

Opinion No. 58-83

April 14, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Howard M. Rosenthal,
Assistant Attorney General

TO: Mr. Dan Sosa, Jr., District Attorney, Third Judicial District, Las Cruces, New Mexico

QUESTION

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Should autopsy costs be paid from the County General Fund or should they be paid from the District Court Fund of the county for which the investigation is being conducted?

CONCLUSION

Either.

OPINION

ANALYSIS

Please note that your withdrawal of a previous opinion was construed in this office to apply to the entire requested opinion. It was on March 26, subsequent to the receipt of your letter of that date, that this office became aware of your wish for an opinion on autopsy payments. The above is to account for the delay.

Autopsies arise from at least two sources. One is the specific statutory authority so to do invested in the justice of the peace conducting a death inquisition. Section 36-17-1, et seq., is the enabling legislative conferment on the justice of the peace. However, no provision for payment for the autopsy is made specifically.

Another source of authority for ordering an investigative autopsy is the District Attorney, acting in his capacity as State's attorney. However, again no specific provision for payment of such an autopsy can be found.

Section 15-37-16 has been interpreted by this office on several occasions. Among these, Attorney General's Opinions 1939-40, page 97, holds that the County Commissioners have implied power "to employ such agents and servants as may be required for county purposes and which are not otherwise provided for by statute or by the State Constitution", and this office is of the opinion the instant situation falls precisely into this category. To detect and prosecute for unlawful death is certainly such

a governmental purpose as is above envisaged and the County Commissioners, under § 15-37-16, can certainly pay for such services.

The District Courts are constitutionally designated as conservators of the peace. (Article VI, § 21). As such, and when autopsies are warranted in pursuit of that design, it appears uncontradictable that District Court funds may be disbursed in payment of autopsies. Hence, we are of the opinion that District Court funds, on proper approval of course, may be so disbursed.

As an aside, it might be well to point out that in the past, customarily, autopsy payments have been made out of District Court funds.