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December 9, 2022

VIA FIRST CLASS MAIL and
Email to judy.gaul@atg.wa.gov

Hon. Robert Ferguson
Attorney General of the State of Washington
PO Box 40100
Olympia, WA 98504-0100

RE: Request for Attorney General Opinion on Authority of County Legislative Body to
Contract with Prosecuting Attorney for Coroner Work after December 2024 and
Related Issues

Dear Attorney General Ferguson:

This request is submitted jointly by the three undersigned Prosecuting Attorneys, each of whom manage offices in a county that will be affected by the 2021 Amendments to RCW 36.16.030. Each of the undersigned subscribed to this request for guidance even though it is submitted on the letterhead of the San Juan County Prosecuting Attorney.

Question Presented

After January 1, 2025, the effective date of the 2021 amendments to RCW 36.16.030, may the County legislative authority appoint the prosecuting attorney to perform the services of the county coroner?

Background

For about the past 90 years, the Washington Legislature has assigned to the prosecuting attorney in small counties the additional duty to perform the services of the county coroner. This dual role of prosecutor and coroner was changed in 2021 with the adoption of ESHB 1326, Chapter 127, Laws of 2021, which amended RCW 36.16.030, a provision of county governance which lists

the county officers.¹

Effective January 1, 2025, the legislature de-linked the office of the prosecuting attorney and coroner. This law affects 13 counties – those counties with a population of less than 40,000 and Clallam County which has a population over 40,000 but includes provisions in its county charter which assigns the duties of the coroner to the County Prosecuting Attorney, just like smaller counties.

These amendments will require several steps be taken during the next two years as the county legislative authorities, prosecuting attorneys, and others plan for a transition including budgeting for staff, training, providing office space and equipment and perhaps calling for the election of the person to hold the office or coroner.

The 2021 amendments to RCW 36.16.030 provide that in each county with a population of less than 40,000 the legislative authority may arrange for coroner services to be provided by:

- A coroner who is duly elected; or
- After a determination that no coroner be elected, a coroner appointed by the legislative authority; or
- An interlocal agreement with an adjoining county for coroner or medical examiner services.

Every coroner, whether appointed or elected would have the authorities and duties assigned by the legislature in RCW Chapter 36.24, RCW Chapter 68.50 and elsewhere.²

¹ As amended n 2021, **RCW 36.16.030** states:

Elective county officers enumerated. (Effective January 1, 2025.)

Except as provided elsewhere in this section, in every county there shall be elected from among the qualified voters of the county a county assessor, a county auditor, a county clerk, a county coroner, three county commissioners, a county prosecuting attorney, a county sheriff, and a county treasurer, except that in each county with a population of less than forty thousand the county legislative authority may determine that no coroner shall be elected and instead appoint a coroner. In a county with a population of two hundred fifty thousand or more, the county legislative authority may replace the office of coroner with a medical examiner system and appoint a medical examiner as specified in RCW [36.24.190](#). Any county may enter into an interlocal agreement under chapter [39.34](#) RCW with an adjoining county for the provision of coroner or medical examiner services. A noncharter county may have five county commissioners as provided in RCW [36.32.010](#) and [36.32.055](#) through [36.32.0558](#).

² The Code Revisor of the Washington Code lists the following additional provisions to be considered in connection with the duties of a coroner: Limitation of actions RCW [4.16.080](#); Cemetery districts: Chapter [68.52](#) RCW; Dead bodies coroner's jurisdiction over, when: RCW [68.50.010](#); coroner's right to dissect, when: RCW [68.50.100](#); Duties relating to execution of judgment: Chapter [6.17](#) RCW; human remains, generally: Chapter [68.50](#) RCW; public cemetery and morgue, management: RCW [68.52.020](#); reports of death caused in motor vehicle accidents: RCW [46.52.050](#); successors, delivery of documents

The 2021 Amendments to RCW 36.16.030 did not specify the qualifications of who may be appointed as coroner and did not expressly disqualify the county prosecuting attorney or any other elected official. ESHB 1326 did add that a person elected or appointed must within 12 months receive training and certification in forensic investigations. Elected prosecutors were excepted when acting as ex-officio coroner, which means that exception will become obsolete after January 1, 2025, at which time, we understand that training and certification requirements apply to all coroners. Training requirements are also added for full time and part-time “medicolegal investigative personnel,” and specific training on medicolegal death topics will be a condition of continued employment. See section 3, part (5).

In addition, there should be a consideration of the doctrine of incompatible office.³ The training requirements, by themselves create substantial obligations for someone who holds another office. But there may be other constraints to be considered. Arguably, by removing the prosecuting attorney from duties as ex-officio coroner, the legislature impliedly intended that the prosecuting attorney will discontinue the service as coroner after January 1, 2025, even if he or she desired to do so, or if provided by County Charter.

Additional Considerations

In addition to answering the narrow question presented it would be useful for you to identify other legal and practical constraints and considerations. Such advice will provide welcome guidance to the legislative bodies of each of the of the affected counties.

and property to: RCW [36.28.120](#); vital statistics: Chapter [70.58A](#) RCW; Labor disputes, arbitration of, service of process by: RCW [49.08.030](#); State hospitals for individuals with mental illness, report of death of patient in, given coroner: RCW [72.23.190](#); and Vehicle of as emergency vehicle: RCW [46.04.040](#).

³ The doctrine of incompatible offices is a legal doctrine — a set of rules developed over time through case law and attorney general opinions — that prohibits an individual from simultaneously holding two offices that are considered “incompatible” with one another. Offices are incompatible when, by their nature and duties, it is deemed improper from a public policy standpoint for one person to simultaneously serve in both. There are also times when statutory election rules step in and prevent an elected official from running for another elected position. See Municipal Research Services Center (MRSC) *Holding Two Public Offices: The Doctrine of Incompatible Offices*. See, e.g., *Sturgeon v. Crosby Mortuary, Inc.*, 140 Neb. 82, 299 N.W. 378 (1941) (under the facts presented, court holds it is a proper for a single person to perform the duties of prosecutor and death investigator.) There is, however, a recent law review article takes a contrary position. See, I. Robbins, *A Deadly Pair, Death Investigators and Prosecutors*, 79 Ohio St. L.J. 901 (2018).

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Sincerely,

/s/ Randall Gaylord

/s/ Dolly Hunt

/s/ Dale Slack

Randall K. Gaylord
San Juan Prosecutor/Coroner

Dolly Hunt
Pend Oreille PA/Coroner

Dale Slack
Columbia Prosecutor/Coroner

Cc: Ms. Amy Vira, Prosecuting Attorney – Elect for San Juan County
Mr. Mike Thomas, San Juan County Manager
Mr. Russell Brown, Executive Director of Washington Association of Prosecuting Attorneys
Eric Johnson, Executive Director, Washington Association of Counties
Jennifer Wallace, Executive Director Washington Association of County Officials
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San Juan County Elected Officials