



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

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EMERGENCY PREPAREDNESS:
Role of County Coroners in
Fatality Management Resulting
From an Infectious Disease Pandemic

Ms. Alicia Tate-Nadeau
Director, Illinois Emergency Management Agency
2200 South Dirksen Parkway
Springfield, Illinois 62703

Dear Ms. Tate-Nadeau:

I have your letter inquiring whether, in circumstances where a disaster has been declared pursuant to section 7 of the Illinois Emergency Management Agency Act (the Emergency Management Act) (20 ILCS 3305/7 (West 2018)), coroners are prohibited under division 3-3 of the Counties Code (55 ILCS 5/3-3001 through 3-3045 (West 2018)) from taking possession of and assisting in the storage of dead bodies where the deaths were caused by the Coronavirus Disease 2019 (COVID-19). For the reasons stated below, it is my opinion that there are no provisions in division 3-3 of the Counties Code that expressly prohibit a county coroner from assisting with the collection, transportation, and storage of dead bodies during a duly declared statewide disaster resulting from the COVID-19 outbreak. To the contrary, provisions of the Emergency Management Act (20 ILCS 3305/1 *et seq.* (West 2018)) and the Department of

Public Health Act (20 ILCS 2305/1.1 *et seq.* (West 2018)) specifically contemplate the critical role of county coroners with respect to fatality management during disasters involving large-scale outbreaks of contagious diseases.

BACKGROUND

COVID-19 Pandemic

A novel coronavirus,¹ COVID-19, was first identified in China in December 2019, and has since spread throughout the world, including to the United States and the State of Illinois. See Illinois Department of Public Health Coronavirus Disease (COVID-19) website (IDPH COVID-19 website), <http://dph.illinois.gov/covid19>. In response to the spread of COVID-19 and to aid the nation's healthcare community in responding to the threat the disease poses, the United States Secretary of Health and Human Services declared that COVID-19 presents a public health emergency in a January 31, 2020, determination that was retroactive to January 27, 2020. See <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx>; <https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html>. On January 30, 2020, the World Health Organization's Director-General, on the advice of the Organization's International Health Regulations Emergency Committee, declared the outbreak of COVID-19 to be a Public Health

¹Coronaviruses are a large family of viruses, some causing illness in people, and others that circulate among animals. Human coronaviruses are common throughout the world and commonly cause mild to moderate illness in humans. However, the emergence of novel coronaviruses, such as SARS (Severe Acute Respiratory Syndrome), MERS (Middle Eastern Respiratory Syndrome), and now SARS-CoV-2 (also known as COVID-19), have been associated with more severe respiratory illness in some individuals. State of Illinois, Coronavirus (COVID-19) Response, About Coronavirus, <https://coronavirus.illinois.gov/s/about-coronavirus>; Centers for Disease Control and Prevention (CDC), Coronavirus Disease 2019 (COVID-19), Situation Summary (last updated April 7, 2020) (CDC COVID-19 Situation Summary), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html>.

Emergency of International Concern. See [https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov)). On March 9, 2020, Illinois Governor JB Pritzker issued a disaster proclamation regarding the outbreak of COVID-19 in Illinois. Executive Proclamation No. 2020-038, issued March 9, 2020. On March 11, 2020, the World Health Organization officially classified COVID-19 as a pandemic² (see <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>), and on March 13, 2020, President Donald Trump declared a national emergency in this country (see <https://www.fema.gov/news-release/2020/03/13/covid-19-emergency-declaration>).

Although the first confirmed COVID-19 case in Illinois was announced on January 24, 2020, in Chicago, the virus has spread quickly throughout the State. As of April 16, 2020, the Illinois Department of Public Health was reporting 25,733 total cases of COVID-19 in the State of Illinois, with cases in 90 of Illinois' 102 counties, resulting in 1,072 total deaths. State of Illinois, Coronavirus (COVID-19) Response website, <https://coronavirus.illinois.gov/s>.

Reported illnesses related to COVID-19 have ranged from very mild (including some with no reported symptoms) to severe, including illness resulting in death. CDC COVID-19 Situation Summary. Currently, no vaccine or drug is available to prevent or treat COVID-19. Therefore, community-based interventions, such as school closures, event cancellations, social distancing, and creating employer plans to facilitate employees working remotely, have been

²A pandemic is a global outbreak of disease. Pandemics happen when a new virus emerges to infect people and can spread between people sustainably. Because there is little to no pre-existing immunity against the new virus, it spreads worldwide. CDC COVID-19 Situation Summary.

instituted to help slow the spread of the disease. State of Illinois, Coronavirus (COVID-19) Response, Prevention, <https://coronavirus.illinois.gov/s/prevention-main>.

Disaster Proclamations in Response to COVID-19

The Emergency Management Act was enacted to ensure that Illinois will be prepared to and will adequately deal with any disasters, in order to preserve the lives and property of the people of this State, and to protect the public peace, health, and safety in the event of a disaster. 20 ILCS 3305/2 (West 2018). The Act grants specific emergency management powers, and other broad emergency powers in the event of a disaster, to the Governor. 20 ILCS 3305/6, 7 (West 2018).

As noted above, on March 9, 2020, pursuant to the Emergency Management Act and in response to the COVID-19 outbreak, Governor JB Pritzker issued a proclamation finding that a disaster exists in Illinois and declaring all counties in the State of Illinois a disaster area. Executive Proclamation No. 2020-038, issued March 9, 2020. By its own terms, the proclamation expired on April 7, 2020. On April 1, 2020, Governor Pritzker issued a second disaster proclamation for the State and declared all counties in the State of Illinois as disaster areas. That proclamation is scheduled to expire on April 30, 2020. Executive Proclamation No. 2020-___, issued April 1, 2020.

Prospect of Mass Fatalities

Although the spread of COVID-19 in Illinois has not met original projections, there are still concerns that the pandemic may give rise to mass fatalities in one or more locations within the State. A "mass fatality" is commonly understood to refer to any circumstance where there are more fatalities than can be handled appropriately using the local resources regularly

available. See Illinois Department of Public Health, Pandemic Influenza Preparedness and Response Plan, Version 5.1 (March 2020) (2020 Illinois Pandemic Influenza Plan), Support Annex 6.0, at 81, available at <http://www.dph.illinois.gov/sites/default/files/publications/illinois-pandemic-influenza-plan-version-51march-2020.pdf>. Mass fatalities are extremely complex situations that no single agency or public body can handle on its own. Once local capacity to handle a mass fatality has been exceeded, temporary morgues and other accommodations may be needed in order to store and maintain the bodies of victims in a safe, professional, and respectful manner. 2020 Illinois Pandemic Influenza Plan, Support Annex 6.0, at 82-88. It is in this context that you inquire whether county coroners are prohibited by the Counties Code from taking possession of and assisting in the storage of dead bodies on an emergency basis under circumstances where the deaths were attributable to the COVID-19 virus.

ANALYSIS

Illinois coroners generally possess those powers derived from the common law, as well as those provided by the constitution, statute, or ordinance. Ill. Const. 1970, art. VII, §4(d). The statutory duties of the coroner are set out in division 3-3 of the Counties Code. In reviewing those statutes, it is clear that the principle duty of the coroner is to make an investigation into the cause of death of a person whose body is found or is lying within the coroner's county, in certain statutorily specified circumstances. 55 ILCS 5/3-3013 (West 2018), as amended by Public Act 101-013, effective June 12, 2019; Ill. Att'y Gen. Op. No. NP-499, issued July 24, 1972. Specifically, section 3-3013 of the Counties Code (55 ILCS 5/3-3013 (West 2018), as amended by Public Act 101-013, effective June 12, 2019) provides, in pertinent part:

Every coroner, whenever, as soon as he knows or is informed that the dead body of any person is found, or lying within his county, whose death is suspected of being:

(a) A sudden or violent death, whether apparently suicidal, homicidal or accidental, including but not limited to deaths apparently caused or contributed to by thermal, traumatic, chemical, electrical or radiational injury, or a complication of any of them, or by drowning or suffocation, or as a result of domestic violence as defined in the Illinois Domestic Violence Act of 1986;

(b) A death due to a sex crime;

(c) *A death where the circumstances are suspicious, obscure, mysterious or otherwise unexplained or where, in the written opinion of the attending physician, the cause of death is not determined;*

(d) A death where addiction to alcohol or to any drug may have been a contributory cause; or

(e) *A death where the decedent was not attended by a licensed physician;*

shall go to the place where the dead body is, and take charge of the same and shall make a preliminary investigation into the circumstances of the death. In the case of death without attendance by a licensed physician the body may be moved with the coroner's consent from the place of death to a mortuary in the same county. Coroners in their discretion shall notify such physician as is designated in accordance with Section 3-3014 to attempt to ascertain the cause of death, either by autopsy or otherwise. (Emphasis added.)

It is likely that many individuals whose deaths are attributable to COVID-19 will have been under the care of a licensed physician at the time of their death. Assuming none of the other elements of section 3-3013 are applicable, the statutory jurisdiction of the coroner to take charge of a dead body and make a preliminary investigation into the cause of death in that instance would not be triggered. However, nothing in the indicated provisions of the Counties

Code expressly limits the ability of coroners to take action, as needed, when a statewide or local disaster or state of emergency has been formally declared. To the contrary, as officers of political subdivisions of the State, the resources and expertise of coroners may be called upon pursuant to applicable provisions of the Emergency Management Act and the Department of Public Health Act to facilitate fatality management.

Emergency Management Act

As noted above, the Emergency Management Act provides the Governor with broad authority to utilize the resources of the State and its political subdivisions, including counties (20 ILCS 3305/4 (West 2018)), in the event of a disaster. Section 7 of the Emergency Management Act (20 ILCS 3305/7 (West 2018)) addresses the Governor's emergency powers and provides, in pertinent part:

In the event of a disaster, as defined in Section 4, the Governor may, by proclamation declare that a disaster exists. Upon such proclamation, the Governor shall have and may exercise for a period not to exceed 30 days the following emergency powers; provided, however, that the lapse of the emergency powers shall not, as regards any act or acts occurring or committed within the 30-day period, deprive any person, firm, corporation, political subdivision, or body politic of any right or rights to compensation or reimbursement which he, she, it, or they may have under the provisions of this Act:

* * *

(2) To utilize all available resources of the State government as reasonably necessary to cope with the disaster and of each political subdivision of the State.

* * *

(12) Control, restrict, and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation or other means, the use, sale or distribution of food, feed, fuel,

clothing and other commodities, materials, goods, or services; and *perform and exercise any other functions, powers, and duties as may be necessary to promote and secure the safety and protection of the civilian population.* (Emphasis added.)

Section 4 of the Emergency Management Act (20 ILCS 3305/4 (West 2018)) defines a "disaster" to include "an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural * * * cause, including but not limited to * * * epidemic,^{13]} * * * [or] public health emergencies[.]" The Act further defines the phrase "public health emergency" as "an occurrence or imminent threat of an illness or health condition that[,] [among other things,] is believed to be caused by * * * the appearance of a novel * * * infectious agent * * *[,] and [it] poses a high probability of * * * a large number of deaths in the affected population[,] * * * or widespread exposure to an infectious * * * agent that poses a significant risk of substantial future harm to a large number of people in the affected population." 20 ILCS 3305/4 (West 2018). It is undisputed that the COVID-19 outbreak constitutes a public health emergency under the Emergency Management Act.

It is well established that, where statutory language is clear and unambiguous, it must be given effect as written. *Klaine v. Southern Illinois Hospital Services*, 2016 IL 118217, ¶14, 47 N.E.3d 966, 970 (2016); *People ex rel. Illinois Department of Corrections v. Hawkins*, 2011 IL 110792, ¶23, 952 N.E.2d 624, 631 (2011). Under the plain and unambiguous language of subsection 7(2) of the Emergency Management Act (20 ILCS 3305/7(2) (West 2018)), the

³While not defined in the Emergency Management Act, the term "epidemic" is generally understood to mean "an outbreak of disease that spreads quickly and affects many individuals at the same time[.]" Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/epidemic>. COVID-19 is currently characterized as a pandemic, which is generally understood to be an epidemic which has spread across a wider geographic range, and which has affected a significant portion of the population. Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/pandemic>.

Governor, having proclaimed that a disaster exists, may "utilize all available resources of the State government as reasonably necessary to cope with the disaster and of each political subdivision of the State[.]" which would include counties and their resources (*see* 20 ILCS 3305/4 (West 2018)). The Governor is further authorized by subsection 7(12) of the Emergency Management Act (20 ILCS 3305/7(12) (West 2018)) to "perform and exercise any other functions, powers, and duties as may be necessary to promote and secure the safety and protection of the civilian population."

In this regard, subsection 18(b) of the Emergency Management Act (20 ILCS 3305/18(b) (West 2018)) provides that "[e]very emergency services and disaster agency established pursuant to this Act and the coordinators thereof shall execute and enforce the orders, rules and regulations as may be made by the Governor under authority of this Act," while section 19 of the Emergency Management Act (20 ILCS 3305/19 (West 2018)) authorizes the Governor, the Director of the Illinois Emergency Management Agency, and the political subdivisions of the State to utilize the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the State and political subdivisions of the State to the maximum extent practicable when carrying out the provisions of the Emergency Management Act. Section 19 also directs the officers and personnel of all such departments, offices, and agencies, "upon request, to cooperate with and extend such services and facilities to the Governor, the Director [of the Emergency Management Agency,] and the emergency services and disaster agencies."

In addition to the authority of the Governor to direct government resources, at every level, during a declared disaster, the Emergency Management Act also addresses the critical role of political subdivisions, including counties and their officers, once a disaster has been declared. Section 10 of the Emergency Management Act (20 ILCS 3305/10 (West 2018)) provides, in pertinent part:

*(a) Each political subdivision within this State shall be within the jurisdiction of and served by the Illinois Emergency Management Agency and by an emergency services and disaster agency responsible for emergency management programs. * * **

* * *

(j) In carrying out the provisions of this Act, each political subdivision may enter into contracts and incur obligations necessary to place it in a position effectively to combat the disasters as are described in Section 4, to protect the health and safety of persons, to protect property, and to provide emergency assistance to victims of those disasters. If a disaster occurs, each political subdivision may exercise the powers vested under this Section in the light of the exigencies of the disaster and, excepting mandatory constitutional requirements, without regard to the procedures and formalities normally prescribed by law pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, and the appropriation, expenditure, and disposition of public funds and property. (Emphasis added.)

These provisions of the Emergency Management Act clearly and unequivocally evidence the need for the State, and all political subdivisions thereof, to possess the flexibility to respond to emergency situations, such as the COVID-19 pandemic, in a manner that ensures maximum protection for the health and welfare of citizens of Illinois. Under such circumstances, political subdivisions and their respective officers, including county coroners, may be called

upon to serve in roles and to provide services that extend beyond the parameters of the statutory scope of their duties under ordinary circumstances.⁴

Department of Public Health Act

In addition to the Illinois Emergency Management Agency, the Department of Public Health (the Department) also possesses considerable statutory and regulatory authority with respect to the management and control of infectious disease within the State. Section 2 of the Department of Public Health Act (20 ILCS 2305/2 (West 2018)) provides that the Department is charged with supervising "the interests of the health and lives of the people of the State[.]" and that it has "supreme authority in matters of quarantine and isolation[.]" In addition, the Department may "adopt, promulgate, repeal and amend rules and regulations and make such sanitary investigations and inspections as it may from time to time deem necessary for the preservation and improvement of the public health, consistent with law regulating[.] [among other things,] * * * [t]ransportation of the remains of deceased persons." Section 2 also provides

⁴For example, the Illinois Pandemic Influenza Plan was developed through a collaborative process involving offices and divisions within the Illinois Department of Public Health and State of Illinois partner agencies that have a response role during a pandemic. Overall direction and control authority resides with the Office of the Governor, with coordination and management expertise supplied by the Illinois Emergency Management Agency. This Plan clearly contemplates and confirms the critical role that county coroners must assume during an influenza pandemic, in particular with regard to fatality management. 2020 Illinois Pandemic Influenza Plan, Support Annex 6.0, at 81-88.

Similarly, local emergency operations plans must comply with the standards promulgated by the Illinois Emergency Management Agency. The Agency's rules require that emergency operations plans due for review on or after September 1, 2020, address, among other things, mortuary services and fatality management. 29 Ill. Adm. Code §301.240(a)(9) (2020), last amended at 42 Ill. Reg. 15933, effective July 31, 2018. Specifically, the rules provide that emergency operations plans should include the means the political subdivision will use to coordinate mortuary services or fatality management, including, among other things "working with local, State and federal authorities to provide mortuary processes, temporary storage or permanent internment solutions[.]" 29 Ill. Adm. Code §301.240(a)(9)(C) (2020), last amended at 42 Ill. Reg. 15933, effective July 31, 2018. Earlier submitted plans were similarly required to address how the political subdivisions would address "mortuary services," including the collection, identification, and care of human remains. *See* 42 Ill. Reg. 15933, 15954 through 15955 (effective July 31, 2018).

that "[a]ll local boards of health, health authorities and officers, police officers, sheriffs and all other officers and employees of the state or any locality⁵ shall enforce the rules and regulations so adopted and orders issued by the Department pursuant to this Section." Section 2 further provides, in pertinent part:

The Department of Public Health shall investigate the causes of dangerously contagious or infectious diseases, especially when existing in epidemic form, and take means to restrict and suppress the same, and whenever such disease becomes, or threatens to become epidemic, in any locality and the local board of health or local authorities neglect or refuse to enforce efficient measures for its restriction or suppression or to act with sufficient promptness or efficiency, or whenever the local board of health or local authorities neglect or refuse to promptly enforce efficient measures for the restriction or suppression of dangerously contagious or infectious diseases, the Department * * * may enforce such measures as it deems necessary to protect the public health, and all necessary expenses so incurred shall be paid by the locality for which services are rendered.

The Control of Communicable Diseases Code (77 Ill. Adm. Code Part 690 (2020), last amended at 43 Ill. Reg. 2386, effective February 8, 2019), which are administrative rules adopted by the Department pursuant to its statutory authority under the Department of Public Health Act, highlight the longstanding role of the coroner with respect to management of infectious disease within the State, even under non-disaster or non-emergency circumstances. See 77 Ill. Adm. Code §690.200(a)(1)(N) (2020), last amended at 43 Ill. Reg. 2386, effective February 8, 2019 (coroners among those required to report deaths suspected to be caused by a reportable communicable disease); 77 Ill. Adm. Code §690.1200(b) (2020), last amended at 18

⁵As used in the Department of Public Health Act, the term "locality" means any governmental agency which exercises power pertaining to public health in an area less than the State, and therefore includes counties. 20 ILCS 2305/2(l) (West 2018).

Ms. Alicia Tate-Nadeau - 13

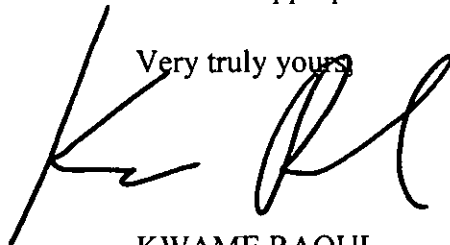
Ill. Reg. 10158, effective July 15, 1994 (coroners among those responsible for labelling dead bodies of individuals suspected of having an infectious or communicable disease as "infection hazard").

Based on the above, it is clear that, in circumstances where a disaster has been declared pursuant to section 7 of the Emergency Management Act, coroners are not prohibited by the Counties Code from taking possession of and assisting in the storage of dead bodies where the deaths were caused by the COVID-19 virus. To the contrary, under such circumstances, coroners will play a critical role in fatality management, as directed by the Illinois Emergency Management Agency, under the auspices of the Office of the Governor, as well as the Department of Public Health.

CONCLUSION

For the reasons stated above, it is my opinion that, where a disaster has been declared pursuant to section 7 of the Illinois Emergency Management Agency Act, coroners are not prohibited by division 3-3 of the Counties Code from taking possession of and assisting in the storage of dead bodies where the deaths were caused by the COVID-19 virus. Rather, coroners will play a critical role in fatality management, as directed by the Illinois Emergency Management Agency, under the auspices of the Office of the Governor, as well as the Department of Public Health, in coordination with the appropriate local officials.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kwame Raoul', is written over the text 'Very truly yours,'.

KWAME RAOUL
ATTORNEY GENERAL