



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**PRICE DANIEL**

**ATTORNEY GENERAL**

August 22, 1950

Hon. Geo. W. Cox, M.D.  
State Health Officer  
Department of Health  
Austin, Texas

Opinion No. V-1094.

Re: The legality of crema-  
tion without first ob-  
taining the certificate  
of a Justice of the  
Peace that an autopsy  
was performed or is un-  
necessary.

Dear Sir:

Your recent request for an opinion from this office reads in part as follows:

"A question has been raised by one of the crematories in this State concerning the proper interpretation of Section 2, Article 969, Code of Criminal Procedure.

"Please advise me if a certificate stating that an autopsy was performed or that no autopsy was necessary should be required in only those instances where the death record shows that an inquest was held? Or, should the owner or operator of a crematory before cremating any body demand and be furnished with a certificate signed by the justice of the peace of the precinct in which the death occurred stating that an autopsy was performed or that no autopsy was necessary?"

Section 2 of Article 969, V C.C.P., provides:

"Before any body, upon which an inquest is authorized by the provisions of Article 968, Code of Criminal Procedure, 1925, as herein amended, can be lawfully cremated, an autopsy shall be performed thereon as provided in this Act, or a certificate that no autopsy was necessary shall be furnished by the Justice of the Peace. Before any dead body can be lawfully cremated, the owner or operator of

the crematory shall demand and be furnished with a certificate signed by the Justice of the Peace of the justice precinct in which the death occurred showing that an autopsy was performed on said body or that no autopsy thereon was necessary. No autopsy shall be required by the Justice of the Peace as a prerequisite to cremation in case death was caused by the pestilential diseases of Asiatic cholera, bubonic plague, typhus fever, or smallpox, named in Rule 77, Sanitary Code of Texas, Article 4477, Revised Civil Statutes of Texas, 1925. All certificates furnished the owner or operator of a crematory by any Justice of the Peace, under the terms of this Act, shall be preserved by such owner or operator of such crematory for a period of two (2) years from the date of the cremation of said body."

It must be admitted that this statute is not free from ambiguity.

It is stated in Texarkana & Ft. S. Ry. v. Houston Gas & Fuel Co., 121 Tex. 594, 601, 51 S.W.2d 284, 287 (1932):

"In construing statutes enacted directly by the Legislature it is the duty of the court to look to the entire act, including the caption, the body of the act, and even the emergency clause, to determine the legislative intent. When the legislative intent is once determined it is the law."

In Hidalgo County Drainage Dist.No.1 v. Davidson, 102 Tex. 539, 543, 120 S.W. 849, 851 (1909), it is stated at page 851:

"In determining the sense in which the language was used by the Legislature, we will look to context and to the purpose of the Legislature in enacting the law."

Also, in Longoria v. State, 126 Tex. Crim. 362, 363, 71 S.W.2d 268, 269 (1934), we find the following:

"We further observe that in accordance with settled rules of interpretation of statutes, even when the language used is susceptible of two meanings, the courts are to give it that meaning which will conform to the scope of the act and carry out the purpose of the statute. Mr. Black, in his Hornbook on Interpretation of Laws, p. 56, lays down the rule that, where the language used is ambiguous, or admits of more than one meaning, it is to be taken in such a sense as will conform to the scope of the act and carry out the purpose of the statute."

House Bill 217, Acts 50th Leg. 1947, ch.369, p.745, amended Articles 968, 969, 970, 971, and 1053, Vernon's Code of Criminal Procedure, and Section 1 of House Bill 613, Acts 46th Leg. 1939, ch. 1, p. 343. All of these statutes deal with inquests.

The emergency clause of House Bill 217, supra, provides in part:

"The fact that Justices of the Peace and physicians and chemists are now underpaid for their services in connection with the holding of inquests and the performing of autopsies on dead bodies; the fact that public health officers and registrars of vital statistics information now have no means of ascertaining the cause of death, in certain cases, as required by the Sanitary Code of Texas; and the further fact that, as a safeguard in the detection and prevention of crime, dead bodies should not be cremated until the cause of death is determined; . . ."

We believe that the Legislature, in passing House Bill 217, was considering only those instances in which inquests were authorized to be held. To hold that such a certificate is required in all cases would be requiring the Justice of Peace to issue a certificate as to facts of which he could have no direct knowledge in the absence of an investigation. The statutes do not authorize investigations by the Justice of the Peace except in connection with inquest proceedings.

Therefore, we agree with you that a certificate stating that an autopsy was performed or that no autopsy was necessary should be required only in those instances where the death record shows that an inquest was held.

SUMMARY

A certificate stating that an autopsy was performed or that no autopsy was necessary is a prerequisite for cremation only when the death record shows an inquest was held. The operator of a crematory is not required to get a certificate signed by the Justice of the Peace of the precinct in which the death occurred, stating that an autopsy was held or that no autopsy was necessary, in any other case before cremating a body.

APPROVED:

J. C. Davis, Jr.  
County Affairs Division

Everett Hutchinson  
Executive Assistant

Charles D. Mathews  
First Assistant

BA:mf:mw

Yours very truly,

PRICE DANIEL  
Attorney General

By *Bruce Allen*  
Bruce Allen  
Assistant