

**Opinion No. [30-27]**

March 19, 1930

**BY:** M. A. OTERO, JR., Attorney General

**TO:** Don Narciso Martinez, Park View, New Mexico.

GRAVES -- Removal of bodies.

**OPINION**

You asked me for an opinion as to whether or not there is any way of preventing the removal of dead bodies from their present place of interment when the said removal is for the purpose of reconstructing a church in a manner which you describe to me in detail.

In reply thereto, will state that we have gone into this matter very carefully and I beg to advise you as follows:

In the first place, there is no statute in New Mexico which specifically covers this proposition. We have got a statute which prohibits the removal of bodies for the purpose of burying some one else in the same place, but, as I stated, there is no statute governing the particular matter which you have submitted to me.

I have accordingly gone into the general law on the subject, which said general law applies in all cases where there are no statutes. According to the general law, it would seem that bodies may be removed for any legitimate reason, **provided**, that the said removal is done in a careful and orderly manner and that the bodies so removed are carefully buried in another grave. It is absolutely illegal to simply disinter bodies and throw away the remains or otherwise desecrate the graves, and any one attempting anything of the sort can be stopped by an injunction gotten out in the courts. But, from what you told me yesterday, I assume that no such proposition as this was intended.

I am very sorry that there is probably no legal way of preventing the removal of the bodies in this case, provided, of course, that the said removal is continued in a careful manner and that the bodies so removed are reburied in another grave.

On the question as to whether or not it is necessary that the bodies be removed, I am afraid that in this case that is something which rests in the discretion of those who purpose to remove them.

If I can be of further service to you at any time please do not hesitate to call upon me. Trusting that you will be able to bring about an adjustment of this whole situation, believe me to be,