

**OPINION**  
**78-34**

July 19, 1978           (OPINION)

Mr. C. E. Crane, Esquire  
Hettinger County State's Attorney  
Box 99  
Mott, ND 58646

Dear Mr. Crane:

This is in response to your letter of June 28, 1978, in which you inquired as to certain powers of the county coroner under North Dakota Century Code Chapter 11-19.

In your letter you set forth the following facts, questions, and opinion:

Hettinger County having a population of less than 8,000 people is governed by Chapter 11-19 entitled COUNTY CORONER, subject to certain exceptions (the Section 11-19.1-17).

The coroner of the County having a population of 8,000 or more is expressly authorized by Section 11-19.1-11 to perform or authorize the performance of an autopsy.

However, it is my opinion that in counties governed by 11-19 and specifically 11-19-09, an autopsy is only authorized when the same is in connection with a formal inquest. Section 11-19-09 provides as follows: "If, on an inquest, the coroner of the jury deems it necessary, the coroner may summon one or more physicians or surgeons to make a scientific examination of the body." I am assuming the "scientific examination of the body" is equivalent to an autopsy. However, it seems unreasonably restrictive if this opinion and interpretation is correct, namely that in order to have an autopsy in these counties, it must be done in conjunction with a formal inquest. Hettinger County happens to have a coroner who is also a physician and surgeon, who could perform an autopsy and in my experience it is often advisable to have an autopsy even though an inquest is not necessary or advisable. However, this Section seems to authorize a scientific examination of the body only when a formal inquest is held.

Initially, we note that Section 11-19.1-17 of the North Dakota Century Code provides as follows:

11-19.1-17. APPLICATION. The provisions of this chapter shall apply to every county in this state having a population of eight thousand or more according to the last preceding official federal census, and the provisions of chapter 11-19 and section 11-10-02 shall not be applicable to such counties. The provisions of this chapter shall not apply to counties having a population of less than eight thousand according to the last preceding official federal census and such counties

shall be governed by the provisions of chapter 11-19 and section 11-10-02, except that coroners shall be appointed in this counties according to section 11-19.1-03.

Under the specific provisions of this section, the duties of a county coroner in those counties with a population of under 8,000 persons is governed by the provisions in Chapter 11-19, which chapter set forth all of the powers and duties of the coroner.

In Chapter 11-19, the only provision resembling statutory authority for an autopsy, to be conducted by the county coroner, is contained in Section 11-19-09 which provides:

11-19-09. PHYSICIANS MAY BE SUMMONED AS EXPERTS - COMPENSATION. If, on an inquest, the coroner of the jury deems it necessary, the coroner may summon one or more physicians or surgeons to make a scientific examination of the body. The physician or surgeon in such case shall receive reasonable compensation instead of witness fees.

We believe that the language of this section empowers the coroner, acting through a physician, to make an "examination" of the body that is synonymous with an "autopsy". This interpretation is strengthened by a reading of Subsection 3 of Section 11-19-23, which provides:

11-19-23. FEES TO BE CHARGED BY CORONER. The coroner shall be entitled to charge and to receive the following fees:

\* \* \*

3. For physician making a postmortem examination of a dead body, ten dollars.

\* \* \*

The charges allowable for a physician under this subsection refer almost certainly to the "scientific examination" performed by a physician under Section 11-19-09, and by strong inference thereby, equate a "scientific examination" with the "postmortem examination" referred to in Subsection 3 of Section 11-19-23.

Nowhere in Chapter 11-19, other than Section 11-19-09, do we find any other authority for such an examination of a dead body. Nor are we aware of any principle law which would grant such authority to a county coroner, simply by reason of his appointment to such position. It is therefore our opinion that any "scientific examination" or autopsy of a dead body must be conducted in connection with an inquest, pursuant to North Dakota Century Code Section 11-19-09.

We trust that the foregoing adequately answers your question.

Sincerely,

ALLEN I. OLSON

Attorney General