

# RED RIVER COUNTY

RQ-0010-JC



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JAN 13 1999

Opinion Committee

FILE # ML-40609-99 Jack Herrington  
I.D. # 40623 District and County Attorney

January 6, 1999

## REQUEST FOR ATTORNEY GENERAL'S OPINION

According to Art. 49.07(c) CCP, "If the justice of the peace who serves the precinct in which the body was found is not available to conduct an inquest, a person required to give notice under this article shall notify the nearest available justice of the peace, municipal court judge, county judge, or judge of the county court at law of the county in which the death occurred or in which the body was found."

Red River County has only one justice of the peace. When he is unavailable to conduct an inquest, the county judge is notified and has been holding inquests.

Does the county judge have the authority to hold inquests under these circumstances pursuant to Art. 49.07(c) CCP?

Your prompt attention to this question will be appreciated.

Sincerely yours,

Jack Herrington

## Question?

Can a county judge, in the absence of the justice of the peace, hold inquests and order autopsies?

## The Facts

There is only one justice of the peace in Red River County. When the justice of the peace is unavailable, the county judge is notified of a death and he holds inquests and orders any necessary autopsies.

## Statutes

The Code of Criminal Procedure sets out the procedures for holding inquests and autopsies. Article 49.04(a) states, "A justice of the peace shall conduct an inquest into the death of a person who dies in the county served by the justice....."

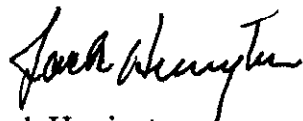
Article 49.05 of the Code of Criminal Procedure states, "A justice of the peace shall conduct an inquest immediately or as soon as practicable after the justice receives notification of the death."

Article 49.07 of the Code of Criminal Procedure states, "If the justice of the peace who serves the precinct in which the body was found is not available to conduct an inquest, a person required to give notice under this article shall notify the nearest available....county judge ....of the county in which the body was found."

All of the language of Article 49 is mandatory and directs the justice of the peace to perform inquests and autopsies. The only language which might possibly allow the county judge to perform inquests and request autopsies is Article 49.07(c) which makes it mandatory to notify a "county judge" if the justice of the peace is not available. It is silent with regard to whether the county judge has the authority to hold an inquest or request an autopsy.

It is the position of Red River County that it is implied in Article 49.07(c) that the county judge does have the authority to hold inquests and order an autopsy in the absence of the justice of the peace.

Respectfully submitted,



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