

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL  
State of California

GEORGE DEUKMEJIAN  
Attorney General

---

OPINION	:	No. 81-905
	:	
of	:	<u>FEBRUARY 18, 1982</u>
	:	
GEORGE DEUKMEJIAN	:	
Attorney General	:	
	:	
Jack R. Winkler	:	
Assistant Attorney General	:	
	:	

---

THE HONORABLE RALPH R. KUCHLER, COUNTY COUNSEL FOR  
MONTEREY COUNTY, has requested an opinion on the following question:

When the coroner orders a body removed from the place of death to a mortuary for further investigation into the cause of death, may the costs of such removal be charged to the estate of the deceased or to the person responsible for interment of the body?

CONCLUSION

When the coroner orders a body removed from the place of death to a mortuary for further investigation into the cause of death, the costs of such removal are not chargeable to the estate of the deceased or the person responsible for interment of the body unless such transportation was also necessary in performance of the coroner's duty to inter

the remains or unless the person responsible for the cost of interment has agreed to pay such transportation costs.

## ANALYSIS

When a person dies the right and duty to inter the remains devolves upon the next of kin. Health and Safety Code section 7100 provides in part:

"The liability for the reasonable cost of interment devolves jointly and severally upon [the next of kin] and upon the estate of the decedent; . . ."

The "funeral expenses" are proper charges against the decedent's estate with a priority of payment second only to the expenses of administration. (Prob. Code, § 950.) The estate of the deceased is primarily liable for funeral expenses and the liability of others under section 7100 is secondary. (*Benbough Mortuary v. Barney* (1961) 196 Cal.App.2d Supp. 861.)

A coroner has two separate statutory duties in respect to dead bodies. His "Article 1"<sup>1</sup> duties relate to interring the body in certain situations, and his "Article 2"<sup>1</sup> duties relate to the determination of the cause of death of the deceased.

Section 27460 of Article 1 provides:

"If an inquest is held by the coroner and no other person takes charge of the body of the deceased, he shall cause it to be interred decently."

Article 1 then provides summary procedures for applying any personal estate the decedent had to the payment of the expenses of the funeral of the deceased. Any deficiency is made a county charge and any excess is turned over to the decedent's legal representative or the county treasurer. (Gov. Code, §§ 27462, 27465, 27466.) It should be noted that the coroner has no Article 1 duty unless no other person takes charge of the body of the deceased.

Turning to his Article 2 duties, Government Code section 27491 makes it the duty of the coroner "to inquire into and determine the circumstances, manner and cause of all violent, sudden or unusual deaths; unattended deaths; . . ." and numerous other deaths under specified circumstances. Government Code section 27491.2 provides:

"The coroner or his appointed deputy, on being informed of a death and finding it to fall into the classification of deaths requiring his inquiry,

---

<sup>1</sup> These refer to Article 1 (commencing with § 27460) and Article 2 (commencing with § 27490) respectively of chapter 10, part 3, division 2 of the Government Code.

may immediately proceed to where the body lies, examine the body, make identification, make inquiry into the circumstances, manner, and means of death, and, as circumstances warrant, either order its removal for further investigation or disposition, or release the body to the next of kin. For purposes of inquiry, the body of one who is known to be dead under any of the circumstances enumerated in Section 27491 shall not be disturbed or moved from the position or place of death without permission of the coroner or his appointed deputy."

Government Code section 27491.4 provides in part:

"For the purpose of inquiry the coroner may, in his discretion, take possession of the body, which shall include the authority to exhumate such body, order it removed to a convenient place, and make or cause to be made a post mortem examination or autopsy thereon, . . ."

Health and Safety Code section 7102 provides:

"When a person is charged by law with the duty of interment he is entitled to the custody of the remains for the purpose of interment or, with respect to cremated remains, for the purpose of burial at sea in accordance with the provisions of this division; except that in any case where a coroner is required by law to investigate the cause of death, the coroner is entitled to the custody of the remains of the person whose death is the subject of investigation until the conclusion of the autopsy or medical investigation by the coroner. Any person in whose possession such remains are found, shall, upon demand by the coroner, surrender such remains to him."

The question presented postulates that the coroner has ordered the removal of a body from the place of death to a mortuary to further inquire into the cause of death. We are asked whether the estate of the deceased or the next of kin are liable for the cost of such removal. We assume for purposes of this opinion that the reasonable cost of transporting a body to the mortuary to prepare the body for interment is a "funeral expense" within the meaning of Government Code section 27461 and Probate Code section 950 and is included in the "reasonable costs of interment" for which the estate of the deceased and next of kin are liable under Health and Safety Code section 7100.

Where the coroner transports a body to the mortuary pursuant to his Article 1 duty to inter the remains, either with or without the additional purpose of investigating the cause of death pursuant to his Article 2 duties, the costs of such transport are properly charged to the decedent's estate as a funeral expense. (Gov. Code, § 27941; Prob. Code, §

950.) Where, however, the coroner transports a body to the mortuary for the sole purpose of investigating the cause of death the costs of such transport may not be considered funeral expenses chargeable to the decedent's estate because the investigation of the cause of death is not part of or necessary to the funeral.

When the coroner takes possession of the body and orders its removal for further investigation of the cause of death the order may be directed to county personnel who will accomplish the removal in county vehicles at county expense. Lacking the needed personnel or equipment the coroner may instead engage a private party to transport the body to the place of examination. In such case the private party would look to the one who hired him to pay the agreed costs of such transportation. This would be the coroner in the usual case. It is conceivable that the coroner and next of kin could agree that the body be taken to a mortuary which would serve the needs of both, first to investigate the cause of death, and then, when the coroner releases the body to the next of kin, to prepare the remains for burial. In such event the coroner and next of kin may find it advantageous to share the transportation expense and jointly order private transportation of the body to the mortuary. In any event the party transporting the body must look to the parties hiring him for compensation and may not look to strangers to the contract for his pay.

We conclude that when the coroner orders a body removed from the place of death to a mortuary for further investigation into the cause of death, the costs of such removal are not chargeable to the estate of the deceased or the person responsible for interment of the body unless such transport was necessary in performance of the coroner's duty to inter the remains or unless the person responsible for the interment has agreed to pay such costs.

To complete the analysis of the responsibility to pay for such costs we note that Government Code section 29604 provides:

"The accounts of the coroner for such services as are not otherwise provided for are county charges."

Government Code section 27491.3 provides that a coroner may lock the premises of the deceased to safeguard the decedent's property during the investigation of the cause of death and that the costs arising from the premises being locked are proper charges against the decedent's estate. We have found no similar provision making the costs of transporting a body on order of the coroner for further investigation of the cause of death chargeable to the estate of the deceased or others. We conclude that such costs are accounts of the coroner for services "not otherwise provided for" which are made county charges by Government Code section 29604.

\*\*\*\*\*