

**STATE OF TENNESSEE**

OFFICE OF THE  
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Opinion No. 01-032

Interpretation of Tenn. Code Ann. § 38-7-105

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**QUESTIONS**

Tennessee Code Annotated § 38-7-105(a) provides that “[w]hen a state medical examiner’s facility is not available, [a] county medical examiner may employ a pathologist. . . to perform an autopsy. . .” A state medical examiner’s facility is under construction in Nashville and is expected to be operational in the summer of 2001. With the establishment of this facility, which will be the only such facility in Tennessee:

1. Will the state medical examiner’s facility be required to accept any and all medical examiner autopsies from every Tennessee county, without regard to restrictions in budget and staff? Or may a county medical examiner continue to employ a pathologist for the performance of an autopsy under the circumstances set out in Tenn. Code Ann. § 38-7-105(a)?
2. If the state medical examiner’s facility is not required to accept any and all medical examiner autopsies, may the state medical examiner limit the autopsies accepted by the Nashville facility to those originating in a finite geographical area, such as that bordered by the Cumberland Plateau to the Tennessee River, and Kentucky to Alabama?
3. Does Tenn. Code Ann. § 38-7-105(b) exempt only the Metropolitan Government of Nashville and Davidson County from the requirements of Tenn. Code Ann. § 38-7-105(a)?

**OPINIONS**

1-2. While the Post-Mortem Examination Act contains no provisions which directly answer your question, we believe that the language of Tenn. Code Ann. § 38-7-105 expresses legislative preference for performance of medico-legal autopsies at a state medical examiner’s facility. However, we do not think that the language is a clear mandate requiring that a state medical examiner’s facility accept any and all autopsies from every Tennessee county. Rather, we believe that the Commissioner of Health and the Chief Medical Examiner may establish reasonable policies and practices respecting the “availability” of the state medical examiner’s facility. In our opinion, these policies and practices could include, for example,

reasonable geographical limitations upon the autopsies to be accepted by the Nashville facility. Any such limitations must, however, be consistent with the legislative purposes addressed in the Post-Mortem Examination Act, *i.e.*, accurate and efficient performance of death investigations and autopsies. Where, under such reasonable policies and practices, the state medical examiner's facility is "not available," a county medical examiner may continue to employ a pathologist for the performance of an autopsy as set out in Tenn. Code Ann. § 38-7-105(a).

3. Yes.

### ANALYSIS

Tenn. Code Ann. § 38-7-105, entitled "Pathologists," provides as follows:

- (a) When a state medical examiner's facility is not available, the county medical examiner may employ a pathologist certified by the American Board of Pathology, or eligible for such certification, to perform an autopsy as provided by this chapter. The county legislative body shall authorize a fee of not more than seven hundred fifty dollars (\$750) to a pathologist who performs an autopsy. The commissioner of health has the authority to contract with the pathologist to provide the professional services necessary to perform medico-legal autopsies and to act as consultant to county medical examiners. The county legislative body shall appropriate funds for this purpose in its annual budget.
- (b) Any county having a metropolitan form of government and a population of over four hundred fifty thousand (450,000) according to the 1990 federal census or any subsequent federal census may employ one (1) or more pathologists, certified by the American Board of Pathology, to be compensated on a salaried basis, as assistant county medical examiners who may perform autopsies as provided by this chapter regardless of the availability of a state medical examiner's facility.

You question whether the new state medical examiner's facility will be required to accept any and all medical examiner autopsies from every Tennessee county. As an alternative and in consideration of restrictions in budget and staff, you would propose to limit the autopsies accepted by the Nashville facility to those originating in a finite geographical area, such as that bordered by the Cumberland Plateau to the Tennessee River, and Kentucky to Alabama.

The Post-Mortem Examination Act (Tenn. Code Ann. §§ 38-7-101, *et seq.*) contains no provisions which directly answer your question. Tenn. Code Ann. § 38-7-105 is the only provision of the Act which mentions a state medical examiner's facility at all. Section 38-7-105(a) provides that a county medical examiner is authorized to employ a pathologist to perform an autopsy "[w]hen a state medical examiner's facility is not available." We view this statutory language as an expression of legislative preference for performance of medico-legal autopsies at a state medical examiner's facility. However, we do not think that the language is a clear mandate requiring that a state medical examiner's facility accept any and all autopsies from every Tennessee county. The common dictionary definition of "available" is "accessible for use; at hand." *Webster's II New College Dictionary*, 77 (1995). Thus, for purposes of Tenn. Code Ann. § 38-7-105(a), a state medical examiner's facility "is not available" when it is not "accessible" or "at hand" for the performance of an autopsy. We think that the Commissioner of Health and the Chief Medical Examiner may establish reasonable policies and practices respecting the "availability" of the state medical examiner's facility. In our opinion, these policies and practices could include, for example, reasonable geographical limitations upon the autopsies to be accepted by the Nashville facility. Any such limitations must, however, be consistent with the legislative purposes addressed in the Post-Mortem Examination Act; *i.e.*, accurate and efficient performance of death investigations and autopsies. Where, under such reasonable policies and practices, the state medical examiner's facility is "not available," a county medical examiner may continue to employ a pathologist for the performance of an autopsy as set out in Tenn. Code Ann. § 38-7-105(a).

Your final question relates to Tenn. Code Ann. § 38-7-105(b). This paragraph provides that, regardless of the availability of a state medical examiner's facility, certain identified counties may employ pathologists, on a salaried basis, as assistant county medical examiners. However, the provision applies only to counties having a metropolitan form of government and a population greater than 450,000, as measured by the 1990 federal census or any subsequent federal census. *Id.* The only Tennessee county which falls within both of these statutory parameters is Davidson County. Tenn. Code Ann., Vol. 13, Table of Municipal Incorporation, County, Charter and Population (2000 Supp.); Table of County Population, 1900-1990 (1995 Repl.).

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