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OPINION COMMITTEE



TEXAS FUNERAL SERVICE COMMISSION

Janice McCoy, Executive Director

RQ-0069-KP

FILE # ML-47861-15
ID. # 47861

November 9, 2015

Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Committee Members:

The Code of Criminal Procedure, Chapter 49.10 (h), requires a county, through the elected Commissioners Court, pay a reasonable fee for transportation of a body to a place for the performance of an autopsy ordered by the Justice of the Peace.

At times the county requests a private business, such as a licensed funeral establishment, transport the body. Referencing Kyle Smith's brief, questions arise about the post autopsy disposition of the body. Who is responsible for transporting the body to the final destination? If the funeral home must retrieve the body, who is responsible for the transportation costs – the county or deceased's agent?

To that end, the Texas Funeral Service Commission is seeking an opinion regarding whether the county must pay for the body to be transported from the autopsy location to the originating county.

Please contact the Commission's Executive Director Janice McCoy for questions or clarification.

Sincerely,

A handwritten signature in cursive script that reads "Jean L. Olinger".

Jean L. Olinger, D.M.
Presiding Officer

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TEXAS FUNERAL SERVICE COMMISSION

BRIEF IN SUPPORT OF REQUEST FOR ATTORNEY GENERAL OPINION

This brief is in support of the request for an AG Opinion from the Texas Funeral Service Commission (Commission). This request stems from a question that has been raised by several Funeral Directors licensed by the Commission.

The Texas Code of Criminal Procedure (CCP), Chapter 49.10(h) states, "The Commissioners' Court shall pay a reasonable fee for the transportation of a body to a place where an autopsy can be performed under this article if a justice of the peace orders to be transported to the place." Based on this provision of the CCP, Texas counties have been paying Funeral Establishments for the expense of transporting a deceased body to a place where an autopsy can be performed.

The intent of CCP Chapter 49 is to authorize a Justice of the Peace to obtain an autopsy of a deceased person. To enable the Justice of the Peace to fulfill the duty of obtaining an autopsy as mandated by Section 49.10(e), the Commissioners' Court is given the authority to pay certain necessary expenses. Subsection (b) states that the Commissioners' Court shall pay a reasonable fee for a consultation with a county health officer or physician concerning the necessity of obtaining an autopsy. Subsection (g) states that the Commissioners' Court shall pay a reasonable fee to a physician to perform an autopsy. Subsection (h) states the Commissioners' Court shall pay for the transportation of a body to a place where an autopsy can be performed.

The Commission is requesting an AG Opinion regarding whether the Commissioners' Court must also pay the fee for a Funeral Establishment to transport the body of the deceased person from the place where the autopsy is conducted to the place designated by the authorized agent for final disposition, whether by burial or cremation. The Legislative intent was clearly to cover the costs related to obtaining an autopsy. This includes consultation fees, physician fees, and transportation fees. The Commission believes that this would also include the cost of transportation of the body once the autopsy has been conducted. If this were not so, the cost would have to be borne by the Funeral Establishment, and would certainly be passed on to the family or person responsible for the final disposition of the deceased.

An AG Opinion clarifying this matter would be greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Kyle E. Smith".

Kyle E. Smith
Staff Attorney
Texas Funeral Service Commission

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