

N.D.A.G. Letter to McBeth (June 14, 1988)

June 14, 1988

Mr. Ronald W. McBeth
Richland County Assistant State's Attorney
413 Third Avenue North
Wahpeton, ND 58075

Dear Mr. McBeth:

Thank you for your letter of March 3, 1988. I apologize for the delay in responding to you.

The questions presented in your letter discuss coroners, law enforcement officers, removal of dead bodies, and the statutes found at N.D.C.C. ch. 11-19.1. After a review of the statutory authority affecting your questions, I will answer each question as it was referenced in your letter.

N.D.C.C. § 11-19.1-17 states, in part, as follows:

1-19.1-17. Application. This chapter applies to every county in this state having a population of eight thousand or more, and chapter 11-19 and section 11-10-02 are not applicable to such counties.

Richland County has a population of over eight thousand thereby making N.D.C.C. ch. 11-19.1 applicable to activities therein.

N.D.C.C. § 11-19.1-07 states, as follows:

11-19.1-07. Death to be reported to coroner by physician or persons discovering body -- Penalty -- Notice to state health officer -- Right to autopsy.

1. ny person who discovers the dead body, or acquires the first knowledge of the death of any person, and any physician with knowledge that a person died as a result of criminal or violent means, casualty, suicide, accidental death, or died suddenly when in apparent good health in a suspicious or unusual anner, shall immediately notify the office of coroner or any law enforcement officer of the known facts concerning the time, place, manner, and circumstances of such death, and any other information which may be required pursuant to this chapter. Any person who violates the provisions of this section shall be guilty of a class B misdemeanor.

2. Any person who discovers the dead body of, or acquires the first knowledge of the death of, any child under the age of three years, where the child died suddenly when in apparent good health, shall immediately notify the office of coroner of the known facts concerning the time, place, manner, and circumstances of the death. The coroner shall notify the state health officer of each such death, and shall provide the state health officer the information concerning the death as he shall require. The coroner or his medical deputy shall notify the parent or guardian of the child of his right to the performance of an autopsy, at state expense, as provided by this chapter.

N.D.C.C. 11-19.1-06 states:

11-19.1-06. Persons authorized to act where no resident physician. In such counties in which no physician is residing or available, the duties of coroner as herein provided shall be performed by the sheriff, the state highway patrol, or any special agent of the bureau of criminal investigation. The sheriff, the state highway patrol, or special agent shall call 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, because of distance or adverse conditions, a physician coroner is not available, the sheriff, the state highway patrol, or special agent shall have the closest practicing Physician called in to investigate and certify as to the medical cause of death.

(Emphasis supplied.)

N.D.C.C. 11-19.1-12 states as follows:

11-19.1-12. Coroner may order removal of body. Where the county does not provide a morgue or morgue facilities for the use of the coroner, the coroner may use existing hospital facilities. When post mortem is completed at county morgue facilities or existing hospital facilities, the coroner after getting expressed order of the person lawfully entitled to the custody of the deceased person's remains as to the funeral home of their choice, shall order the remains released to such funeral home, or the coroner after getting the expressed order of the person lawfully entitled to the custody of the deceased person's remains, as to the funeral home of their choice, may order the remains removed to such funeral home and the necessary post mortem conducted there.

If Richland County has no resident or other physician available to serve as coroner, N.D.C.C. § 11-19.1-06 states that the sheriff, the state highway patrol, or special agent of the Bureau of Criminal Investigation shall perform the duties of the coroner. Furthermore, if Richland County's coroner is not available, the nearest physician coroner or deputy

coroner from an adjacent county must be called. Where no physician coroner is available, N.D.C.C. § 11-19.1-06 requires that the sheriff, highway patrol or Bureau of Criminal Investigation call the closest practicing physician to investigate and certify as to the medical cause of death.

There are many reasons for utilization of an available physician. An important one is found in N.D. Admin. Code ch. 33-05-02 (attached). That rule deals with post mortem communicable diseases and indicates that the notice must be prepared by the attending physician or, in the absence of an attending physician, by the examining coroner. In addition, N.D.C.C. § 11-19.1-12 would indicate that it is the coroner, assistant coroner, or local physician's decision to move the body and utilize other facilities within the county for post mortem activities.

In view of the above-referenced discussion, the answers to your questions are as follows:

1. Once the coroner or his assistant has given his permission to remove the body, without seeing it or going to the scene, does a local physician have to be first called to view the body and declare the person medically dead?

N.D.C.C. § 11-19.1-06 indicates that a practicing local physician must be called in to investigate and certify the medical cause of death if the coroner, a physician coroner, or an assistant physician coroner from an adjacent county is not available. The facts as indicated in your correspondence would suggest that other local physicians were available in Richland County. The coroner or assistant coroner may give their permission to have the body moved and a local practicing physician may certify as to cause of death after the body has been moved. In addition, the sheriff, state highway patrol, or special agent of the Bureau of Criminal Investigation may have the body moved prior to certification of cause of death by the coroner or local physician if their training and experience would indicate that there is no need for the physician coroner or local physician to view the body at the scene. There is no requirement in N.D.C.C. § 11-19.1-06 prohibiting the removal of a dead body unless authorized by a coroner, assistant coroner, or physician.

2. If a local physician does not have to be first called, does the sheriff, highway patrolman, or crime bureau agent have the authority to remove the body from the scene with consent of the coroner when the coroner does not go to the scene? Without consent of the coroner?

The sheriff, highway patrolman, or crime bureau agent has the authority to remove the body from the scene with consent of the coroner. Professional judgment of the sheriff, highway patrolman, or crime bureau agent regarding apparent cause of death (i.e., automobile accidents) may be provided to the coroner, assistant coroner, or local physician to aid that physician in making a decision regarding removal of the body. If a local physician is available and the coroner and assistant coroner are not, the sheriff, state highway patrol or special agent of the Bureau of Criminal Investigation may utilize their training and experience to have the body moved if they feel there is no need for the physician to view the body at the scene.

3. If the coroner or his assistant cannot be reached, does § 11-19.1-06, N.D.C.C., require that a local physician go to the scene of the death to investigate and certify as to the medical cause of death? Or, can the sheriff, highway patrolman, or crime bureau agent authorize the body be removed to a morgue or a funeral home and then have a local Physician inspect the body?

The sheriff, highway patrolman, or crime bureau agent may authorize that the body be removed to a morgue or funeral home if their training and experience would indicate that there is no need for the local physician to view the body at the scene. N.D.C.C. § 11-19.1-06 does not require a local physician to go to the scene of the death to determine the cause of death.

4. Does the chief of police have authority to have a body removed without first calling the sheriff, highway patrol or crime bureau?

The statutory authority only authorizes the sheriff, state highway patrol, or special agent of the Bureau of Criminal Investigation to have a body removed in lieu of a coroner.

5. If the chief of police does have the authority (referring to question 4), does that authority come from § 11-19.1-07.1, N.D.C.C., and if so, does that section take precedence over § 11-19.1-06, N.D.C.C.?

Although N.D.C.C. § 11-19.1-07 requires reporting to the coroner or a law enforcement officer, the apparent authority regarding disposition of bodies rests only with the sheriff, state highway patrol, or special agent of the Bureau of Criminal Investigation in lieu of the coroner.

N.D.C.C. ch. 11-19.1 provides little guidance for the actual conduct of death scene investigations. Although it would be the better practice to have a physician at the scene of a death, except in those cases where all concerned readily agree that a physician's presence would be unnecessary, there is no requirement in N.D.C.C. ch. 11-19.1 that a body must be held at the scene of death until a physician is present to authorize removal of the body.

It appears necessary for law enforcement and medical officials to enter into a cooperative understanding to ensure that a proper investigation of an unattended death will be performed. I encourage this effort to avoid misunderstanding or disputes which may affect such an investigation.

Sincerely,

Nicholas J. Spaeth

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Enclosures