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**ARIZONA ATTORNEY GENERAL**

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*Yours truly*  
*8/5/52*

Dr. M. W. Conway, Director  
Arizona State Hospital  
2500 E. Van Buren Street  
Phoenix, Arizona

Dear Doctor Conway:

This is in reply to your letter of July 19, 1952, wherein you ask our opinion on two questions. The first one being:

"Do the laws of Arizona presently require a sheriff to return to the Arizona State Hospital escaped patients whenever picked up on the outside, or are we obligated to send for them ourselves?"

We have searched the statutes regarding insane persons, also the requirements of the board of supervisors to pay expenses of county officers, and the duties of the sheriff of the various counties. In none of them have we found a law that specifically requires the sheriff to return escaped patients. Paragraph 27, of Section 17-309 ACA 1939, sets out the duties of the supervisors of the county regarding insane persons, as follows:

"Contract for the transportation of insane persons from their county to the State Hospital for the Insane, or direct the sheriff to transport such persons and allow the expenses thereof;"

Section 8-309 ACA 1939 provides definitely for the supervisors to pay the expenses of transporting adjudged insane persons to the hospital as follows:

"The board of supervisors of the county shall cause such person to be conveyed to the state hospital and shall provide for the same confinement and care of such person until placed therein, and the costs and charge therefor shall be a county charge."

Each of these sections apparently presumes that the county charge will end at the time the patient is placed in the hospital. The Legislature, in directing how an individual should get into the hospital, sets up the entire procedure in Section 8-307, and then states as follows:

" \* \* \* If the court finds that such person is mentally ill, and by reason of his mental illness he be in danger, if at liberty, of injuring himself, or the person or property of others, it shall order and direct the confinement of such person in the state hospital, or to the veterans administration pursuant to section 42-319, Arizona Code of 1939, and he shall be confined therein and not discharged therefrom until sufficiently restored to reason, unless the order of commitment be for observation as provided by law." (Emphasis supplied)

Section 8-211 ACA 1939, as amended, prescribes the duties of the superintendent of the hospital as follows:

"The superintendent shall be appointed by the board. He shall have charge of the state hospital, supervise and direct its activities, subject to the provisions of law and the rules and regulations of the board, and be directly responsible to the board for carrying out the purpose for which the hospital is maintained."

The purpose of the hospital is set out in Section 8-205 ACA 1939, as amended:

"A state hospital for the insane shall be maintained for the care and treatment of persons who are adjudged insane and such other mentally diseased persons as may be admitted in accordance with law. \* \* \*"

We find by looking over these quoted sections of our statutes that the superintendent shall keep a patient sent to the institution and treat him until sufficiently restored to reason. You can see that the law is silent regarding your question. While it is presumed that the sheriff of the various counties will assist in

apprehending escaped patients and in some instances may return them to the hospital, but we fail to see wherein the statutes require the sheriff to do that. The statutes likewise direct that the superintendent shall retain the patient in the hospital until discharged.

We are therefore of the opinion that the laws of Arizona do not require a sheriff to return escaped patients to the Arizona State Hospital.

Your second question is:

"I've been requested by certain members of the embalmers group of Phoenix to permit them to take to their local undertaking establishments the bodies of patients at this institution immediately after death for the purpose of embalming them even before consent has been secured from the nearest of kin or the guardian."

We fail to find any statute requiring you to deliver the bodies of deceased patients to any undertaker without the consent of relatives or friends who may be responsible for the payment of the bill. However, if you should deliver the body to a local undertaker you would not be responsible for the payment of the embalming expense. Neither would the relatives be responsible and the undertaker could not collect, but it might put the relatives in an embarrassing position if you did that before they gave their consent. Neither the statutes nor the rules of the board of health require that a body be embalmed before burial or shipment unless it is being transported out of the state.

Article 6 of Chapter 68, which is Sections 68-601 through 68-621, as amended, of the Arizona Code, provide the procedure necessary for you to follow regarding the securing of a burial permit and making a report to the local registrar of vital statistics, etc., which, of course, you have been following. We call your attention specifically to Section 68-603, as amended by the 1952 Legislature, the pertinent parts to your question being as follows:

"(a) The body of a dead person or fetus shall not be interred, deposited in a vault, cremated or otherwise disposed of, removed from a registration district, or held more than three days after death, except upon a burial-transit permit issued by the local registrar of the district in

which the death occurs or the body is found, and such permit shall not be issued until a death or fetal death certificate is filed with the local registrar in accordance with the requirements of law and regulations of the state board of health.

\* \* \* \* \*

(b) The state board of health may make regulations in conformity with the public health laws, relating to the disposal, transportation, interment or disinterment of the dead. \* \* \*

Paragraph (b) of Section 68-609, as amended by the 1952 Legislature, is as follows:

"(b) A certificate of death or a certificate of fetal death, on forms prescribed by the state department of health, shall be filed with the local registrar of the district in which a death or fetal death occurs within three days after the occurrence.  
\* \* \* \*

(c) Any person who knowingly inserts in a birth or death certificate false information as to any matter covered therein or who knowingly imparts to another false information as to any fact required to be shown in a birth or death certificate with the intent that such information shall be placed therein is guilty of a misdemeanor."

The 1952 enactment will become effective October 1, 1952, and of necessity any rule that the board of health may make in accordance with the 1952 enactment will not become effective before the effective date of the Act.

We fail to find any law or rule that requires you, or authorizes you, to turn the bodies over to local undertaking establishments.

Very truly yours,

FRED O. WILSON  
Attorney General

CHAS. ROGERS  
Assistant Attorney General

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