

COUNTY CORONERS: Method and procedure for calling a jury to hold an inquest. If said jury is sworn in they must remain together except when the jury consists of men and women.



December 9, 1957

Honorable Edward C. Westhouse
Prosecuting Attorney
Madison County
Fredericktown, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion which reads:

"Section 58.260, RSMo 1949 states that the coroner shall hold an inquest when he is 'notified of the dead body of any person, supposed to have come to his death by violence or casualty.' Further Section 58.310, RSMo 1949 states that the jury shall determine 'the death of the person, whether he died by felony or accident' and other matter.

"Do these actions prevent the coroner from exercising any jurisdiction in the matter as to whether an inquest shall or shall not be held? That is, if an investigation is made and everyone that knows anything about the death cooperates in the investigation so that there can be no doubt as to what occurred and who the parties were and all other matter as set forth in Section 58.310, be it an accident or a felony, must the coroner hold an inquest?

"Secondly, if the body is to be buried before a coroner's inquest is held, what would be the proper procedure? That is, can a group of men be assembled, as an arbitrary number, say twelve, to view the body; then when the inquest is to be held select six of those to hear it, so six can be sworn at the time the hearing is held? Or must they be sworn, according to Section 58.320, RSMo 1949, before they view the body? If this be the case, then it would seem that they must be kept together until the hearing is held."

In answering your first inquiry we are enclosing a copy of an

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opinion rendered by this Department under date of March 20, 1946, to the prosecuting attorney of Lewis County, Missouri, Honorable David W. Wilson, holding that a coroner exercises sole discretion in determining whether to hold an inquest.

Your second inquiry concerns the proper procedure to follow if the body is to be buried prior to the coroner's inquest and, further, if twelve men could be assembled to view the body then later when the inquest is to be held, select six men to hear it and the six men would not be sworn until the time of hearing, or must they be sworn according to the provisions of Section 58.320, RSMo 1949, before viewing the body?

Again, we refer you to a former opinion rendered by this Department to G. C. Beckham, prosecuting attorney of Crawford County, under date of November 26, 1951, a part of which reads:

"Under our statutes, a 'view' or an 'inquest' must be held where the person is 'supposed to have come to his death by violence or casualty.' This, of course, requires a jury. Section 58.610 RSMo 1949, however, makes an exception to the above where some credible person declares under oath to the coroner that the person whose body is to be viewed, came to his death by violence or crime; then in that event the coroner shall not order a jury but shall himself view the body and declare the cause of death. With the above statutory exception there must be an 'inquest' before there can be a 'view.' A view of the body is a part of the inquest as these terms are used in the coroner's and inquest law of the State of Missouri."

In view of the foregoing opinion, a view of the body without a jury can be made only under one circumstance and that is under the exception provided for under Section 58.610, RSMo 1949, which is, where some credible person declares to the coroner under oath that said deceased person came to his death by violence or crime, then the coroner shall view the body without a jury and declare the cause of death. In all other instances there must be an inquest before there can be a view of the body.

In Rex c. Ferrand, (K.B. 1819 reported in 7 English Ruling Case, 144, it was held that a coroner's jury must be sworn before the view of the body is taken. In so holding it was said at l.c. 145, and 146:

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"* * * *Now, taking the whole of this together, it appears to me that there can be no good inquest, unless the coroner and the jurors are both present at the same time, and the oath is administered by the former to the latter super visum corporis. If, indeed, after this inquest had proceeded, upon the arrival of the coroner himself, both he and the jury had gone to view the body, and the jury had then been resworn, it might have been a good inquest. That, however, was not done; and, therefore, I am of opinion that this inquest was wholly void, and that we ought not to grant any mandamus to continue its proceedings.

* * * * *

* * * *Now in the present case it appears that on the 8th day of September the oath of inquest was administered, and the dead body viewed by the jury. But then the oath was administered by a person wholly without authority. At that time, therefore, the jury were not under a valid obligation to inquire, but were mere strangers to the transaction. And when the jury were sworn afresh by the coroner, upon his arrival, it was not done super visum corporis. Nor, indeed, did they ever view the body after the oath was administered to them by the coroner. For though, on the 24th of September, the coroner viewed the body, the jury were not then present. I am, therefore, of opinion that we ought not to make this rule absolute. * * * *"

Section 58.260, VAMS is authority for a coroner summoning a jury for an inquest and reads:

"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 sheriff of the county where the dead body is found, requiring him forthwith to summon a jury of six good and lawful citizens of the county, 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

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by whom he came to his death."

It will be noticed the foregoing statute requires the coroner to summon a jury for an inquest and to view the body as soon as he shall be notified of the dead body supposed to have come to his death by violence or casualty and found in the county.

Section 58.130, VAMS, provides for giving an oath to said jurors called for the inquest.

Section 58.310, VAMS prescribes the function of the jurors after being sworn and reads:

"As soon as the jury shall be sworn, the coroner shall give them a charge, upon their oaths, to declare of the death of the person, whether he died by felony or accident; and if of felony, who were the principals and who were accessories, and all the material circumstances relating thereto; and if by accident, whether by the act of man, and the manner thereof, and who was present, and who was the finder of the body, and whether he was killed in the same place where the body was found, and, if elsewhere, by whom, and how the body was brought there, and all other circumstances relating to the death; and if he died of his own act then the manner and means thereof, and the circumstances relating thereto."

Section 58.320 VAMS, further provides that if the jury is sworn they shall remain together with one exception, and that is where there are women members when the jury is not receiving evidence or deliberating on its verdict the men and women members may separate. Said section reads:

"When the jury are sworn they shall remain together, and proclamation shall be made for any persons who can give evidence to draw near, and they shall be heard; provided, however, when there are women members of a jury, they may separate from the men members of the jury, if any, when not receiving evidence or deliberating upon their verdict."

Since a view of the body cannot be made without an inquest and jury, with one exception thereto, referred to in Section 58.610, supra, and also under the requirement of Section 58.260, supra, as soon as the coroner is notified of the dead body supposed to have come to his

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death he shall summon a jury for an inquest and view of the body, and under Section 58.310, supra, requiring a coroner to charge the jury as soon as it is sworn in, it all clearly indicates that the jury shall consist of only six citizens who shall be sworn in as soon as they appear in answer to the summons and shall not perform any function, until sworn in, even the viewing of a body which is a part of an inquest. Furthermore, the jury shall remain together after being sworn in for jury service except when there are women on the jury when not receiving evidence or deliberating upon their verdict.

We realize this has not always been the practice of members of coroner juries and in certain instances it might be expedient to proceed in other ways, however, in order to do so we believe that the matter should be referred to the General Assembly for consideration.

CONCLUSION

Therefore, it is the opinion of this Department that the matter of holding an inquest rests solely within the discretion of the coroner. Furthermore, if the coroner decides to hold an inquest and the deceased is to be buried, the coroner is vested with no statutory authority to call in twelve men to view the body and later, when the inquest is held, select six as a jury to hear the case and be sworn in at that time. All he can do is follow the hereinabove statutory procedure if he deems an inquest shall be held, then he shall summon six persons for the jury, swear them in and view the body.

Furthermore, if the jury is sworn in they must remain together with one exception, when some members of the jury are women then the women may separate from the men on the jury when said jury is not receiving evidence or deliberating on their verdict.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Aubrey R. Hammett, Jr.

Yours very truly,

John M. Dalton
Attorney General

Enclosure(1)

ARH:mw