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OPINION
OF
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Opinion No. 88-01

By: Michael J. Vargon
Assistance Attorney General

To: Honorable Mary L. Thompson
New Mexico State Representative
1915 La Jolla
Las Cruces, New Mexico 88005

QUESTION:

May County Clerks issue certified copies of death certificates pursuant to Section 14-8-4 NMSA 1978 in order to avoid the higher fees charged for the issuance of certificates by the Vital Statistics Bureau of the New Mexico Health and Environment Department?

ANSWER:

No.

ANALYSIS:

When an individual dies, his estate sometimes needs to obtain certified copies of the death certificate for the transfer of the deceased's interest in stocks and bank accounts. The Vital Statistics Bureau (the "Bureau") issues such certified copies pursuant to Section 24-14-29 NMSA 1978. The Bureau charges \$10.00 for each certified copy.

People who need numerous certified copies of death certificates have sought to avoid paying the costs imposed by Section

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24-14-29 by filing a copy of a death certificate with the county clerk pursuant to Section 14-8-4 NMSA 1978 and then obtaining certified copies of the certificate from the county clerk. County clerks charge \$5.00 to record a one-page photocopied document and between \$1.50 and \$2.00 for issuing certified copies of a recorded document. Section 14-8-12.2 NMSA 1978. Thus, an individual requiring forty certified copies of a death certificate would pay only \$45.00 to \$85.00 if a county clerk issued the copies. The same number of copies would cost \$400.00 if purchased from the Bureau. The question presented is whether county clerks are authorized to issue copies of death certificates that have been filed with their office.

County clerks are the ex officio recorders for their respective counties. Section 14-8-1 NMSA 1978. Section 14-8-4 NMSA 1978 provides, in pertinent part:

Any instrument of writing, duly acknowledged and certified, may be filed and recorded. Any instrument of writing, not duly acknowledged and certified, may not be filed and recorded, nor considered of record, though so entered; provided, however, that ... instruments of writing in any manner affecting lands in the state, when these instruments have been duly executed by an authorized public officer, need not be acknowledged but may be filed and recorded....

Section 4-40-5 NMSA 1978 imposes a duty upon the county clerk to "deliver to any person who may demand it a certified copy of any record in his office, or any accounts on file therein, on receiving from such person fifteen cents [(\$.15)] for every page contained in such copy." Thus, Sections 14-8-4 and 4-40-5 give apparent authority to county clerks to accept certified copies of death certificates for filing and to issue certified copies of these records to any person requesting them.

The Bureau was created specifically for the purpose of "installing, maintaining and operating a system of vital statistics throughout this state, and carrying out all regulations relating to vital statistics established by the department." Section 24-14-3 NMSA 1978. The term "vital statistics" means "the data derived from certificates and reports of birth, death, spontaneous fetal death, induced abortion and related reports." Section 24-14-2(A) NMSA 1978. The term "system of vital statistics" includes "the registration, collection, preservation, amendment and certification of vital records and related activities, including the tabulation, analysis and publication of

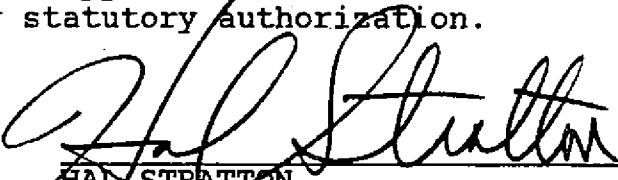
statistical data derived from these records." Section 24-14-2(B) NMSA 1978. "Vital records" are defined as "certificates of birth and death." Section 24-14-2(L) NMSA 1978. The Bureau thus deals with very limited and specific records. Section 24-14-28(E) NMSA 1978 provides that "no person shall prepare or issue any report of an induced abortion or any certificate which purports to be an original, certified copy or copy of a certificate of birth, death or spontaneous fetal death nor reproduction of certified copy except as authorized in the Vital Statistics Act or regulations adopted thereunder...." No part of the Vital Statistics Act, Sections 24-14-1 to 24-14-17 and 24-14-20 to 24-14-31 NMSA 1978, nor any of the regulations promulgated by the Bureau, authorize county clerks to issue death certificates.

A county clerk's authority to issue a document pursuant to Section 4-40-5 NMSA 1978 is, in the absence of another statute, broad enough to include the issuing of a certified copy of a death certificate.¹ The Vital Statistics Act, however, was enacted to deal specifically with the collection, registration, and certification of vital records. The Supreme Court of New Mexico has held that "[a] statute enacted for the primary purpose of dealing with a particular subject prescribing terms and conditions covering the subject-matter supersedes a general statute which does not refer to that subject although broad enough to cover it." Varney v. City of Albuquerque, 40 N.M. 90, 92, 55 P.2d 40, 42 (1936) (cited in Lopez v. Barreras, 77 N.M. 52, 54, 419 P.2d 251, 253 (1966)). See also State v. Thompson, 79 N.M. 748, 449 P.2d 656 (1969). To the extent that the Vital Statistics Act conflicts with the provisions of Section 14-8-4 NMSA 1978, the Vital Statistics Act controls.

For these reasons, we conclude that county clerks may not issue copies of death certificates on file in their office unless the Vital Statistics Bureau promulgates regulations authorizing it or unless the legislature amends the Vital Statistics Act to grant county clerks such authority. The records of the county clerk remain open to inspection and county clerks may certify that a copy of a death certificate has been filed with their office.

1 We assume, without deciding, that a death certificate is an "instrument of writing, duly acknowledged and certified," or is otherwise subject to recording by the county clerk pursuant to Section 14-8-4 NMSA 1978.

They may not, however, issue the copy of the death certificate in the absence of administrative or statutory authorization.


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