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OPINION COMMITTEE

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

Re: Request for Opinion

FILE # ML-43892-04

Dear Sir:

I.D. # 043892

In your recent opinion, GA-0235 (August 19, 2004), it is stated that a "county may dispose of remains [of paupers] by burial, by donating the body to a medical facility, or by cremation." The source for this statement is Op. Tex. Att'y Gen. No. JC-0228 (2000), in which your office sought to harmonize Sections 694.002 and 711.002 of the Health & Safety Code, concluding that a pauper's remains may be cremated if a commissioners court so opts.

Omitted from both opinions is consideration of Section 691.023 of the Health & Safety Code.

Section 694.002 provides:

(a) The commissioners court of each county shall provide for the disposition of the body of a deceased pauper. The commissioners court may adopt rules to implement this section.

(b) The commissioners court shall consider any information, including the religious affiliation of the deceased pauper, provided by a person listed in Section 711.002(a).

Tex. Health & Safety Code Ann. §694.002 (Vernon 2003). It is interesting to note that in 1999 the legislature amended this section to specifically delete "interment or cremation" of paupers unless any "relative or friend" objected as an option for the commissioners court to adopt. What is an appropriate "disposition" under the current statute is not defined.

Under Section 711.002:

- (e) If there is no person with the duty to inter under Subsection (a) and:
 - (1) an inquest is held, the person conducting the inquest shall inter the remains; and
 - (2) an inquest is not held, the county in which the death occurred

shall inter the remains.

Tex. Health & Safety Code Ann. §711.002(e) (Vernon 2003). Opinion JC-0228, followed by your opinion in GA-0235, presumes that a commissioners court may opt for cremating paupers' remains, although those opinions apparently rely solely on a reading of Section 694.002.

However, Chapter 691 of the Health and Safety Code deals with the State Anatomical Board. Under that statute, political subdivisions having charge or control of a body not claimed for burial, or a body required to be buried at public expense, are mandated to notify the Anatomical Board for delivery of the body for ultimate delivery to a school of medicine.

(b) If the board does not require a political subdivision or agency of the political subdivision to deliver a body under this section, the political subdivision *shall pay all costs of preparation for burial, including costs of embalming.*

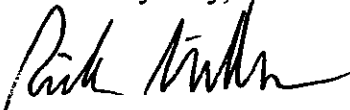
Tex. Health & Safety Code Ann. §691.023(b) (Vernon 2003) [Emphasis added].

I have checked with the Texas Anatomical Board, and have been advised that, as a matter of policy, it is no longer accepting paupers' bodies from counties, primarily because there is an adequate supply of bodies from voluntary donations, and because of concern over liability issues. Thus, even if a county does follow the dictates of Chapter 691, it would be a perfunctory exercise only; the county would still be responsible for the "disposition" of the remains, and, if Section 691.023 is followed, counties appear to be required to embalm and bury pauper remains, not cremate them. The discussion in Opinion JC-0228 concerning more specific provisions prevailing over more general statutes would seem to also apply in this conflict.

Thus the question: Is a commissioners court statutorily prohibited from adopting an order authorizing cremation as a means of disposing of a pauper's remains?

Thank you for your consideration of this request.

Yours very truly,



Rick Miller
Bell County Attorney