

Opinion No. 67-99

August 15, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. D. K. Kelley State Safety Director New Mexico Traffic Safety Commission State Capitol Santa Fe, New Mexico 87501

QUESTION

FACTS

A blood test made on a dead body must be conducted within four (4) hours after death. Any test made after that time will be inconclusive as to alcoholic content. Under Chapter 255, Laws of 1967, no blood test may be conducted without a District Attorney's order. However, the time involved in obtaining such an order for such blood test would mean that many blood tests would be valueless.

QUESTION

Under Chapter 255, Laws of 1967, may the District Attorney issue a blanket authorization for the taking of blood samples from individuals killed in a motor vehicle accident or who die within four (4) hours as a result of a motor vehicle accident?

CONCLUSION

Yes.

OPINION

{*145} ANALYSIS

Shapter 255, Laws of 1967, reads:

Section 1. IMPLIED CONSENT TO CHEMICAL TESTS -- PERSONS KILLED IN AUTOMOBILE ACCIDENTS. -- Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given his consent to a chemical test or tests of his blood or urine, upon his death as a direct result of a motor vehicle accident on the public highways of this state. The test shall be for the purpose of determining the alcoholic content of such person's blood, the results of which shall be sent to the planning division of the state highway commission and shall be used only for statistical purposes relating to traffic safety and traffic safety planning. The results of such test or tests shall be releasable to the public in such form that it contains no identification of the dead motor vehicle operator. **The chemical test shall be made**

only upon the request of the investigating officer and upon the order of the district attorney of the county in which the fatality occurred. (Emphasis supplied)

The underlined language is the pertinent language here.

It is the opinion of this office that a blanket order may be given by the District Attorney in this situation. Admittedly, this office held that such orders were objectionable in other situations. Opinion of the Attorney General No. 65-128, dated July 12, 1965. That opinion dealt with altogether different considerations. It does not apply here.

Presumably, the legislature did not engage in a meaningless act by passing the above law. To disallow a blanket order by a District Attorney in this situation would result in the failure to obtain blood tests from many dead bodies. Surely, this was not the legislative intent. It is the opinion of this office that such a blanket order adequately reflects legislative intent under this law.

It should be noted that nothing in the law forces such a blanket order. This opinion should not be so construed. This office states only that such an order is within the legislative intent reflected in the law. The District Attorney may validly issue such an order.

By: Donald W. Miller

Assistant Attorney General