

VOLUME NO. 37

OPINION NO. 179

CORONER - Duties; Conflict of interest; COUNTY OFFICER AND EMPLOYEES - Coroner; Code of Ethics; EMPLOYEES, PUBLIC - Code of Ethics; REVISED CODES OF MONTANA, 1947 - Sections 59-1702, 82-443(1), 95-801.

- HELD: 1. When a county coroner investigates a death, he has authority to remove the body.
2. The county coroner must make the decision as to whether or not a physician will sign the death certificate.
3. A county coroner who is also a mortician or employed by a funeral home is not automatically in violation of the provisions of the Montana Code of Ethics. However, the mortuary that he is affiliated with may not receive compensation for any services related to the coroner's official duties.

22 December 1978

Keith Haker, Esq.
Custer County Attorney
Custer County Courthouse
Miles City, Montana 59301

Dear Mr. Haker:

You have requested my opinion on the following questions:

1. When a person dies of natural causes and is not under the care of a physician or surgeon licensed in the State of Montana and the county coroner is called to make an investigation, can he remove the body of the deceased?
2. Does the county coroner make the decision whether a physician will sign a death certificate, and what steps must he take to make that determination?
3. If there is more than one mortician in the county, and one of the morticians is the county coroner, is he automatically in violation of section 59-1702(2)(b) if he performs the duties of county coroner?

In regard to your first question, section 95-801 provides in pertinent part:

Whenever a coroner is informed that a death was caused by other than natural causes, or that a death has occurred under circumstances such as to afford a reasonable ground that the death is the result of criminal conduct, or when no physician or surgeon licensed in the State of Montana will sign a death certificate, the coroner shall make an investigation thereof.

In addition, section 82-443(1) provides:

When a medical examiner or coroner takes custody of a body of a deceased person for purposes of examination and no other person claims the body, the coroner of the county in which the death occurred where the body was found, shall cause it to be decently interred.

It is clear from the reading of the two provisions that the coroner has the duty to investigate a death when a person dies of natural causes and is not under the care of a physician. The coroner also has the authority to do all that he considers necessary to perform an adequate investigation, including removing or having the body of the deceased removed. The powers which a county officer can exercise are not confined to those expressly granted by statute. An officer has by implication such powers as are necessary for due and efficient exercise of those expressly granted. Guillot v. State Highway Commission, 102 Mont. 149, 56 P.2d 1072 (1936).

It is also clear that the coroner must eventually make the decision as to whether a physician will sign the death certificate. The statute does not specifically provide what steps a coroner must take in making that determination, but it may be inferred that the coroner should contact any appropriate medical personnel including the physician that most recently treated the person together with appropriate county health officials.

Your last question concerns the application of the Montana Code of Ethics, contained in section 59-1701 et seq., R.C.M. 1947, to the office of the county coroner.

It is my opinion that a county coroner who is also a mortician does not automatically violate the provisions of section 59-1707(2)(b) when he performs his official duties. That section provides:

(2) An officer or an employee of local government may not:... (b) perform an official act directly and substantially effecting to its economic benefit a business or other undertaking which he either has a substantial financial interest or is engaged as counsel, consultant, representative or agent.

"Financial interest" is defined in section 59-1702(4)(c) to include an employment interest. The Code of Ethics prevents a county officer from performing an act that will provide substantial economic benefit to a business in which he is an employee. Therefore, as long as the mortuary in which the coroner is associated, either as an owner or employee, does not obtain a direct economic benefit from the actions of the coroner, the provisions of section 59-1707(2)(b) would not be violated.

By way of example, a coroner who is also a mortician must conduct an investigation when a person dies of natural causes and a physician has not signed the death certificate. That investigation could include the removal of the body to the mortuary with which the coroner is affiliated. However, that mortuary may not receive compensation in connection with that case. This rule does not apply if the mortuary is the only mortuary in the county. See 37 OP. ATT'Y. GEN. NO. 104.

THEREFORE, IT IS MY OPINION:

1. When a county coroner investigates a death, he has authority to remove the body;
2. The county coroner must decide whether a physician will sign the death certificate;
3. A county coroner who is also a mortician or employed by a funeral home is not automatically in violation of the provisions of the Montana Code of Ethics. However, the mortuary that he is affiliated with may not receive compensation for services related to the coroner's official duties.

Very truly yours,

MIKE GREELY
Attorney General