

Opinion No. 65-161

August 24, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: W. F. Foster, Administrator, New Mexico State Hospital, P.O. Box 1181, Las Vegas, New Mexico

QUESTION

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Can the bodies of persons who die at the New Mexico State Hospital be furnished to the Medical School at the University of New Mexico if the body is unclaimed and the person is indigent?

CONCLUSION

Yes. If the following procedures are followed.

OPINION

{*272} ANALYSIS

Your question necessitates an examination of the Disposition of Unclaimed Dead Act. Section 12-7-1, et seq., N.M.S.A., 1953 Compilation.

Section 12-7-1, supra, provides in pertinent part as follows:

"It shall be the duty of every . . . public hospital . . . having possession, charge or control of **bodies to be buried at public** expense . . . to use due diligence to notify the relatives of the deceased and in the cost of burial at private expense, to notify by telegraph collect, immediately after the lapse of twenty-four hours after death, the department of public health or the duly authorized agent of the same, stating, whenever possible, the name, age, sex and cause of death of any person or persons required to be buried at public expense." (Emphasis added).

The Federal Veteran's Administration should also be contacted.

In regard to the definition of one who is to be buried at public expense, Section 13-2-5, N.M.S.A., 1953 Compilation provides that "No deceased person shall be considered to be an indigent if there are any sums, no matter how small, with which to defray the cost of such burial." And Section 13-2-4, N.M.S.A., 1953 Compilation mentions the county's

burial duty when the dead person has no visible estate out of which to defray the cost of burial, and when no relative or friend of the deceased will undertake to bury him.

Section 12-7-3, N.M.S.A., 1953 Compilation provides that:

"The unclaimed dead retained by the state department of public health **for educational purposes within the state** shall be embalmed according to directions, and disposed of subject only to instructions, of the said department; Provided, however, that any unclaimed dead **shall be held for a period of thirty days** by those properly in charge of said bodies, awaiting the claim of said bodies by an authenticated relative of the deceased for the purpose of identifying said bodies." (Emphasis added).

Section 12-7-4, N.M.S.A., 1953 Compilation that:

"The bodies of the unclaimed dead shall be used solely for the purpose of instruction and study in the promotion of medical education and science within the state of New Mexico. . . ."

Section 12-7-6, N.M.S.A., 1953 Compilation requires the public institution wherein the deceased was a patient or inmate to transmit to the Health Department, upon its request, a medical history of the unclaimed dead person. It further provides that the institution {*273} receiving the unclaimed dead person for educational purposes within the State of New Mexico "shall bear all reasonable expense incurred in the preservation and transportation of the dead and shall keep a permanent record of bodies received, giving the identification number, the name, age, sex, nationality and race, if possible, together with the place of last residence of the deceased and the source and disposition of the body."

Section 12-7-6, N.M.S.A., 1953 Compilation provides that:

"Whenever the duly authorized officer or agent of the state department of health deems a body required to be buried at public expense, unsuitable or unnecessary for scientific purposes, he shall notify the official custodian of such body or bodies, in order that it may be cremated, or buried at public expense as required by law."

We see then that by working in conjunction with the State Department of Public Health and the University of New Mexico Medical School, it is possible for the State Hospital to transmit the body of one who is to be buried at public expense to the Medical School for use "in the promotion of medical education and science." All that is required is that the procedures set forth above be followed.