



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

June 29, 1992

Mr. Larry A. Farrow
Executive Director
Texas Funeral Service Commission
8100 Cameron Road, Bldg. B, Suite 550
Austin, Texas 78753

Letter Opinion No. 92-20

Re: Whether the El Paso County
Commissioners Court may authorize
the El Paso Medical Examiner to
charge a fee for the storage of human
bodies (RQ-345)

Dear Mr. Farrow:

You ask about the validity of the order of the El Paso County Commissioners Court establishing a \$35.00 per day fee to be assessed against funeral homes for bodies stored at the office of the El Paso County Medical Examiner. You enquire whether this fee is within the power of the El Paso County Commissioners Court. You object to the fee on the ground that "it is the county's duty and responsibility to operate a morgue, and the [Texas Funeral Service] Commission knows of no provision allowing the county to assess a fee of this nature."¹

Texas Code of Criminal Procedure article 49.25 authorizes the commissioners court to establish and maintain the office of medical examiner, and to furnish the medical examiner with office space and laboratories if necessary. Code Crim. Proc. art. 49.25, §§ 1, 5. Texas Local Government Code chapters 291 and 292 authorize counties to acquire property and buildings to use for county purposes. We believe these provisions are sufficient to authorize the county and the medical examiner to maintain a county morgue. However, we note that there is no specific statute authorizing the commissioners court or the medical examiner to levy fees for the storage of bodies at the county morgue or the office of the medical examiner.

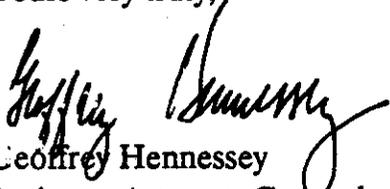
¹WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 772 (1990) defines a "morgue" as "a place where the bodies of persons found dead are kept until identified and claimed by relatives or are released for burial."

Counties are political subdivisions of the state and possess only those powers "specifically conferred upon them" by the constitution or statutes. *Canales v. Laughlin*, 214 S.W.2d 451, 453 (Tex. 1948). A county may not charge fees unless the county is specifically authorized to do so by statute. *Nueces County v. Currington*, 162 S.W.2d 687, 688 (Tex. 1942); *McCalla v. City of Rockdale*, 246 S.W. 654, 655 (Tex. 1922); *McLennan County v. Boggess*, 137 S.W. 346, 348-49 (Tex. 1911). Because there is no statute authorizing a fee for the storage of bodies at the medical examiner's office or the county morgue, the order of the El Paso County Commissioners Court establishing such a fee is unlawful and invalid. See Attorney General Opinions DM-22 (1991) (opining that underground water conservation district may not assess fees for registering wells); MW-5 (1979) (Bell County has no authority to charge adoption fees without specific statutory authorization and collecting previous attorney general opinions to similar effect).²

S U M M A R Y

The order of the El Paso Commissioners Court establishing a storage fee for human bodies at the El Paso County Morgue (or the office of medical examiner) is invalid because there is no statute authorizing the commissioners court to establish such a fee.

Yours very truly,


Geoffrey Hennessey
Assistant Attorney General
Opinion Committee

²See also Health & Safety Code §§ 691.002 (creating the Anatomical Board of the State of Texas), 691.025(c) (providing that after death "[a] body that is not claimed for burial within 48 hours after a relative receives notification shall be delivered as soon as possible to the [Anatomical Board] or the board's representative").