

**OPINION
69-118**

November 24, 1969 (OPINION)

Mr. John B. Hart

State's Attorney

Rolette County

RE: Counties - Medical County Coroner - Duties of Sheriff

This is in reply to your letter of November 19, 1969, relative to the Medical County Coroner Act. You state the following facts and questions:

"Rolette County, North Dakota, has a population in excess of 8,000 persons (See Section 11-19A-17). In the county we have six doctors who are licensed to practice medicine in the State of North Dakota. Besides this we have three or four Public Health Service doctors at Belcourt, North Dakota, who are not required to have a license to practice medicine in the state.

"For the last four or five months, Rolette County has been without a medical county coroner because the then coroner moved to another state. The remaining six licensed doctors in the county do not want to be bothered with being county coroner and have refused an appointment by the Board of County Commissioners. The net result is that Rolette County is required, because of population, to have a medical county coroner who is licensed to practice medicine in this state, but we have no one to fill the vacancy.

"Section 11-19A-06 provides that in counties in which no physician is residing, the duties of coroner as therein provided shall be performed by the sheriff. Since we do have a physician residing in the county it appears the sheriff would be ineligible to perform the duties as coroner by virtue of section cited.

"This office requests your OPINION as to what the sheriff is authorized to do in this county in the absence of a medical coroner where it is necessary that a coroner be notified of a death under the provisions of Section 11-19A-07."

Section 11-19A-06 of the North Dakota Century Code provides as follows:

"PERSONS AUTHORIZED TO ACT WHERE NO RESIDENT PHYSICIAN. In such counties in which no physician is residing, the duties of coroner as herein provided shall be performed by the sheriff. The sheriff shall call upon the nearest physician coroner or deputy coroner from an adjacent county to investigate the medical cause of death of all coroner cases within said county. Where, because of distance or adverse conditions, a physician coroner is not available, the sheriff shall have the closest

practicing physician called in to investigate and certify as to the medical cause of death."

As you are aware, the statutes make no provisions for those instances in which a licensed physician is residing within the county but refuses to accept the position of coroner. Presumably the Legislature did not contemplate a situation in which physicians licensed to practice medicine in this State would refuse to perform these duties. The law cannot and does not expect the impossible from counties which are required to have a medical county coroner but are unable to comply because of the refusal of the licensed physicians therein to accept the position.

We assume the Board of County Commissioners has made a good faith effort to secure the services of one of the licensed physicians in the county to act as medical county coroner or, in the alternative, to secure a cooperative agreement among the licensed physicians in the county whereby they would, as a group, provide the services required by chapter 11-19A. If such good faith effort has been made and has not met with success, it is our opinion the sheriff of the county should proceed as if there were no licensed physician in the county as provided in section 11-19A-06.

HELGI JOHANNESON

Attorney General