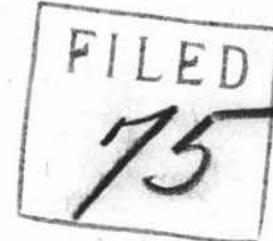


CORONER: Coroner has no authority to order return of body
for holding of inquest. No crime for removing
DEAD BODIES: a body from jurisdiction of coroner.

October 10, 1950



Honorable John M. Rice
Prosecuting Attorney
Newton County
Neosho, Missouri

Dear Mr. Rice:

This is in reply to your request for an opinion which reads as follows:

"We have a situation in this county on which I would appreciate an opinion from your office. As you know the city of Joplin is located in Jasper County and adjoins the north-west border of this county. We have had numerous occasions in the past where a death occurred by violence or casualty in the northwest part of this county where funeral directors from Joplin have removed the dead bodies from the scene of the crime or accident, and from the county, before the Newton County Coroner had arrived at the scene. The most recent case was on September 7th when an automobile accident occurred in this county in which a woman was instantly killed, and in which there was some indications of criminal negligence. The coroner was immediately notified, and arrived at the scene within 25 minutes, but the body had been removed to Joplin. This makes it impossible for the coroner to conduct a proper investigation, or to hold an inquest.

"I would appreciate an opinion as to what, if any, action can be taken against persons who thus remove bodies from this jurisdiction,

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and what powers the coroner has to order the body returned to this county for purposes of swearing a jury and conducting an inquest."

Sections 13227 and 13231, R.S.Mo. 1939, deal with the duties and jurisdiction of coroners. These sections are as follow:

"A coroner shall be a conservator of the peace throughout his county, and shall take inquests of violent and casual deaths happening in the same, or where the body of any person coming to his death shall be discovered in his county, and shall be exempt from serving on juries and working on roads."

"Every coroner, so soon as he shall be notified of the dead body of any person, supposed to have come to his death by violence or casualty, being found within his county, shall make out his warrant, directed to the constable of the township where the dead body is found, requiring him forthwith to summon a jury of six good and lawful men, householders of the same township, to appear before such coroner, at the time and place in his warrant expressed, and to inquire, upon a view of the body of the person there lying dead, how and by whom he came to his death."

This office has had previous occasion to consider the above sections in relation to the jurisdiction of coroners. In an opinion under date of December 15, 1948 (Hugh Waggoner) this office denied the authority of a coroner to issue blanket instructions that all bodies be left at the scene until the coroner arrives.

In an opinion under date of August 25, 1941 (N. Burton Short) this office considered the question as to the coroner's duty to investigate deaths where the alleged act of violence or accident was outside the legal boundaries of his county but where death occurred within the boundaries of his county. The opinion cited the following from Volume 4, American & English Annotated Cases at pages 1161 and 1162:

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"* * * Originally, in England, the office of coroner was one of great dignity and authority, and coroner's juries had the power, like grand juries, to present indictments for murder. The power and authority of the coroner from usage and statute have been much curtailed, * * *

"* * * Under the old system, where the coroner's jury performed the functions of a grand jury, this might require the removal of the body back to the jurisdiction where the crime was committed; but under the system in this state the inquest is to speedily inquire into the cause of death for the purpose of apprehending the guilty parties, and the testimony then taken to be an aid to the grand jury. * * *

"In England, under the common law, prior to the statute of 6 & 7 Victoria, chapter 12, the jurisdiction over an inquest, as regards place where the same might be held, was conferred upon the coroner only within whose jurisdiction the injury which caused the death had been received. * * *."

Thereafter, the opinion states:

"This statement is borne out by the Missouri Statutes as they apply to coroners. It seems that under the earlier authorities where the coroner's jury was acting in the capacity of a grand jury that the body had to be moved back to the jurisdiction where the crime was committed, but it seems under the later statutes which authorized the inquest to be held in the county in which the body is found, the result is that the inquest is more speedily made and in some cases with less expense. It seems that the rule of construction of the statutes similar to the Missouri Statutes was announced in

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Volume 4, American & English Annotated Cases, page 1163, as follows:

"But the common-law rule was suspended by the statute of 6 and 7 Victoria, Chapter 12, which provided "that the coroner only within whose jurisdiction the body of any person upon whose death an inquest ought to be holden shall be lying dead, shall hold the inquest, notwithstanding that the cause of death did not arise within the jurisdiction of such coroner."

"In a case construing this statute, where the injury was inflicted and death occurred outside the city of London, but afterward the body was removed into the city, it was held that the inquisition was properly held by the coroner of London, although the cause of death arose without his jurisdiction. Reg. v. Ellis, 2 C. & K. 470, 61 E.C.L. 470. But it was held that the coroner of a county wherein a dead body was found could take an inquisition only in that county. * * *

"In the United States statutory provisions in most of the states determine the proper place for the holding of inquests, and decisions construing these statutes are not numerous.

"Where a person died in one county and was buried in another county, and after burial it became necessary to exhume the body in order to hold an inquest to determine the manner and cause of death, it was held that if there were conflicting claims between the coroner of the county wherein the person died and the coroner of the county wherein the body was buried, the former would have the better right; but in the absence of such conflicting claims, the coroner of the county wherein the body was buried had jurisdiction to hold a valid inquest. In its opinion the court said:

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"An inquest must always be super visum corporis, and could not have been held in the other county without taking the body back there, thus involving useless expense and delays, and in some cases that may easily be imagined, such removal from the place of interment back to the place where the death occurred would be impracticable, and if the position taken by counsel for defendant is correct, defeating the ends of justice, or at least hindering them greatly by preventing the holding of any inquest at all. * * * On the whole, it would seem to be in accord with reason and convenience to say that under such circumstances as appear in the case now under consideration, the inquest could be lawfully held, as it was, in Erie county (the county wherein the body was buried)." Pickett v. Erie County, 19 S.N.C. (Pa.) 60, 3 Pa. Co. Ct. 23. See also Jameson v. Bartholomew County, 64 Ind. 524, 86 Ind. 154. But see Rentschler v. County, 1 Leg. Rec. (Pa.) 289, where the contrary was held.

"Under a statute providing that the coroner shall take inquisition over dead bodies "found within the county," it has been held that a body is found within the county within the meaning of the statute whenever it is ascertained by any means that it is within the county. State v. Bellows, 62 Ohio St. 307."

The conclusion reached by the writer of this opinion was:

"We are, therefore, of the opinion that in cases of assault committed on a person outside of your county and the person is later brought to your county and there dies, that under Section 13227, supra, it is your duty to hold an inquest over this body, and that under said Sections 13251 and 13252,

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your county court would be the body to which your fee bill should be presented for allowance and payment."

In view of this former opinion, and considering the authorities cited therein, we believe that jurisdiction attaches to the coroner of Jasper County when the dead body is taken within the confines of his county and he is notified of the presence of the dead body. Therefore, it would seem that the coroner of Newton County would have no jurisdiction of the case when the body is no longer to be found in Newton County. Since he does not have any jurisdiction at that time there would be no way for him to order the body returned for an inquest.

In answer to your other question we are unable to find any statute making provision for any action against persons who remove bodies from the jurisdiction of one coroner to another. Admittedly, the Missouri statutes concerned with the office of coroner are incomplete and difficult of application. However, we must accept the law as written and must apply the statutes which are in effect at the present time.

CONCLUSION

Therefore, it is the opinion of this department that no action can be taken against persons removing bodies from the jurisdiction of one coroner to another and the coroner in the county where the accident or felony has been committed has no authority to order the body returned for the purpose of holding an inquest.

Respectfully submitted,

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APPROVED:

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Attorney General