



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

DAN MORALES
ATTORNEY GENERAL

November 12, 1997

The Honorable Alice L. Chapman
Uvalde County Auditor
Courthouse Building #4, 2nd Floor
Uvalde, Texas 78801

Letter Opinion No. 97-101

Re: Whether a municipal judge may request that a body be transferred to an approved forensic agency for an autopsy and related questions (ID# 39567)

Dear Ms. Chapman:

You have requested opinions from the county and district attorneys pursuant to section 41.007 of the Government Code but have not received answers to your questions. You are therefore requesting an opinion from this office pursuant to section 402.042 of the Government Code.

You inform us that local municipal law enforcement officers summoned a justice of the peace to the scene of a traffic accident for verification of death. The justice of the peace did not respond, and a municipal judge of the town in which the accident occurred came to the scene and pronounced the death. At that time, the municipal judge directed the local morgue to transfer the body to a forensic agency in Bexar County for an autopsy. Subsequently, the bills for that transfer and autopsy were mailed to "Justice of the Peace Municipal Judge." You ask the following questions in regard to this incident:

May a Municipal Judge request that a body be transferred to an approved forensic agency for an autopsy?

May a Municipal Judge order an autopsy?

If a Municipal Judge may order the autopsy, then may that official incur the bill to the County government in that precinct?

The laws of this state establish who may authorize an autopsy. A justice of the peace may direct a physician to perform an autopsy in connection with an inquest into the cause of death. Article 49.04 of the Code of Criminal Procedure sets out the circumstances under which an inquest must be held and article 49.10 authorizes a justice of the peace to order an autopsy. A justice of the peace has no power to order an autopsy except in connection with an inquest. *Aetna Life Ins. Co. v. Love*, 149 S.W.2d 1071, 1076 (Tex. Civ. App.—El Paso 1941, writ dismissed) (citing statutory predecessors of articles 49.04 and 49.10). In counties that have a medical examiner, the medical examiner or his deputy conducts inquests and performs autopsies. See Code of Crim. Proc. art. 49.25, §§ 6, 9; Letter Opinion No. 97-004 (1997) at 3. Autopsies of the nonofficial type are

performed by a physician with consent of next of kin. Code Crim. Proc. art. 49.13; Letter Opinion No. 97-004, n. 13 at 4.

Only those persons with express legal authority to order an autopsy may do so. Attorney General Opinion O-6640 (1945) at 2; Letter Opinion No. 94-060 (1994) at 1. We find no provision of law authorizing a municipal judge to order an autopsy, and you have cited none.

We note that article 49.07 of the Code of Criminal Procedure requires physicians and peace officers in certain circumstances to report deaths to the justice of the peace of the precinct in which the body was found. This article further provides that “[i]f the justice of the peace who serves the precinct in which the body was found is not available to conduct an inquest, a person required to give notice under this article shall notify the nearest available justice of the peace, *municipal court judge*, county judge, or judge of the county court at law of the county in which the death occurred or in which the body was found.” Code Crim. Proc. § 49.07(c) (emphasis added). The 1987 legislation that adopted the notification requirement did not extend the authority to hold inquests and order autopsies to municipal court judges or to any of the other officers who might be notified of the death, although it did authorize a commissioners court to establish an office of death investigator and to employ individuals to assist persons in the county who conduct inquests.¹

Article 49.07, as adopted in 1987, expanded the prior reporting requirement and established a penalty for failure to report.² By providing that other officers may receive reports if the justice of the precinct is not available, article 49.07(c) facilitates compliance with the reporting requirement. A county judge or justice of the peace who receives a report may then exercise his or her statutory authority to provide for a temporary justice of the peace to conduct the inquest, while a municipal court judge or judge of a county court of law may forward the report to an officer with such authority.³ Accordingly, a municipal judge has no authority to require a body to be transferred to an approved forensic agency for an autopsy or to order an autopsy. Since your third question is contingent on a conclusion that the municipal judge may order an autopsy, we need not answer it.

¹Act of May 21, 1987, 70th Leg., R.S., ch. 529, § 1, 1987 Tex. Gen. Laws 2138, 2144. See Code Crim. Proc. art. 49.23 (office of death investigator).

²Before the 1987 legislation became effective, the notification was required only when a prisoner died in custody and when a person died under the care of a physician and the physician did not know the cause of death. In addition, there was no penalty for failure to notify. House Comm. on Criminal Jurisprudence, Bill Analysis, Tex. C.S.H.B. 1104, 70th Leg., R.S. (1987). The offense of intentional or knowing failure to comply with the notice requirement is punishable by a fine in an amount not to exceed \$500. Code Crim. Proc. art. 49.07(d). Legislation effective on September 1, 1997, provides that an offense is a class C misdemeanor and deletes the provision for a fine. Act of May 22, 1997, 75th Leg., R.S., ch. 656, § 2, 1997 Tex. Sess. Law Serv. 2230, 2230.

³If the justice of a precinct is absent or unable or unwilling to perform his duties, section 27.052 of the Government Code provides that “the nearest justice in the county may temporarily perform the duties of the office.” “If a justice is temporarily unable to perform official duties because of absence, recusal, illness, injury, or other disability,” section 27.055 of the Government Code provides that “the county judge may appoint a qualified person to serve as temporary justice for the duration of the disability.”

But see Letter Opinion No. 94-060 (1994) (county may not pay for performance of autopsy not authorized by statute).

S U M M A R Y

A municipal judge has no authority to require a body to be transferred to an approved forensic facility for an autopsy or to order an autopsy.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Opinion Committee