

LETTER OPINION
95-L-88

April 3, 1995

Mr. James T. Odegard
Grand Forks County State's Attorney
PO Box 5607
Grand Forks, ND 58206-5607

Dear Mr. Odegard:

Thank you for your letter requesting my opinion concerning the disclosure of records of a medical county coroner which show the cause of death pursuant to N.D.C.C. ?? 11-19.1-08 and 44-04-18(1) in light of a contrary provision contained in N.D.C.C. ? 23-02.1-27.

North Dakota's open records law provides:

Except as otherwise specifically provided by law, all records of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, are public records, open and accessible for inspection during reasonable office hours.

N.D.C.C. ? 44-04-18(1). See also N.D. Const. art. XI, ? 6. Counties are political subdivisions which must follow legislative enactments. County of Stutsman v. State Historical Society, 371 N.W.2d 321, 329 (N.D. 1985). Therefore, the open records law applies to county records except if governing law provides otherwise.

Records of the medical county coroner

[m]ust be kept in the office of the coroner, if the coroner maintains an office as coroner, and if the coroner maintains no separate office, then in the office of the clerk of the district court of the county, and must be properly indexed, stating the name, if known, of every deceased person, the place where the body was found, date of death, cause of

death, and all other available information required by [N.D.C.C. ch. 11-19.1].

N.D.C.C. ? 11-19.1-08. "All records of the coroner shall become and remain the property of the county and are public records." Id.

The possibility that coroner records may be stored with the clerk of court does not exempt these records from the open records requirement. Although records of the county court, and presumably the district court, are not subject to N.D.C.C. ? 44-04-18, see Williston Herald v. O'Connell, 151 N.W.2d 758 (N.D. 1967), this office has previously opined that the records of a coroner's inquest come within the provisions of N.D.C.C. ? 44-04-18 because they are the records of the medical county coroner and are not the records of the county court. See Letter from Attorney General Helgi Johanneson to Mr. Vincent A. LaQua, Wells County State's Attorney (December 3, 1971). Whether the coroner's records are kept in the coroner's office or in the office of the clerk of the district court, they are subject to inspection by the public unless specifically exempted by law.

The system of vital records registration for the state of North Dakota "includes the registration, collection, preservation, amendment, and certification of records of birth, death, fetal death, marriage, divorce, or other records as may be determined necessary by the state health officer or his designee." N.D.C.C. ? 23-02.1-01(11). Certain information contained within vital records is made confidential by statute:

The state registrar, and local registrars, may supervise and regulate physical access to vital records to protect vital records from loss, mutilization, or destruction and to prevent improper disclosure of records that are confidential. Information relating to the birth or fetal death of a child to a woman who was not married to the child's father when the child was conceived or born may be disclosed only to the child's guardian, to the person to whom the record relates if that person is at least eighteen years old, to the parent of the child, or upon order of a court of competent jurisdiction. Information in vital records indicating cause of death may not be disclosed except to a relative or personal representative of

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the deceased, to the attorney or the agent of a relative or personal representative of the deceased, or upon order of a court of competent jurisdiction.

N.D.C.C. ? 23-02.1-27. (Emphasis supplied.) Therefore, if a document is a vital record, information contained in that record which indicates the cause of death may not be disclosed except to certain defined persons or upon court order.

The restriction against the disclosure of the cause of death in vital records does not apply only to death certificates issued pursuant to N.D.C.C. ? 23-02.1-19(1), but also applies to other records maintained under the system of vital records registration. Items subject to registration under the Health Statistics Act include not only certificates, but also reports or other records provided for under N.D.C.C. ch. 23-02.1 of birth, death, fetal death, marriage, divorce, and other records as determined by the state health officer. N.D.C.C. ? 23-02.1-01(9). The Legislature differentiated between certificates and other records, which implies that vital records include more than certificates alone. See, for example, N.D.C.C. ?? 23-02.1-25(1) and 23-02.1-28(1) ("certificate or record"). Therefore, any information in vital records, whether upon a death certificate or other record, which indicates cause of death, may not be disclosed by a registrar except under N.D.C.C. ? 23-02.1-27.

"[F]or an exception to the open-records law to exist under our constitutional and statutory provisions, it must be specific, i.e., the Legislature must directly address the status of the record in question, for a specific exception, by the plain terms of those provisions, may not be implied." Hovet v. Hebron Public School Dist., 419 N.W.2d 189, 191 (N.D. 1988). See also, NSP v. N.D. Public Service Com'n, 502 N.W.2d 240, 243 (N.D. 1993). The records which are maintained by the medical county coroner are required by statutory authority which is independent of the creation of vital records. Although the records of the medical county coroner may be the source of information from which vital records subject to N.D.C.C. ? 23-02.1-27 have been created, it is my opinion that the exception from the open records law for information in vital records indicating the cause of death may not be extended by implication to the records of the medical county coroner. Therefore, information indicating cause of death contained within the records of the medical county coroner are not exempt from the open records law by N.D.C.C. ? 23-02.1-27.

However, there are other exceptions to the open records law which may provide a specific exemption for records of the

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medical county coroner. If the medical county coroner is assisting law enforcement agencies in conducting criminal investigations or prosecutions, the records of the medical county coroner concerning this information are exempt from the open records requirement so long as the case is active. N.D.C.C. ? 44-04-18.7. Also, if the records of a medical county coroner relate to a child, the records are not open to public inspection nor may their contents be disclosed to the public, except pursuant to N.D.C.C. ? 27-20-52. See Letter from Attorney General Nicholas J. Spaeth to Representative Rod Larson (June 23, 1989).

Therefore, it is my opinion that the records of the medical county coroner are public records subject to inspection under N.D.C.C. ? 44-04-18(1), notwithstanding the provisions of N.D.C.C. ? 23-02.1-27 restricting access to vital records information concerning the cause of death of an individual. Under certain circumstances, however, exceptions may apply to the records of the medical county coroner.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

eee/vkk

cc: Beverly Wittman, Department of Health and Consolidated
Laboratories