

Opinion No. 2012-003

April 3, 2012

The Honorable Garry L. Smith  
State Representative  
600 Ouachita 31  
Camden, Arkansas 71701-9561

Dear Representative Smith:

You have requested my opinion on the following questions concerning transportation of the deceased:

1. What official under the law has responsibility to transport and store a body or human remains?
2. Some jurisdictions have multiple coolers. In this instance, a city police department, the County Sheriff Office, and the County Coroner Office each have coolers. What authority does Law Enforcement (Sheriff's deputies or City deputies) have to order an elected Coroner to transport the body to their (a law enforcement) cooler?
3. If the Sheriff's deputy or city police officer ordered the Coroner to transport the body to their (law enforcement) cooler for storage, (a) If the Coroner refuses to transport the body to a law enforcement cooler, what legal recourse does law enforcement have against the Elected Coroner or his/her Deputy Coroner? (b) Does Law Enforcement have the authority to move, alter, or disposition the body after death has been declared/determined? Before a Coroner is called to the scene? After a Coroner is called to the scene?

Before setting out these questions, you note that coroners in Arkansas “are duly elected officials charged with responsibility for death investigations.” You further report that “[i]n many counties, including Benton County, the coroner’s office has proper equipment and facilities for transportation, storage and to conduct [sic] death investigations.”

## **RESPONSE**

I gather that these questions are asked in connection with death investigations, that is, in circumstances where the cause of death has not yet been certified and further investigation is necessary to determine whether the death resulted from a crime.<sup>1</sup> The law on your first question is not entirely clear and would benefit from legislative clarification. Pending such clarification, however, it is my opinion that the coroner likely has the general authority and responsibility to ensure that the body is transported from the death scene for proper storage pending further examination. But as explained below, this assumes there is agreement among those investigating the death that moving the body from the death scene is appropriate and necessary under the particular circumstances. It is my opinion in response to your second question that a law enforcement officer does not have the responsibility for custody of the remains and therefore generally cannot order the coroner to transport the body to a particular storage location. The coroner should, however, consult with law enforcement in determining the appropriate storage facility, given the interest in preserving a body that may become evidence in a criminal investigation. It is my opinion in response to Question 3(a) that law enforcement ordinarily would have no legal recourse against the coroner, unless perhaps it can somehow be shown that the coroner’s actions would interfere with a criminal investigation under the particular circumstances. The outcome in any such case would be highly fact-dependent. Question 3(b) cannot be answered in the abstract because the answer may vary depending upon the particular action

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<sup>1</sup> Certain deaths must be reported to the coroner, prosecuting attorney, and either the sheriff or the chief of police where the death occurred. A.C.A. § 12-12-315(a)(1)(A)–(S) (Repl. 2009). The circumstances include apparent homicide, suicide, accidental death, or whenever the manner of death appears to be other than natural. *Id.* at (A), (L). The county coroner is charged with investigating such reported deaths to determine the cause and manner of death. A.C.A. § 14-15-301 (Repl. 1998). The State Crime Lab may also examine into the cause of death, either as it deems necessary or upon the request of certain officials, including the coroner and local law enforcement. A.C.A. § 12-12-318(a)(2)(A) (Repl. 2009). The cause of death is certified by either the coroner or the state medical examiner, depending upon who conducted the investigation. A.C.A. § 12-12-317(a) (Repl. 2009). *See also* A.C.A. § 20-18-601 (d) and (e) (Supp. 2011). But if a postmortem examination has been performed, the certificate of death must be made by the state medical examiner or whoever performed the exam. A.C.A. § 12-12-317(b).

taken by law enforcement, viewed in light of the surrounding circumstances. But I can opine generally that it would be contrary to law to remove the body before the coroner is called because a coroner in my opinion must be given access to a body at the scene of death.

## **DISCUSSION**

### ***Question 1 - What official under the law has responsibility to transport and store a body or human remains?***

Given your remaining questions, I assume this question is asked in connection with a death that is still under investigation to determine its cause and manner and whether it was the result of a crime. According to my research, no statute explicitly assigns responsibility for transporting and storing the body under these circumstances. Legislative clarification would therefore be beneficial.<sup>2</sup> Pending such clarification, however, I believe some insight can be gained from a review of the laws governing coroners' investigations, the reporting and investigation of crime, and the disposition of the dead. Various references in these laws to the coroner's role or authority suggest that the coroner has charge of, or exercises a degree of control over the body where the cause of death is under investigation. For instance, pursuant to A.C.A. § 14-15-303, the coroner shall "release the body for final disposition" if everyone is satisfied that no crime occurred and the cause of death is known.<sup>3</sup> Similarly, under the Vital Statistics Act, consent for removal of the body from the place of death for final disposition must be obtained from

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<sup>2</sup> Some recognition of the need for clarification in this area of the law involving death investigations is reflected in A.C.A. § 14-15-307 (Supp. 2011) (codification of Acts 2009, No. 1275), which created a "Coroner's Advisory Task Force" to recommend improvement of laws regarding coroners' duties and to address certain issues involving death scene investigations, including treatment of the body and its removal from the scene. The Task Force was abolished in April, 2011. A.C.A. § 14-15-307(c). A bill filed in the 88<sup>th</sup> General Assembly would have created an Arkansas Coroner's Board to develop standards and policy recommendations, as well as a course curriculum for coroner certification and training. *See* HB 2175 (2011 regular session). But this bill failed.

<sup>3</sup> The statute provides in full:

If, after conducting an investigation, the law enforcement agency and prosecuting attorney of the jurisdiction are satisfied that no crime has occurred, the coroner is satisfied that the death is not the result of a crime, and the coroner knows to a reasonable certainty the cause and manner of death, the coroner or his designated deputy shall proceed to execute a death certificate in the form and manner required by law and release the body for final disposition.

A.C.A. § 14-15-303 (Repl. 1998).

either the medical examiner or the coroner, depending upon who is to certify the cause of death.<sup>4</sup> I believe it is also of note that the coroner's preliminary report of his investigation must include "[d]isposition of the body."<sup>5</sup>

These statutes plainly reflect an element of authority in the coroner over the dead body. This authority is further reflected in A.C.A. § 20-17-701 (Repl. 2005), part of a subchapter dealing with unclaimed bodies. This statute seems to acknowledge that the coroner has charge of the body: "None of the provisions of this subchapter shall affect *the right of a coroner or a justice of the peace to hold the [unclaimed] dead body* as described under § 20-17-703 for the purpose of investigating the cause of death...." (Emphasis added). Reference should also be made to the Revised Arkansas Anatomical Gift Act, A.C.A. § 20-17-1201 *et seq.*, wherein it refers to "a decedent whose *body is under the jurisdiction of the coroner or the state medical examiner....*"<sup>6</sup>

In my view, these statutes may be cited in support of the proposition that the coroner has the general authority and responsibility to ensure that the body is transported from the death scene for proper storage pending further investigation.<sup>7</sup> I am reinforced in this conclusion by the absence of similar statutory language suggesting that another person or official exercises "jurisdiction" over the body or has a comparable "right" to hold the body.

I should nevertheless emphasize that this conclusion as to the coroner's authority and responsibility concerning transportation from the place of death assumes there is agreement among those investigating the death that moving the body from the death scene is appropriate and necessary under the particular circumstances. In other words, it is my opinion that the coroner does not exercise this authority in isolation. Rather, I believe he is obliged to consult with law enforcement to obtain

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<sup>4</sup> A.C.A. § 20-18-604(c) (Repl. 2005). *See* n. 1, *supra*, regarding the State Crime Lab's investigatory authority.

<sup>5</sup> A.C.A. § 14-14-302(e)(2)(N) (Supp. 2011).

<sup>6</sup> A.C.A. §§ 20-17-1222(b) and -1223(a), (f) (emphasis added).

<sup>7</sup> *Accord* Op. Att'y Gen. Ala. 2009-050 (concluding, based on Alabama statutes similar to those discussed above, that "the coroner [has] responsibility for the placement, movement, and storage of the body to facilitate external postmortem examinations and autopsies...."). *See also* Op. Att'y Gen. Ala. No. 2009-093 ("The appropriate method to move bodies and the facility to store them until the bodies can be transported to the state forensics laboratory are determinations that must be made by the coroner.").

their consent when removing the body from the scene.<sup>8</sup> This reasonably follows, in my opinion, from the coroner's obligation to cooperate in a criminal investigation.<sup>9</sup> This obligation is also reflected in A.C.A. § 14-15-303, *supra* note 2, which clearly envisions agreement among the coroner and law enforcement officials as to the absence of a crime. Once it is determined, however, that further examination is necessary and that the body must be moved, the coroner in my opinion has the general responsibility and authority to ensure proper transportation and storage.

***Question 2 - Some jurisdictions have multiple coolers. In this instance, a city police department, the County Sheriff Office, and the County Coroner Office each have coolers. What authority does Law Enforcement (Sheriff's deputies or City deputies) have to order an elected Coroner to transport the body to their (a law enforcement) cooler?***

My review of the laws governing coroners' investigations, the reporting and investigation of crime, and the disposition of the dead indicates that a law enforcement officer does not have the responsibility for custody of the remains, and therefore in all likelihood has no general authority to order the coroner to transport the body to a particular storage location. But given law enforcement's interest in preserving a body that may become evidence in a criminal investigation, I believe the coroner has an obligation to consult with law enforcement officials when determining the temporary disposition of the body. And this would reasonably extend to consultation regarding the appropriate storage facility. Consultation with the State Crime Lab may also be indicated to determine the appropriate placement of the body, assuming the Crime Lab will be making an investigation. If the Crime Lab will be investigating the death, the Lab may well be interested in the body's placement; and all parties are specifically

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<sup>8</sup> *Accord* Op. Att'y Gen. Ala. 2011-013 (quoting Op. Att'y Gen. Ala. 93-00080: "The coroner may not move the body or otherwise disturb the crime scene until the district attorney or his law enforcement officials have indicated to him that to do so would not disrupt their investigation. To rule otherwise would create the possibility that the movement of the body would destroy evidence, prevent accurate investigation, or compromise the crime scene.")

<sup>9</sup> *See* A.C.A. § 14-15-302(a) (Supp. 2011) ("A coroner's investigation does not include criminal investigation responsibilities. However, the coroner shall assist any law enforcement agency or the State Crime Laboratory upon request."). I have previously observed that "this statute reflects the fact that whatever law enforcement agency conducts an investigation into a death, that agency may compel the coroner to cooperate." Op. Att'y Gen. 2010-133 at 3.

required to “fully cooperate” with the Lab’s staff.<sup>10</sup> It also bears noting that the Crime Lab is specifically authorized to “transport bodies of persons whose death is subject to the provisions of this subchapter to an appropriate place for autopsy or for any other scientific tests.”<sup>11</sup> This further suggests the possible need to consult with the Lab when determining the temporary disposition of the body.

***Question 3 - If the Sheriff’s deputy or city police officer ordered the Coroner to transport the body to their (law enforcement) cooler for storage, (a) If the Coroner refuses to transport the body to a law enforcement cooler, what legal recourse does law enforcement have against the Elected Coroner or his/her Deputy Coroner? (b) Does Law Enforcement have the authority to move, alter, or disposition the body after death has been declared/determined? Before a Coroner is called to the scene? After a Coroner is called to the scene?***

It is my opinion in response to the first part of this question that the law enforcement officials ordinarily would have no legal recourse against the coroner because, as explained above, they have not been vested with general authority to order or direct the placement of the body. The only exception might be if one of these officials was able to establish that the coroner’s actions in refusing to transport the body to their cooler interfered with a criminal investigation under the particular circumstances. I cannot speculate further as to the probable success of such an argument, as the outcome in any such case would be highly fact-dependent.

As for the second part of this question concerning moving or altering the body, it is difficult to answer this question in the abstract without knowing what sort of action is contemplated under the specific circumstances. I can state generally, however, that in my opinion removing the body entirely from the scene, whether before or after the coroner is called, without consulting the coroner would likely be contrary to law. Removing the body before the coroner is called would in all likelihood be contrary to law because the coroner must be given access to a body at the scene of death:

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<sup>10</sup> A.C.A. § 12-12-311(a)(1) (Repl. 2009) (“All law enforcement officers and other state, county, and city officials, as well as private citizens, shall fully cooperate with the staff of the State Crime Laboratory in making any investigation provided for or authorized in this subchapter.”).

<sup>11</sup> A.C.A. § 12-12-316(a) (Repl. 2009).

In my opinion, some or all of the coroner's duties and authority may be meaningfully carried out and exercised only at the scene of the death, depending upon the particular facts and circumstances of each case. For example, a death that might appear innocent if the body were merely viewed in isolation away from the scene of death might clearly warrant further investigation when viewed in the context of the scene of death, and vice versa.<sup>12</sup>

Additionally, as explained above, I believe there must be general agreement among those investigating the death that moving the body from the death scene is appropriate and necessary under the particular circumstances.

You may be asking, however, whether law enforcement can move or alter the body in some manner short of removal from the scene. In my opinion, regardless of whether the coroner has been called to the scene, the answer to this question probably depends upon whether the particular action taken in moving or altering the body is necessary and appropriate as part of a criminal investigation under the specific circumstances. Law enforcement plainly has full authority to investigate. But because there is no precise answer as to which official has primary jurisdiction, the circumstances of each case must determine the priority of investigation as between the coroner and law enforcement. There is nothing in the law that gives to either coroners or law enforcement officials the authority to direct or supervise the other in the performance of their respective duties. Ideally, as this office has previously emphasized, there should be cooperation between law enforcement and coroners in investigating a death.<sup>13</sup> One of my colleagues aptly summarized the parties' coextensive authority as follows:

[i]t is my opinion that where law enforcement officers are investigating an incident with a view to establishing whether any violation of law has been committed, the coroner in normal circumstances, should, where immediate action by the police officers is indicated, defer to the investigation by the police officers, and that where no immediate action by the police officers is required, that the

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<sup>12</sup> Op. Att'y Gen. 95-263.

<sup>13</sup> *See id.* ("Obviously cooperation and agreement among the coroner and those law enforcement officers at the scene is desirable and would permit each to perform his investigatory duties as fully and efficiently as possible, taking into account the inevitable conflicts and inconveniences that will occur when two distinct investigations must be carried out at the same place and time.").

law enforcement officers should defer to the coroner to enable him to carry out his duties. There is no precise answer as to which officials have primary jurisdiction, but the circumstances of each case must determine the priority of investigation. The basic answer to the question can only be that the law enforcement officers and the coroner must work together in cooperation. The findings and determinations of each branch can often materially assist the other in the performance of their respective duties, and therefore the priority of jurisdiction should not arise. If it does arise, the only answer that I can give is that the immediate [investigative] ... needs of each must be weighed in the light of the circumstances existing, and one should defer to the other as those circumstances dictate.<sup>14</sup>

I fully concur with this analysis.

Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN MCDANIEL  
Attorney General

DM/EAW:cyh

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<sup>14</sup> Inf. Op. Att’y Gen. S.C., 1998 WL 261524 (issued April 22, 1998) (quoting Oct. 31, 1973 Op. Att’y Gen. S.C.).