



STATE OF ARKANSAS  
ATTORNEY GENERAL  
LESLIE RUTLEDGE

Opinion No. 2016-030

July 21, 2016

The Honorable John T. Vines  
State Representative  
123 Market Street  
Hot Springs, AR 71901-5308

Dear Representative Vines:

This is in response to your request for my opinion on several questions concerning coroners. Several of the questions center on a coroner's duties and the equipment necessary for a coroner to fulfill the statutorily mandated requirements of that office. As background for your questions, you have enumerated the following list of items that you say "are impliedly and/or explicitly required for a coroner in upholding his or her statutory obligations":

1. Transport – Cargo Vans, Pick-up trucks with campers, or SUV (Suburbans). Something that is long enough for first call cots. Blue lights and siren included; a radio will be required to communicate with dispatch and possibly law enforcement during transport;
2. Cots – Mortuary cots, at least 2;
3. Body Bags, white sheets, paper bags to cover hands and feet;
4. Personal Protective Equipment (PPE) – gloves, aprons, Tyvek suits, masks, safety goggles, rubber boots;
5. Camera – Digital point and shoot camera, along with card, card reader and batteries;
6. Office Space – The Office of the Coroner has a duty to complete death certificates, manage data and caseloads for coroner's required reports. Therefore, each county should have an official coroner's office where he/she can conduct daily required duties. The county should afford space separate from the funeral home of the elected official if he/she is an owner of a funeral home.

Each office should have their own computer system where the office can keep track of coroner cases. This not only assists the coroner, but also eases the transition from one coroner to the next and assures a place to maintain records. These are public records and are the property of the county, not the coroner. It is vitally important that the county have control of the records to include where and how these records are created, completed, stored and accessed;

7. Morgue – Each county should have its own morgue. If not, then an agreement should be made with local hospitals or funeral home for use of coolers;
8. County-issued cell phone or reimbursement for work use of cell phone;
9. Toxicology Supplies – Spinal needles, and Blood/Vitreous needles, vacutainers, syringes.

With this background in mind, you ask:

1. Per the Arkansas Code Annotated and any relevant Attorney General opinions, what must a quorum court provide for in the appropriation for the office of coroner? Must the quorum court provide for Items 1-9?
2. Per the Arkansas Code Annotated and any relevant Attorney General opinions, what is necessary to perform the statutorily mandated duties? Are Items 1-9 necessary?
3. Per the Arkansas Code Annotated and any relevant Attorney General opinions, are there any specific requirements in the sections of the Arkansas Code Annotated?
4. Per the Arkansas Code Annotated and any relevant Attorney General opinions, what transportation, equipment, office space, cooler storage is necessary?
5. Are coroners entitled to APERS according to Attorney General Opinion No. 2006-187, if a coroner can demonstrate that he or she works as a coroner for more than 80 hours per month for the required 90 day minimum? What is the threshold at which APERS will be triggered?

6. Can coroners be compensated as independent contractors? Can coroners, in light of the minimum and maximum salary under Amendment 55 and Ark. Code Ann. § 14-14-1204, be paid as independent contractors?

## **RESPONSE**

With regard to Questions 1 through 4, the relevant statutes do not fix the necessary expenses incidental to the proper performance of coroners' duties. I believe a statute regarding certain mutual aid agreements among coroners is an indication of what expenditures are necessary for the county to fulfill its obligation to provide for the services that state law requires of coroners. But it is the role of the quorum court to appropriate sufficient amounts to cover expenses incurred by the coroner in the performance of the official duties of that office. Any alleged insufficiency in the appropriation will need to be reviewed by a trier of fact. In response to Question 5, a coroner will be entitled to membership in the Arkansas Public Employees Retirement System (APERS) if he can demonstrate that: 1) he works at least 80 hours per month during a 90 consecutive-day period and 2) his rate of pay is not less than the federal minimum wage. I have found no controlling authority on your last question, but I believe it is clear that state law generally does not contemplate coroners performing their duties under a contract.

## **DISCUSSION**

*Question 1: Per the Arkansas Code Annotated and any relevant Attorney General opinions, what must a quorum court provide for in the appropriation for the office of coroner? Must the quorum court provide for Items 1-9?*

*Question 2: Per the Arkansas Code Annotated and any relevant Attorney General opinions, what is necessary to perform the statutorily mandated duties? Are Items 1-9 necessary?*

*Question 3: Per the Arkansas Code Annotated and any relevant Attorney General opinions, are there any specific requirements in the sections of the Arkansas Code Annotated?*

*Question 4: Per the Arkansas Code Annotated and any relevant Attorney General opinions, what transportation, equipment, office space, cooler storage is necessary?*

I will respond to these questions together because the applicable analysis and conclusions are the same.

The County Government Code provides in pertinent part:

A county government, acting through the county quorum court, shall provide, through ordinance, for the following necessary services for its citizens:

\* \* \*

All other services prescribed by state law for performance by each of the elected county officers or departments of county government.<sup>1</sup>

The coroner is an elected constitutional officer whose duties are prescribed by state law.<sup>2</sup> The bulk of the services prescribed by law for performance by the coroner, i.e., the “necessary services” of that office, are found at Ark. Code Ann. §§ 14-15-301–309 (Repl. 2013). Most significant for purposes of your questions are the coroner’s duties to conduct an investigation into, and report on, the cause and manner of death when he receives a report of a death:

When a death is reported to the coroner, he or she shall conduct an investigation concerning the circumstances surrounding the death of an individual and gather and review background information, including, but not limited to, medical information and any other information which may be helpful in determining the cause and manner of death.<sup>3</sup>

The coroner is authorized to issue subpoenas to secure pertinent records and relevant testimony in determining the cause and manner of death.<sup>4</sup> He is also

---

<sup>1</sup> Ark. Code Ann. § 14-14-802(a)(5) (Repl. 2013).

<sup>2</sup> Ark. Const. art. 7, § 46; Ark. Code Ann. § 14-14-1301(a)(9) (Repl. 2013).

<sup>3</sup> Ark. Code Ann. § 14-14-301. Certain deaths must be reported to the coroner, prosecuting attorney, and either the sheriff or the chief of police where the death occurred. Ark. Code Ann. § 12-12-315 (a)(1)(A)-(S) (Repl. 2009). The circumstances include apparent homicide, suicide, accidental death, or whenever the manner of death appears to be other than natural. *Id.* at (A), (L).

<sup>4</sup> Ark. Code Ann. § 14-14-302(b)(2).

authorized to take toxicological samples from the body.<sup>5</sup> When the coroner conducts the investigation, he is responsible for executing a death certificate and releasing the body for final disposition.<sup>6</sup> A written report of the investigation must also be completed.<sup>7</sup> If the death was a homicide, suicide, or an accident, the report must include certain specific information, including the location of the body, photographs, and the body's disposition.<sup>8</sup>

State law, therefore, clearly assigns to the county coroner the responsibility to investigate and report on the cause and manner of death in certain circumstances. Additionally, although a coroner's investigation does not include criminal investigation responsibilities,<sup>9</sup> the coroner is required to assist law enforcement upon request.<sup>10</sup>

These necessary services must be adequately funded. This funding obligation includes reimbursing coroners for expenses they undoubtedly incur in discharging these necessary services. In this regard, a provision of the County Government Code states that reimbursement is to be provided under an appropriation for "operating expenses":

*All county and district officials and authorized deputies or employees are entitled to receive reimbursement of expenses incurred in the conduct of official and nondiscretionary duties under an appropriation for the operating expenses of an office, function, or service.* Reimbursement of expenses incurred in the performance of

---

<sup>5</sup> *Id.* at (c)(1) and (2).

<sup>6</sup> Ark. Code Ann. § 14-15-303. *See also* Ark. Code Ann. §§ 12-12-317(a) (Repl. 2009) and 2018-601(d) and (e) (Supp. 2013). If a postmortem examination has been performed, however, the certificate of death must be made by the state medical examiner or whoever performed the exam. Ark. Code Ann. § 12-12-317(b).

<sup>7</sup> Ark. Code Ann. § 14-15-302(e)(1).

<sup>8</sup> *Id.* at (e)(2).

<sup>9</sup> *Id.* at (a).

<sup>10</sup> *Id.*

discretionary functions and services may be permitted when authorized by a specific appropriation of the quorum court.<sup>11</sup>

A coroner's operating expenses are not fixed by state law. Nor does any statute fix the expenses of any function or service provided by the coroner. In the absence of a statute fixing expenses, I cannot identify particular expenses that must be included in an appropriation for a coroner's operating expenses.<sup>12</sup> I believe questions as to specific expenses must be addressed instead by the quorum court and analyzed based on an assessment of the coroner's specific statutory duties.<sup>13</sup>

I do note that many of the items you have enumerated in the background for your questions are also identified in Ark. Code Ann. § 14-15-309 as the types of items that coroners and the Arkansas Department of Human Services may enter mutual aid agreements to provide.<sup>14</sup> And consequently, that provision seems to indicate that those are the types of items the General Assembly contemplated would

---

<sup>11</sup> Ark. Code Ann. § 14-14-1207(a)(1) (Repl. 2015) (emphasis added).

<sup>12</sup> Compare Ark. Code Ann. § 21-6-305 (Repl. 2004) (imposing an obligation on the quorum court to appropriate funds for the county collector's automated record-keeping system). See also *Campbell v. Arkansas State Hospital*, 228 Ark. 205, 306 S.W.2d 313 (1957) (holding that a county was required to pay the expenses for court-ordered mental examinations of defendants, given that this was a court expense for which the counties were responsible by statute, and in light of a statute that required counties to reimburse the state hospital for such examinations).

<sup>13</sup> The appropriation power plainly lies with the quorum court. See Ark. Code Ann. § 14-14-801(a) and (b)(2) Repl. 2013) ("As provided by Arkansas Constitution Amendment 55, § 1, Part (a), a county government, acting through its county quorum court, may exercise local legislative authority not expressly prohibited by the Arkansas Constitution or by law for the affairs of the county. These powers include, but are not limited to, the power to ... [a]ppropriate public funds for the expenses of the county in a manner prescribed by ordinance."). Additionally, the Arkansas Supreme Court generally accords strong deference to a quorum court's determinations regarding what appropriations are necessary to fund county government operations. See *Venhaus v. Adams*, 295 Ark. 606, 612, 752 S.W.2d 20 (1988) ("Appropriations made by the quorum court are presumed to be reasonable...." (quoting *Union County v. Union County Election Comm.*, 274 Ark. 286, 623 S.W.2d 827 (1981)). As a general proposition, a county agency or official must live within the appropriation allotted by the quorum court unless it is unreasonable, in which case it can be further funded only by filing a claim as provided by law. *Union County*, 274 Ark. at 291, 623 S.W.2d at 830.

<sup>14</sup> Ark. Code Ann. § 14-15-309(b) (Repl. 2013).

generally be available to coroners.<sup>15</sup> Thus, although it does not fix the items as specific expenses that must be included in a coroner's operating expenses, it is an indication of what expenditures are necessary for the county to fulfill its obligation to provide for the services that state law requires of coroners.<sup>16</sup>

***Question 5: Are coroners entitled to APERS according to Attorney General Opinion No. 2006-187, if a coroner can demonstrate that he or she works as a coroner for more than 80 hours per month for the required 90 day minimum? What is the threshold at which APERS will be triggered?***

Counties are required to include in the membership of APERS "their employees, as defined in [Ark. Code Ann.] § 24-4-101(14), (17), and (27)."<sup>17</sup> As an elected officer whose compensation is paid by the county,<sup>18</sup> a coroner will fall within the definition of "county employee" and "employee" under section 24-4-101(14) and (17), respectively,<sup>19</sup> if two conditions are met: (1) The coroner must work at least 80 hours per month during a 90 consecutive-day period, and (2) his rate of pay

---

<sup>15</sup> I note that the list includes equipment for storing and transporting bodies, and in this respect it appears to buttress the conclusion that a coroner is generally responsible in death investigations for ensuring that the body is properly transported from the death scene. *Accord* Ops. Att'y Gen. 2012-003, 2009-093, 2009-050.

<sup>16</sup> With regard to "office space"—an item included in both section 14-15-309 and your list—it is also necessary to mention Ark. Code Ann. § 14-14-1307(b) (Repl. 2013). Under that provision, a county is not required "to provide justices of the peace, constables, coroners, or surveyors with a formal office." While it is, therefore, clear that a county is not obliged to provide the coroner with a "formal office," *id.*, I do not read into this statute any suggestion that a coroner does not incur office expenses in the course of performing the various duties of that office. To the contrary, the coroner's investigation and reporting requirements undoubtedly entail data management and other office-related functions for which expenses are incurred.

<sup>17</sup> Ark. Code Ann. § 24-4-302 (Repl. 2014).

<sup>18</sup> Ark. Const. art. 7, § 46; Ark. Code Ann. § 14-14-1204(a) and (j) (Repl. 2013) (requiring quorum court to fix the county coroners' annual salary within the specified minimum and maximum amounts).

<sup>19</sup> Section 24-4-101(14) defines "county employees" as "all *employees* whose compensations are payable ... by county participating public employers" (emphasis added); and section 24-4-101(17) defines "employees" in relevant part as "all *officers of a public employer* whose compensations were or are payable from funds appropriated by the public employer...." Ark. Code Ann. § 24-4-101(14)(A) and (17)(A)(i)(a) (Repl. 2014). The other referenced subsection—section 24-4-101(27)—defines "nonstate employees" and is not dispositive of your inquiry.

must not be less than the federal minimum wage.<sup>20</sup> These two conditions are included in section 24-4-101(17), wherein it specifically excludes from the definition of “employee” the following:

(vii) Persons employed with the intent of working less than ninety (90) calendar days;

(viii) Persons who are employed for a period of more than ninety (90) consecutive calendar days but who do not qualify as full-time employees shall be excluded from membership. A person shall be considered a full-time employee if that person works at least eighty (80) hours per month during a period of ninety (90) consecutive calendar days;

(ix)(a)(1) Persons whose rate of pay does not constitute employment that is substantially gainful shall be excluded from membership.

(2) A rate of pay less than the federal minimum wage for the year shall not be considered employment that is substantially gainful.<sup>21</sup>

It should also be noted that Ark. Code Ann. § 24-4-101 commits the final decision as to who is a “county employee” for purposes of APERS eligibility to APERS’s Board of Trustees.<sup>22</sup>

---

<sup>20</sup> The previous Attorney General Opinion mentioned in your question addressed the status of a justice of the peace as a county employee for retirement purposes, and the analysis differs somewhat as to that office.

<sup>21</sup> Ark. Code Ann. § 24-4-101(17)(B). Ark. Code Ann. § 24-4-301(d) (Repl. 2013) provides that “all elected and appointed ... county constitutional officials shall be or become members of [APERS],” but I believe this provision must be read to encompass only those officials who meet section 24-4-101(17)’s definition of “employees” (which includes the conditions discussed above). As explained above, the latter definition applies pursuant to section 24-4-302, which is the more specific provision regarding the counties’ obligation to include their “employees” in APERS. And as also explained above, the term “employees” includes officers who are compensated by the county as long as the work hours and income requirements are met.

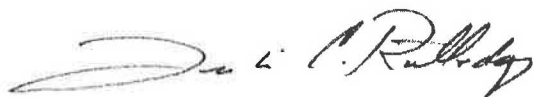
<sup>22</sup> *Id.* at 24-4-101(14)(B) (“In any case of doubt as to who is a county employee within the meaning of this act, the board shall have the final power to decide the question.”).



***Question 6: Can coroners be compensated as independent contractors? Can coroners, in light of the minimum and maximum salary under Amendment 55 and Ark. Code Ann. § 14-14-1204, be paid as independent contractors?***

Coroners hold elective office.<sup>23</sup> And their duties and salaries are set by statute.<sup>24</sup> State law, therefore, does not contemplate coroners serving under a contract. Accordingly, although I have found no controlling authority on point, it is my opinion that a county in all likelihood cannot compensate a coroner as an independent contractor.<sup>25</sup>

Sincerely,



LESLIE RUTLEDGE  
Attorney General

---

<sup>23</sup> Ark. Const. art. 7, § 46.

<sup>24</sup> Ark. Code Ann. § 14-14-1204(a) and (j)(2).

<sup>25</sup> I should emphasize that regardless of whether a county can, as a general proposition, establish an independent contractor relationship with a coroner, there is no question that the county cannot pay the coroner more or less than the salary fixed by law. *Cf. Helena-W. Helena Sch. Dist. v. Fluker*, 371 Ark. 574, 579-80, 268 S.W.3d 879, 883-84 (Ark. 2007) (observing that the county could not legally contract with the circuit clerk to pay overtime because “the clerk was an elected county officer with statutory duties and a fixed salary”—stating: “This court has specifically held that even a contract to pay an officer more or less compensation than that fixed by law is contrary to public policy and void.”) (citing *City of Stuttgart v. Elms*, 220 Ark. 722, 249 S.W.2d 829 (1952)). Additionally, as an officer whose compensation is paid by the county, a coroner’s membership in APERS turns on the two conditions noted in response to Question 5 above, and not on whether the coroner might be paid as an independent contractor.