established a state forensic examiner and substituted the state forensic examiner as the person who the coroner may summon for a scientific examination. See N.D.C.C. § 11-19-09, 1995 N.D. Sess. Laws ch. 114, § 1. This implies that a county coroner under N.D.C.C. ch. 11-19 is not necessarily a medical examiner, but may obtain the services of one. Instead of being a medical examiner, the county coroner under N.D.C.C. ch. 11-19 is a specialized peace officer having the duties of investigating suspicious deaths. "Under the early common law, the office of coroner was one of great dignity,

the coroner being, next to the sheriff, the most important civil officer in the county." 18 Am.Jur 2d. Coroners § 1 (1985).

Under state law, the county coroner is to act as sheriff in the absence of the sheriff or deputy sheriff, and "shall exercise all the powers and duties of that office" until the office is filled. N.D.C.C. § 11-19-01. Further, in the chapter defining the complaint and warrant of arrest, the definition of a peace officer includes a coroner. N.D.C.C. § 29-05-10. Under certain circumstances, the coroner may be the official to whom an execution of judgment is issued and "the coroner shall have the same power and authority to enforce the judgment by execution as provided to the sheriff in [N.D.C.C. ch. 28-21]." N.D.C.C. § 28-21-05. See also N.D.C.C. § 28-21-18. If the sheriff is a party to an action in which the sheriff is required to serve or execute a summons, order or judgment, "the coroner shall be bound to perform the service, as the coroner is bound to execute process when the sheriff is a party." N.D.C.C. § 11-15-06. Generally, "[t]he provisions of title 28 relating to the sheriff shall apply to coroners when the sheriff is a party." Id. Therefore, the coroner in counties of 8000 or less does not need to personally make a medical or forensic examination.

A coroner does not need to investigate all deaths. Under ordinary circumstances, a death does not require any official inquiry. The death certificate is required to include medical certification of the cause of death. N.D.C.C. § 23-02.1-19(2). This medical certification must be provided and signed by the physician in charge of the patient's care for the illness or condition which resulted in death except when inquiry is required by the local health officer or the coroner. N.D.C.C. § 23-02.1-19(3). However, the county coroner is required to investigate the cause of death and complete and sign the medical certification of the cause of death if there is no medical attendance or when the local health officer or coroner inquires into the matter. N.D.C.C. § 23-02.1-19(4).

In a county of under 8,000 people, the coroner's duties generally relate to holding inquests upon the dead bodies of persons the coroner believes to have died within the county by unlawful means. N.D.C.C. § 11-19-02. The coroner has general authority to determine whether it is necessary to hold an inquest, and may choose not to do so when the facts indicate. N.D.C.C. § 11-19-03. Most of the remainder of chapter 11-19 concerns the procedure required for the coroner to summon a jury which is required to investigate the facts concerning the death, including ordering the arrest of a person charged with committing a crime against the deceased. See N.D.C.C. § 11-19-13.

In contrast, the medical county coroner's duties primarily relate to performing an autopsy to determine the cause of death and the manner

and mode in which the death occurred. N.D.C.C. §§ 11-19.1-11, 11-19.1-13. A medical county coroner operating under N.D.C.C. ch. 11-19.1 does not summon a coroner's jury to inquire into the cause of death, nor does a medical county coroner have authority to order the arrest of a person suspected to have caused another person's death by criminal means. The medical county coroner has authority to determine whether an autopsy is necessary, but the sheriff or state's attorney may direct an autopsy be performed in this instance. N.D.C.C. § 11-19.1-11. The cause of death, the manner of death, and the mode in which the death occurred are to be incorporated into the death certificate. N.D.C.C. § 11-19.1-13. Further, the local coroner, and acting coroner, or the county state's attorney may request the state forensic examiner to investigate the cause of death. N.D.C.C. § 11-19.1-18. Nothing in N.D.C.C. ch. 11-19.1 indicates that the medical county coroner is to have any duties other than making forensic examinations and reaching medical conclusions concerning the cause of death. These statutes do not apply to counties with less than 8,000 people. Brinkman v. Mutual of Omaha Ins. Co., 187 N.W.2d 657, 662 (N.D. 1971).

Under N.D.C.C. § 11-19.1-17, in the event that an individual dies in a county of less than 8,000 population, the investigation by the county coroner could consist of a coroner's jury being called and a possible autopsy being performed by the state forensic examiner. However, the coroner has authority to determine whether it is necessary to hold the inquest and may choose not to do so when the facts do not indicate one is necessary. N.D.C.C. § 11-19-03. Under ordinary circumstances, the cause of death on the death certificate may be filled out by the decedent's physician. N.D.C.C. § 23-02.1-19(3).

Although Brinkman v. Mutual of Omaha Ins. Co., 187 N.W.2d 657 (N.D. 1971), indicates approval of a physician being employed as a county coroner under N.D.C.C. ch. 11-19, this case does not indicate that such a physician would have the powers of a medical county coroner under N.D.C.C. ch. 11-19.1. In Brinkman, objection had been made to the admissibility of the county coroner's conclusions as to the decedent's cause of death. 187 N.W.2d at 662. The court noted that the chapter creating the medical county coroner did not apply to the county coroner in that case, but held that the county coroner's conclusion was admissible because the county coroner was the decedent's treating physician. Id., see also N.D.C.C. § 23-02.1-19(3).

Therefore, it is my opinion that a county with a population of under 8,000 does not have an office of medical county coroner under N.D.C.C. ch. 11-19.1, but instead has a county coroner under N.D.C.C. ch. 11-19, and may appoint the county coroner under N.D.C.C. § 11-19.1-03. It is my further opinion that a physician may be appointed in

ATTORNEY GENERAL'S OPINION 2000-16
September 28, 2000
Page 6

accordance with that section, but would possess only the general authority of N.D.C.C. ch. 11-19 and not the medical county coroner authority of N.D.C.C. ch. 11-19.1.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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