

July 21, 2008
OPINION 08-0034

Dr. Ron Coe, M.D.
Office of the Coroner
140 Aspen Square, Suite H
Denham Springs, LA 70726

50 HIGHWAYS

R.S. 32:681(C); R.S. 1:3

Pursuant to R.S. 32:681(C), the use of the word "shall" mandates that the coroner extract bodily substance samples necessary for toxicology screening in traffic fatality scene investigations.

Dear Dr. Coe:

You have asked this office to advise you whether the use of the word "shall" in R.S. 32:681(C) is mandatory or permissive. R.S. 32:681(C) states:

681. Post accident drug testing; accidents involving fatalities, required

C. In the case of all traffic fatalities, the coroner, or his designee, shall perform or cause to be performed a toxicology screen on the victim or victims of all traffic fatalities for determining evidence of the presence of any abused substance or controlled dangerous substance as set forth in R.S. 40:964 or any other impairing substance which shall include the extracting of all bodily substance samples necessary for such toxicology screen. The coroner, or his designee, shall be responsible for ensuring the body is not removed from his custody until such time as the bodily substance samples are extracted. The coroner's report shall be made available to the investigating law enforcement agency and may be admissible in any court of competent jurisdiction as evidence of the presence of an abused substance or controlled dangerous substance as set forth in R.S. 40:964 or any other impairing substance at the time of the fatality. Nothing herein shall be construed to limit the authority of the investigating law enforcement agency from conducting an investigation of the accident scene concurrently with the coroner or his designee.

The rules of statutory construction dictate that the use of the word "shall" in a statute is mandatory. R.S. 1:3 states:

Words and phrases; how construed

Words and phrases shall be read with their context and shall be construed according to the common and approved usage of the language. Technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning.

The word "shall" is mandatory and the word "may" is permissive.

Thus, in answer to your question, the use of the word "shall" in R.S. 32:681(C) is mandatory.

Of further interest to you may be Attorney General Opinion 07-0035, copy attached, in which this office concluded that the language of R.S. 32:681(C) places primary control of a traffic fatality scene investigation with the coroner, rather than with law enforcement agency.

We hope the foregoing is helpful to you. Should you have other questions in which we may provide assistance, please contact this office.

Very truly yours,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY:

KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

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SYLLABUS

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KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL