

**OPINION
67-129**

April 13, 1967 (OPINION)

Dr. Richard W. Prouty

State Toxicologist

RE: Motor Vehicles - Blood Specimens of Accident Victims - Procedure

This is in reply to your letter of April 10, 1967, relative to Senate Bill No. 44 enacted by the 1967 Legislative Assembly. You are concerned with the study to determine the relationship of alcohol, carbon monoxide and other drugs to motor vehicular deaths as provided in section 19 of said bill. You ask three questions concerning said section:

1. Is a licensed embalmer considered qualified to collect the blood specimens under the terms of the Act?
2. What officials, agencies, or individuals may be afforded the individual analytical results in any one given case?
3. Is it permissible for interested individuals such as peace officers, state's attorneys and coroners to submit two blood samples separately collected from the body of a fatally injured traffic victim; one sample to be analyzed and reported routinely by this laboratory to the requesting agency?

Section 19 of Senate Bill No. 44 provides:

STATE TOXICOLOGIST TO EXAMINE BLOOD SPECIMENS OF FATALITIES IN ACCIDENTAL DEATHS INVOLVING A MOTOR VEHICLE. In cases of death occurring on or after July 1, 1967, and prior to July 1, 1969, resulting from a motor vehicle accident or other unnatural death occurring in a motor vehicle, the county coroner shall require that a blood specimen of at least 20 cc. be withdrawn from the body of the decedent within 24 hours after his death by a coroner, coroner's physician, or other qualified person, prior to embalming. The blood specimens shall be collected and preserved by methods and techniques established by the state toxicologist. The blood so drawn shall be sent to the state toxicologist for analysis for alcohol, carbon monoxide, and other drug content. The state toxicologist shall keep a record of all such examinations to be used for statistical purposes. The results of the examinations referred to in this section shall not be admissible in evidence in any action of any kind in any court or before any tribunal, board, agency, or person, but shall be used only for statistical purposes. The cumulative results of the examinations, without identifying the individuals involved, shall be disseminated to interested state and local officials and made public by the state toxicologist. Any person drawing blood and any person making any examination of blood under the terms of this Act shall be immune from all liability, civil or criminal, that might otherwise be incurred

or imposed. The individual drawing the blood sample shall be paid a fee of five dollars by the state toxicologist for each acceptable blood specimen submitted for analysis under the requirements of this Act."

With respect to your first question, the Act does, as you have noted, provide that the county coroner shall require a blood specimen to be withdrawn by a coroner, coroner's physician, "or other qualified person." It would appear to be a question of fact as to who is a qualified person within the meaning of the Act and it would further appear that the initial decision as to who is to withdraw the blood specimen is left to the discretion of the county coroner, since it is that official who, under the terms of the Act, must require the specimen to be withdrawn. In view of the subjects with which an embalmer must be versed in order to become licensed under the provisions of chapter 43-10 of the North Dakota Century Code we believe a licensed embalmer may be considered as a "qualified person" within the meaning of the Act and thus entitled to withdraw blood samples upon the direction of the county coroner. We would also note this does not involve withdrawing of blood from a living being.

With respect to your second question, there may be some doubt as to the confidential nature of the analysis in individual cases. While it is true that the statute prohibits the use of such analysis in any action of any kind in any court or before any tribunal, board, agency or person, the statute does not positively state the results are to be confidential as do other statutes under which information is made confidential. However, we do note the affirmative statement that the results of such examinations are to be used "only for statistical purposes." We note the further statement that the "cumulative results of the examinations, without identifying the individuals involved shall be disseminated to interested state and local officials and made public by the state toxicologist."

The only purpose of this section of Senate Bill No. 44 is to accumulate statistical information to enable the legislature in making a determination as to whether or not legislation concerning motor vehicle accidents and such factors as alcohol, carbon monoxide, etc., should be enacted. See Page 97 of the 1967 Report of the Legislative Research Committee. We do not believe the state toxicologist is required or authorized to release his finds of individual examinations of blood specimens to any person or agency, including law enforcement officials and agencies, since same is not contemplated by the Act.

With respect to your third question, we find no authority for the submission of two blood samples in order to permit the report on one of the blood samples to be analyzed for the purposes of the Act and the other blood sample to be reported to the requesting agency. If any blood sample (one or more) is taken and submitted to the state toxicologist under the provisions of this Act, it must be used only for the purposes specified in the Act, i.e., the gathering of cumulative statistics. If a blood sample is to be taken and the results thereof used for other purposes, the person or agency taking such sample must find authority for so doing elsewhere than in the provisions of section 19 of Senate Bill No. 44.

HELGI JOHANNESON

Attorney General