

Medical examiner, release of autopsy photographs

Number: INFORMAL

Date: December 13, 2006

Subject:

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Dr. R.H. Imami
Medical Examiner, District 22
18130 Paulson Drive
Port Charlotte, Florida 33954

Dear Dr. Imami:

As the Medical Examiner for District 22 of the State of Florida, you ask whether you must release autopsy photographs to the county attorney's office when you are unsure whether the request is in furtherance of its official duties.

Section 406.135(1), Florida Statutes, states:

"A photograph or video or audio recording of an autopsy in the custody of a medical examiner is confidential and exempt from the requirements of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that a surviving spouse may view and copy a photograph or video or listen to or copy an audio recording of the deceased spouse's autopsy. . . . *A local governmental entity, or a state or federal agency, in furtherance of its official duties, pursuant to a written request, may view or copy a photograph or video or may listen to or copy an audio recording of an autopsy, and unless otherwise required in the performance of their duties, the identity of the deceased shall remain confidential and exempt.* The custodian of the record, or his or her designee, may not permit any other person, except an agent designated in writing by the deceased's surviving relative with whom authority rests to obtain such records, to view or copy such photograph or video recording or listen to or copy an audio recording without a court order. . . ." (e.s.)

The plain language of the statute allows a local governmental entity or a state agency, in furtherance of its official duties and upon written request, to have access to autopsy photographs or videos. When such access is provided, the identity of the deceased remains confidential and exempt unless otherwise required in the performance of the entity's official duties. For example, this office in Attorney General Opinion 01-47 concluded that a medical examiner could show autopsy photographs or videotapes in the context of professional training or education efforts for public agencies, provided that the identity of the deceased is shielded and there is a written request for such disclosure from the public agency.[1]

While this office cannot, at the request of the medical examiner, assess the validity of the county's claim that its request for access to the autopsy photographs is in furtherance of its official duties, the following informal comments are offered in an effort to be of some assistance.

In Attorney General Opinion 01-29, this office considered the responsibility of a clerk of court as county auditor to rely on a determination by the county commission that an expenditure satisfied a county purpose. As auditor, the clerk has the duty to determine the legality of an expenditure before dispensing public funds and pursuant to statute he or she may be personally liable for illegal expenditures.[2] While recognizing the auditing function of the clerk involved more than the arithmetical determination of the amount of the claim, this office stated that absent clear unreasonableness or an obvious abuse of discretion by the county's governing body in enacting the ordinance, the clerk of court should be able to rely upon a county commission's determination that an expenditure fulfills a county purpose when it has obligated the county through a contract or agreement.[3] The courts, in considering what constitutes a county purpose have generally stated that such an issue is a question of fact, the determination of which by a duly constituted fact-finding body will not be reviewed by the court unless the finding is shown to be arbitrary and unfounded.[4]

This office would generally note that county officers and employees, when acting in an official capacity, are presumed to be acting on behalf of the county for a county purpose since their authority to act is based upon the county's authority to carry on county business.[5] Absent clear unreasonableness or an obvious abuse of discretion, the medical examiner should be able to rely on the county's representation that a review of the autopsy photographs is necessary to carry out a county purpose. Such a request must be in writing and the identity of the deceased must be shielded. If, however, you as medical examiner believe that the request is not in furtherance of a county purpose and refuse to release the autopsy photographs, presumably this issue would be resolved by the courts in an appropriate judicial proceeding.

I hope that the above informal comments may be of assistance.

Sincerely,

Joslyn Wilson
Assistant Attorney General

[1] *And see In the Matter of Bruce A. Hyma, M.D., Medical Examiner, Miami-Dade County, Florida*, No. 01-7873CA01 (Fla. 11th Cir. Ct. April 2, 2001), in which the circuit court concluded that a medical examiner could "use photos and videos as part of its scheduled law enforcement, 'Police Medical Investigation of Death Training Seminar,' which are deemed as part of official duties, provided that the identity of all deceased shall remain confidential." *Compare s.* 406.135(2)(a), Fla. Stat., establishing a procedure whereby a court may allow access to autopsy photographs or videotapes by any person upon a showing of good cause.

[2] See s. 129.09, Fla. Stat., stating:

"Any clerk of the circuit court, acting as county auditor, who shall sign any warrant for the payment of any claim or bill or indebtedness against any county funds in excess of the expenditure allowed by law, or county ordinance, or to pay any illegal charge against the county, or to pay any claim against the county not authorized by law, or county ordinance, shall be

personally liable for such amount, and if he or she shall sign such warrant willfully and knowingly he or she shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083."

[3] *And see* Op. Att'y Gen. Fla. 70-134 (1970).

[4] *See, e.g., State v. Monroe County*, 3 So. 2d 754 (1941).

[5] *Cf.* s. 125.01(1), Fla. Stat., which provides in relevant part that "[t]he legislative and governing body of a county shall have the power to carry on county government"; s. 1, Art. VII, State Const., which impliedly limits the imposition of taxes and the expenditures of tax revenues to public purposes. *And see Burton v. Dade County*, 166 So. 2d 445 (Fla. 1964) (county funds may be used to accomplish any legitimate county purpose); *State ex rel. Himes v. Culbreath*, 174 So. 422 (Fla. 1937) (necessary implication is that legal counsel may be employed by the boards of county commissioners whenever in the judgment of such boards the interests of the counties require the services of counsel); and s. 125.01(1)(b), Fla. Stat., authorizing the governing body of a county to provide for the prosecution and defense of legal causes in behalf of the county or state and retain counsel and set their compensation.