

It is manifest that minors in the care of a parent or guardian fall within the coverage of the Act. As indicated above, section 102(a) sets forth the definition of "age" simply as "chronological age." Had the Legislature intended to exclude minors, it could have so provided.

Finally, construing the statute as a whole, it may be noted that the provisions of 1968 PA 112, § 201 are qualified in 1968 PA 112, § 301 in the following terms:

"Sec. 301. Section 201 does not apply:

"(e) With respect to the age provision only, to the sale, rental, or lease of housing accommodations meeting the requirements of federal, state, or local housing programs for senior citizens, or accommodations otherwise intended, advertised, designed or operated, bona fide, for the purpose of providing housing accommodations for persons 50 years of age or older."

Thus, under the doctrine of *expressio unius est exclusio alterius*, it is clear that the provisions of 1968 PA 112, § 201 apply in all situations not expressly excluded by 1968 PA 112, § 301. It is therefore my opinion that minors are within the scope of protection of 1968 PA 112, § 201(c), *supra*.

It should also be noted, however, that under the provisions of 1968 PA 112, § 205, a refusal to engage in a real estate transaction is not unlawful where based upon the lack of legal capacity of a person to enter into a binding contract. I would also note that we know of no court decisions that prohibit a landlord from setting aside a portion of a building or a separate building in a complex of buildings for families with children if that action is taken in the interests of the comfort and convenience of all of his tenants.

FRANK J. KELLEY,
Attorney General.

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COUNTY MEDICAL EXAMINERS: Autopsies

PROSECUTING ATTORNEYS: Autopsies

AUTOPSY: Performed outside the state

The role of a prosecuting attorney in the performance of an autopsy is limited to issuance of a written order to the county medical examiner to conduct an investigation. After issuance of the order by the prosecuting attorney, the county medical examiner, if he believes it to be required, assumes full control and responsibility for arranging for an autopsy.

A county medical examiner may direct that an autopsy be performed by another person even where the autopsy is to be performed outside the state, but the county medical examiner continues to be responsible for the duties imposed upon him by law.

Opinion No. 4999

April 21, 1976.

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You have requested my opinion as to whether a prosecuting attorney or a county medical examiner has the authority to order that an autopsy be performed at a facility outside the state.

The county medical examiner statute, 1953 PA 181, § 7; MCLA 52.207; MSA 5.953(7), states:

“Upon the written order of the prosecuting attorney or the attorney general or upon the filing of a petition signed by 6 electors of a county, the county medical examiner or deputy shall conduct an investigation, as provided in section 5, of the circumstances surrounding any death believed to have occurred in the county. Upon determination of the prosecuting attorney or upon the determination of the examiner an inquest shall be held by a district court judge or a municipal court judge.”

1953 PA 181, § 5; MCLA 52.205; MSA 5.953(5), referred to in 1953 PA 181, § 7, *supra*, states:

“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. If the investigation is for the reason only that the dead person has had no medical attendance during 48 hours prior to the hour of death, and if the dead person had chosen not to have medical attendance because of his bona fide held religious convictions, removal shall not be required unless there is evidence of other conditions stipulated in section 3. *If there is no public morgue, then the body may be removed to such private morgue as the county medical examiner has designated.* 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. The names of designated representatives shall be filed with the local medical and law enforcement agencies and posted in the office of the county clerk at least 15 days before becoming effective. The law enforcement officer or representative shall not be an agent or employee of any person or funeral establishment licensed under Act No. 268 of the Public Acts of 1949, as amended, receive, directly or indirectly, any remuneration in connection with the disposition of the body or make any funeral or burial arrange-

ments without approval of the next of kin, if they be found, or the person responsible for the funeral expenses. *The county medical examiner may perform or direct to be performed an autopsy and shall then and there carefully reduce or cause to be reduced to writing every fact and circumstance tending to show the condition of the body and the cause and manner of death, together with the names and addresses of any persons present at the autopsy, which record he shall subscribe.* It shall be the responsibility of the medical examiner to ascertain the identity of the deceased and to notify immediately as compassionately as possible the next of kin of the death and the whereabouts of the body. *The county medical examiner may conduct an autopsy whenever he determines that an autopsy reasonably appears to be required pursuant to the provisions of law. After the county medical examiner or his deputy has made diligent effort to locate and notify the next of kin, he may order and conduct the autopsy with or without the consent of the next of kin of the deceased.* The county medical examiner or his deputy shall keep a written record of such efforts to locate and notify the next of kin for a period of 1 year from the date of the autopsy. *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.*" (emphasis added)

Pursuant to these statutory provisions, therefore, the prosecuting attorney's role in these procedures is limited to the issuance of the written order to the county medical examiner to conduct an investigation. After issuance of the order by the prosecuting attorney, the county medical examiner assumes full control and responsibility for removing the dead body and arranging for an autopsy if he believes that one "reasonably appears to be required pursuant to the provisions of law."

Where the aforementioned statutory provision is complied with, and a determination is made that an autopsy is required, the county medical examiner "may perform or direct to be performed an autopsy . . ." 1953 PA 181, § 5, *supra*.

An examination of Michigan cases has failed to find any precedent regarding the authority of a county medical examiner to transfer a body out of state for the performance of an autopsy. However, in *Green v Department of Corrections*, 386 Mich 459, 465; 192 NW2d 491 (1971), the Court was concerned with an analogous legal principle and held as follows:

" . . . the legislature has created the Department of Corrections for the purpose of concentrating with that department the primary (but not exclusive of course) responsibility for the well-being as well as the disciplinary rehabilitation of state-sentenced prisoners, whenever such prisoners are held in any penal institution over which Corrections has jurisdiction and the power—whether exercised or not—to promulgate rules and standards relating thereto. *No matter where Corrections may*

choose lawfully or need lawfully to incarcerate or permit incarceration of any such prisoner, its duty to him remains constant and may not be subjected to delegation; whether or not others are concurrently accountable for breach of the same or a corresponding legal duty." (emphasis added)

Thus, the Department of Corrections may choose to permit incarceration of a prisoner in its custody at another location. It may also be noted that in *People of the State of Michigan v Dale Otto Remling*, Jackson Circuit Judge Charles J. Falahee ordered a subject defendant transferred to the Federal Bureau of Prisons to serve a Michigan sentence imposed upon him.

It follows that, if a prisoner may be incarcerated at a location outside the state pursuant to general powers granted to an agency, a county medical examiner may transfer a body for an autopsy out of state where 1953 PA 181, § 5, *supra*, authorizes the county medical examiner to "direct to be performed an autopsy."

Thus, it is my opinion that a county medical examiner does have the authority to order that an autopsy be performed at an out-of-state facility but he continues to be responsible for the duties imposed upon him by law.

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PUBLIC HEALTH, DEPARTMENT OF: Confidential records

RECORDS AND RECORDATION: Confidentiality

LEGISLATURE: Committee subpoena of confidential records

A department of state government is obligated to comply with a subpoena issued by a legislative committee provided that the investigation is in aid of a legislative purpose and the information subpoenaed is pertinent to the investigation.

The director of the Department of Public Health, after being served with a subpoena issued by a legislative committee, must provide the committee with confidential clinical data. However, the members of the legislative committee are under a duty to respect the rights of privacy of the participants in the clinical study.

Opinion No. 4998

April 22, 1976.

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You have requested advice in regard to providing, to a legislative committee, certain information gathered by the Department of Public Health in a study to determine whether ingestion of PBB contaminated foods had caused adverse effects on human health. Specifically, you state that a