

OPINION
60-47

August 11, 1960 (OPINION)

COUNTIES

RE: County Coroner - Duties and Jurisdiction

This is in reply to your request of July 29, 1960, for an opinion from this office relating to the duties and jurisdiction of county coroners. You have asked for a clarification of the existing law, and you have asked for our opinion as to what the legislative intent of the statute is. Further, you have asked the specific question:

. . . . whether it is proper in a coroner case, to call the coroner of the county in which the victim died, regardless of where he may have first incurred his injuries, or in the case prescribed in section 11-19021, the nearest available county coroner."

In your inquiry you have referred to chapter 11-19 of the North Dakota Revised Code of 1943, section 11-1902, which states that:

Except as otherwise specifically provided, the coroner shall hold inquest upon the dead bodies of such persons only as he believes to have died within his county by unlawful means."

Emphasis supplied

This chapter was added to by the 1953 legislative enactment now embodied in section 11-19021 of the 1957 Supplement to the North Dakota Revised Code of 1943, which provides that:

Whenever a county sheriff or a duly appointed, qualified and acting highway patrolman of this state appears at the site or scene of the death of a human being upon or near a highway, whether such death appears to have resulted from an automobile accident or from some other cause, he is hereby authorized to call the nearest available county coroner to view the body."

The county coroner so called shall immediately view the body and take such official action as may appear to him to be necessary and he is hereby authorized so to do if the site of such fatality is not within the county for which he was elected or appointed."

Emphasis supplied

It is to be noted at this point that due to the stated circumstances in the case you presented, it becomes necessary to consider the provisions of chapter 11-19 of the North Dakota Revised Code of 1943, in conjunction with chapter 11-19A, the Medical County Coroner Act, enacted in 1955, and presently contained in the 1957 Supplement to the North Dakota Revised Code of 1943. A close comparison of the two chapters brings out the following primary distinctions:

1. Chapter 11-19 and section 11-19021 of the 1957 Supplement are applicable only to counties having a population of less than 8,000 persons. The county coroner may, or may not be a medical doctor. It provides for both a coroner's jury (11-1904 through 11-1910) and authorizes an inquest (11-1902). It provides for a warrant returnable to a justice of the peace (11-1914).
2. Chapter 11-19A in section 11-19A17 specifically provides that chapter 11-19 (North Dakota Revised Code of 1943 and its amendments), and section 11-1002 of the North Dakota Revised Code of 1943 shall not be applicable to counties which have over 8,000 population. It provides that the county coroner be a physician who has been duly licensed to practice in this state for a period of not less than two years immediately preceding his appointment (11-19A04). It makes no provisions for a coroner's jury, but it does authorize the coroner, his assistant (11-19A05) to perform an autopsy (11-19A11) or perform other duties required by the coroner, or recommended by the state's attorney. Section 11-19A06 is noteworthy to show the scope of the statute in that in a county where no physician resides the sheriff is empowered to

. . . . all 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 , 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."

Whereas 11-1902 of the North Dakota Revised Code of 1943 provides for an inquest to determine whether the death was by unlawful means, section 11-19A07 extends the means of death to those arising not only criminally or violently, but also to those arising through casualty, suicide, accident, or in a suspicious or unusual manner. Section 11-19A08 provides that all records and reports relating to the deceased be considered public records, and that the state's attorney shall receive such records in any case where the coroner or the state's attorney deem further investigation advisable. Section 11-19A09 gives the state's attorney subpoena powers to continue the investigation; section 11-19A10 further extends the powers of the state's attorney in that the coroner must consult with him or the sheriff, or highway patrolman to decide whether the retention of the dead body is still necessary

to assist these officials in their duties. And finally, section 11-19A11 requires that if the state's attorney and the sheriff deem it necessary, the coroner may perform an autopsy.

In regard to the legislative intent behind the enactment of the statutes in question, it appears to be quite clear that the older law contained in chapter 11-19 was adequate for the period for which it was enacted. However, the Legislature by their manifest acts of legislating as exemplified by chapter 11-19A felt that a broader, more comprehensive treatment of the subject matter was necessary, thus insuring to counties of larger population density a more thorough, and obviously superior method of determining whether the death of a person was by lawful or unlawful means. It also seems clear that the Legislature intended that the prime element or basic purpose of the coroner laws was to provide a method of ascertaining the means of death of a deceased person as rapidly as possible, thus permitting the officials to quickly and accurately determine whether or not a crime was committed, and whether prosecution was deemed necessary.

In reply to your specific question, it is the opinion of this office that it is entirely proper in a coroner's case to call the coroner of the county in which the victim died, regardless of where he may have first incurred his injuries, either under chapter 11-19 of the North Dakota Revised Code in 1943, or section 11-19021 of the 1957 Supplement to the North Dakota Revised Code of 1943. The intent of the law would appear to be carried out if the coroner of the county to which the person is brought and subsequently dies in is called because the main purpose of the law is a speedy, yet accurate handling of the situation, a thorough investigation of the circumstances surrounding it, with an autopsy authorized if deemed necessary, under any of the existing statutes.

In summing up, we point out that in counties having less than 8,000 population (Towner County in the case your presented), the burden of carrying out the intent of the law rests on the coroner, the coroner's jury, the inquest conducted by the preceding persons, the justice of the peace, and finally the state's attorney. All of these persons and the duties they are to perform are governed by chapter 11-19 of the North Dakota Revised Code of 1943, and section 11-19021 of the 1957 Supplement to the North Dakota Revised Code of 1943. In counties having a population of more than 8,000 persons (Rolette County in the case you presented), the burden of carrying out the intent of the law rests on the medical county coroner, the state's attorney and other law enforcement officials, and we note especially that there is no provision for a coroner's jury in chapter 11-19A, which governs the official acts of the persons specified, in counties having over 8,000 population.

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