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MORTUARY SCIENCE: Requirement that a funeral director sign death certificate.

Requirement that a funeral director or mortuary science licensee supervise the disposition of dead human bodies.

A dead human body may be transported by an unlicensed person.

WORDS AND PHRASES: "Person in charge of a corpse" defined.

A death certificate must be filled out and signed by a funeral director before a burial or removal permit may be obtained.

The presence of a funeral director or mortuary science licensee is required for the preparation of dead human bodies for transportation and to supervise the burial or disposition thereof.

One who merely transports a dead human body need not be a licensed funeral director or a mortuary science licensee.

A county medical examiner may file a death certificate and thereby obtain a burial or removal permit as a person in charge of a corpse.

Opinion No. 4770

July 18, 1973.

Department of Commerce
State Cemetery Commission
Law Building
Lansing, Michigan 48913

You have asked my opinion on three questions regarding the disposition of dead human bodies.

You first ask:

"Are the services of a funeral director required to file a death certificate and obtain the burial transit permit?"

1925 PA 343, as amended, MCLA 326.1 *et seq*; MSA 14.221 *et seq*, provides for the registration of death. Section 6 of 1925 PA 343, *supra*, provides in pertinent part, as follows:

"No body where the death occurred in this state, nor any dead body found therein, shall be interred, deposited in a vault or tomb, cremated or other disposition made thereof, removed from or into any registration district or be held pending further disposition for more than 72 hours after death, unless a permit for the disposition thereof has been issued by the registrar of the district in which the death occurred, or the body was found. . . ." MCLA 326.6; MSA 14.226

As the quoted provision indicates, prior to disposition of a body a burial or removal permit must be obtained. Such permit may not be issued, with certain exceptions not relevant here, until a certificate of death has been filed with the registrar.

Section 9 of 1925 PA 343, *supra*, provides, in pertinent part, as follows:

"The funeral director or person having charge of a corpse shall file the certificate of death or stillbirth with the registrar of the district in which the death or stillbirth occurred and obtain a burial or removal

permit prior to disposing of the body, subject to the provisions of section 6. He shall obtain the required personal and statistical particulars over the name and address of his informant. The attending physician or in the absence of an attending physician, the coroner shall fill out and sign the medical certificate of death or stillbirth within 24 hours after death. The funeral director shall then state over his signature and address the date and place of intended burial, cremation or to which the body is to be removed, and present the completed certificate to the registrar for a permit for burial, removal or other disposition of the body." MCLA 326.9; MSA 14.229

That provision was considered in OAG, 1945-1946, No 0-3424, p 320 (April 26, 1945). The superintendent of the Wayne County Infirmary, Eloise, Michigan, asked the Attorney General if the institution should make out both sides of the information column in the death certificate. In his response, Attorney General John R. Dethmers concluded as follows:

" . . . you will notice provision is made for (1) a medical certificate to be signed by the attending physician or coroner, and (2) the death or burial portion to be signed by the funeral director. There is no provision that these certificates are to be filled out and signed by anyone other than the physician or coroner and funeral director and the latter's informant.

" . . . Then the death portion of the certificate must be signed by the funeral director and the medical certification signed by the attending physician or the coroner, after which the completed certificate should be presented to the register of vital statistics in the district." (pp 320-321)

After the certificate of death has been properly executed, either the funeral director or the person in charge of the body may file such certificate and obtain a burial or removal permit.

The disposition of dead human bodies is an activity necessitating licensure by the State Board of Examiners in Mortuary Science pursuant to 1949 PA 268, as amended; MCLA 338.861 *et seq*; MSA 14.509(1) *et seq*. Section 5 of that act provides in pertinent part, as follows:

"The term 'funeral director', as herein used, is a person engaged in or conducting, or holding himself out as being engaged in: (a) Supervising the burial and disposal of dead human bodies, or (b) Maintaining a funeral establishment for the preparation and disposition and care of dead human bodies, or (c) Who shall, in connection with his name or funeral establishment use the words 'funeral director' or 'undertaker' or 'mortician', or any other title embodying the words 'mortuary science', or otherwise implying that he is engaged as a funeral director, as herein defined. All persons engaged in the profession of funeral directing or who profess to be engaged in such profession shall be licensed as funeral directors or the holders of a license for the practice of mortuary science. Any person who engages in or professes to engage in the profession of funeral directing without being the holder of a license as funeral director or to practice the profession of mortuary science shall be guilty of a violation of this act.

“* * *

“. . . Any person who shall prepare for transportation or burial or otherwise dispose of any dead human body, or who shall carry on any of the duties of funeral directing as defined in this act, without being the holder of a funeral director's license or license to practice mortuary science granted by the said board, shall be guilty of a violation of this act.” MCLA 338.865; MSA 14.509(5)

Consequently, the presence of a funeral director or mortuary science licensee is required to prepare dead human bodies for transportation and to supervise the burial or disposition thereof.¹

You next ask: “Who can be the person in charge of a corpse?”

The language, “in charge of” has been judicially defined with reference to the current edition of *Webster's International Dictionary*. For example, in *Consumers Veneer Co. v Chestnut*, 210 Miss 430, 434; 49 So 2d 734, 735 (1951), the court stated:

“. . . ‘In charge’ means ‘having the charge or care of something’; ‘charge’ means ‘a thing committed or entrusted to the care of * * * or management of another.’ *Webster's International Dictionary*, 3rd Ed. . . .”

Also see *Lyon v Aetna Casualty & Surety Co*, 140 Conn 304; 99 A2d 141 (1953). Accordingly, the “person in charge of a corpse” is that person who has been entrusted with the care of the corpse. Thus, it is necessary to determine who has the right to place a person in charge of a corpse.

The right of the next of kin to possession of a deceased has been recognized both at common law and as a matter of statute. *Deeg v City of Detroit*, 345 Mich 371, 376 (1956), considered whether a widow had a cause of action against a person who mutilated the body of her deceased husband. In finding that the widow did have such a cause, the court relied on *Doxator v Chicago & West Michigan R Co*, 120 Mich 596 (1899), citing with approval *Larson v Chase*, 41 Minn 307, 50 NW 238, and said:

“. . . it has been held in a number of well considered American cases that the one whose duty it is to care for the body of the deceased is entitled to possession of the body as it is when death comes, and that it is an actionable wrong for another to interfere with that right by withholding the body or mutilating it in any way. . . .”

That right is also set forth in section 10 of 1949 PA 268, which provides in pertinent part:

“No public officer or employee, or the official of any public institution, convalescent home, private nursing home, maternity home, public or private hospital, or physician or surgeon, or any other person having a professional relationship with any decedent or coroner or other public official having temporary custody thereof, shall send or cause to be sent to any person or establishment licensed under this act the

¹ Preparation of a body for disposition by cremation within 48 hours after death may be accomplished through use of a suitable container. The law does not require the use of a casket.

remains of any deceased person without having first made due inquiry as to the desires of the next of kin and of the persons who may be chargeable with the funeral expenses of such decedent. And if any such kin be found, his or her authority and directions shall govern the disposal of the remains of such decedent. . . ." MCLA 338.870; MSA 14.509(10)

Your attention is also directed to section 4 of 1953 PA 181, as amended, which provides in part:

"It shall be unlawful for any funeral director, embalmer or other person to remove the body from the place where death occurred, or to prepare the body for burial or shipment, when such funeral director, embalmer or other person knows or upon reasonable investigation should know that death may have occurred in a manner as indicated in section 3, without first notifying the county medical examiner or his deputy and receiving permission to remove, prepare for burial or ship such body. . . ." MCLA 52.204; MSA 5.953(4)

Section 3 provides:

"Any physician and any person in charge of any hospital or institution, or any person who shall have first knowledge of the death of any person who shall have died suddenly, unexpectedly, accidentally, violently, or as the result of any suspicious circumstances, or without medical attendance during the 48 hours prior to the hour of death unless the attending physician, if any, is able to determine accurately the cause of death, or in any case of death due to what is commonly known as an abortion, whether self-induced or otherwise, shall notify the county medical examiner or his deputy immediately of the death." MCLA 52.203; MSA 5.953(3)

The duties of the county medical examiner, upon learning of such a death, are provided, in part, in section 5:

"When a county medical examiner has notice that there has been found or is lying within his county or district the body of a person who is supposed to have come to his death in a manner as indicated in section 3, he shall forthwith repair to the place where such body lies and take charge of same; and if, on view thereof and personal inquiry into the cause and manner of the death, he deems a further examination necessary, the county medical examiner or his deputy may cause such dead body to be removed to the public morgue. . . . The medical examiner may designate a law enforcement officer or a representative to go to the place where the body lies and take charge of it, make pertinent inquiry, note the circumstances surrounding the death, and, if deemed necessary, cause the body to be transported to the morgue for examination by the medical examiner. . . . Such county medical examiner shall, after any required examination or autopsy, promptly deliver or return such body to the relatives or representatives of the deceased or, if there are no relatives or representatives known to the examiner, he may cause the body to be decently buried, except that such examiner may retain, as long as may be necessary, any portion of

such body believed by him to be necessary for the detection of any crime." MCLA 52.205; MSA 5.953(5)

Thus, it is clear that a county medical examiner may, pursuant to statutory mandate, become the "person having charge of a corpse." However, section 6 of 1925 PA 343, *supra*, provides, in part:

"No body where the death occurred in this state, nor any dead body found therein, shall be interred, deposited in a vault or tomb, cremated or other disposition made thereof, removed from or into any registration district or be held pending further disposition for more than 72 hours after death, unless a permit for the disposition thereof has been issued by the registrar of the district in which the death occurred, or the body was found. . . ." MCLA 326.6; MSA 14.226

It is entirely conceivable that a county medical examiner would remain in charge of a dead human body beyond the period of 72 hours after death and his right of possession of the corpse would supersede that of the widow or heir. Section 9 of 1925 PA 343, *supra*, anticipates such circumstances and would allow the county medical examiner to file the death certificate as the "person having charge of a corpse."

Finally, you ask whether a person who is in charge of a body, and who is not a funeral director, may transport the body to a crematory or cemetery within 48 hours from the time of death, if no contagious diseases are present. As you further indicated, 1954 AC R 325.1142 provides that embalming is not required if disposition of the body is made within 48 hours from the time of death:

"Bodies dead from a cause not named in rule 1 which shall reach their destination within 48 hours from the time of death, or are addressed to the demonstrator of anatomy of a medical college or for other demonstration purposes, may be received for transportation when encased in a sound shipping case. If the body is not so addressed or cannot reach its destination within 48 hours it must be prepared for shipment as described in rule 1. . . ."

It has already been concluded in OAG, 1943-1944, No 0-1462, p 565 (October 19, 1943), that a person need not be licensed as a practitioner of mortuary science if he merely transports the body:

"We are of the opinion that an unlicensed employee of a funeral establishment could not supervise the procession to and the committal service at the cemetery, but that he could be sent to bring a corpse to the funeral establishment following the first call."

Accordingly, an unlicensed person could transport a body to a facility lawfully entitled to dispose of dead human bodies so long as such transportation was carried out under the supervision of a licensed funeral director. If disposition of the body is effected within 48 hours, in the absence of contagious disease, embalming would not be required.

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Attorney General.
