

OFFICIAL OPINION NO. 77-23, Appointment of a state medical examiner

March 17, 1977

Miss Judith K. Call, Secretary
Department of Health
Foss Building
Pierre, South Dakota 57501

Official Opinion No. 77-23

Appointment of a state medical examiner

Dear Miss Call:

You have requested an opinion based on the following factual situation:

FACTS:

The Department of Health is preparing its portion of the State Emergency Plan. It has come to our attention that there is no responsible state agency in charge of the functional area of mortuary service at anytime. The Department is concerned with the organization of mortuary services during an emergency or disaster and contends that such responsibility should be assigned prior to such an occurrence.

SDCL 34-1-17(3) and (8) provide that the Public Health Advisory Board has authority to adopt rules and regulations for location of cemeteries and removal and burial of the dead, and the control of the accumulation of filthy and unwholesome matter injurious to the public health.

Based on the above factual situation you have asked the following questions:

QUESTIONS:

1. Does the Public Health Advisory Board have the authority to make a regulation to appoint a state medical examiner?

2. At what times would a state medical examiner have supervisory control over the activities of the county coroner:
 - a. during a period of time designated by the regulation;
 - b. during a gubernatorially or presidentially declared emergency/disaster involving dead human bodies; or
 - c. during an undeclared emergency/disaster situation involving dead human bodies?

IN RE QUESTION NO. 1:

The functions of the Public Health Advisory Committee are specified in SDCL 34-1. As you have pointed out in the factual situation, SDCL 34-1-17 authorizes the Committee to adopt rules "as may be necessary to preserve and protect the public health" in a number of rather broad areas of health preservation. An argument could certainly be made that said rule-making authority is sufficient for the committee to establish the office of "state medical examiner" and prescribe the duties thereof. In the absence of any other pertinent statutory language, I would be more inclined to consider that position. However, in my opinion there are other statutes which provide a means for accomplishing the intended purpose.

Therefore, in my opinion, the hereinafter discussed statutes can be utilized to implement the desired emergency mortuary service program and express the intent of the Legislature in this regard.

First, pursuant to SDCL 34-1-9, the Secretary of the Department of Health appoints all necessary personnel. With regard to division heads, the Public Health Advisory Committee has veto power inasmuch as it must approve such appointments. In my opinion, this statute clearly defines the roles of the Secretary and the Committee with regard to department personnel.

A second major consideration in my decision was S.B. 18 (1977) which has been enacted into law and will become effective July 1, 1977. This bill, which revises and strengthens the South Dakota civil defense laws, requires the Adjutant General to prepare and implement a comprehensive emergency and disaster service plan. Part of the plan is a

training program for "emergency disaster service workers" who are defined as "any full or part-time paid, volunteer or auxiliary employee of this state," The ultimate purpose for such training is to ensure that adequately trained and equipped personnel will be available to cope with emergency situations, be it to protect property or public health.

In giving full meaning and effect to SDCL 34-1-9 and the provisions of S.B. 18, I conclude that these provisions, rather than SDCL 34-1-17, are the basis and authority for creation of the office or position of "state medical examiner." The answer to your first question is no.

IN RE QUESTION NO. 2:

From the above discussion it is apparent that I cannot specifically answer your second question. The comprehensive plan and cooperative agreements entered into pursuant thereto should define the working relationship and structure between state and local governments.

Respectfully submitted,

William J. Janklow
Attorney General

WJJ:LLV:rw