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**FEES--CORONER'S INQUEST:** Fees claimed in Coroner's Statutory Statement of costs of inquest as costs against the County must be audited by the County Court and the Auditors should disallow inquest fees claimed but not provided for by Statute.

April 30, 1935.

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Honorable John B. Brooks  
Presiding Judge  
County Court of Grundy County  
Trenton, Missouri

Dear Sir:

Your letter requesting an opinion from Honorable Forrest Smith, State Auditor, was referred to this office, and reads as follows:

"You will find enclosed a bill of costs for a Coroner's inquest held in Grundy County, Missouri.

"We are sending it to you for an audit before allowing the same. We offer the following explanations that may help in the audit;

"Dr. Kimberlin is a physician and surgeon.

"There is but one subpoena for witnesses on file in the Circuit Clerk's office (all names on one.)

"One summons for jury on file.

"No post-mortem examination was held.

"Should the Sheriff's bill be paid with no order from the Coroner on record for his services?

"Should the Coroner be paid \$15.00 per day for his services as charged on bill?

"We will appreciate a complete audit and will furnish any further information at our command.

Honorable John B. Brooks

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"Also please find enclosed bill presented to the County Court by Miss Agnes Mae Wilson, retiring Prosecuting Attorney of Grundy County, Missouri. The first two items are allowed, should the remainder of the bill be allowed?"

"What we want to know about these bills is what is legal and right for us to pay so that our books will audit properly."

We also acknowledge receipt of the enclosures referred to in your letter. We are returning said enclosures herewith. Our opinion follows:

46 Corpus Juris, page 1014, Section 233, provides as follows:

"The person rightfully holding an office is entitled to the compensation attached thereto; this right does not rest upon contract, and the principles of law governing contractual relations and obligations in ordinary cases are not applicable. Public officers have no claim for official services rendered except where, and to the extent that, compensation is provided by law, and, when no compensation is so provided, the rendition of such services is deemed to be gratuitous.\* \* \* \*"

Section 11632 R. S. Mo. 1929, provides certain conditions precedent to payment of costs by a County Court for expenses incurred at a coroner's inquest. Said Section provides:

"The coroner or other officer holding an inquest, as provided for by this chapter, shall present to the county court a certified statement of all the costs and expenses of said inquest, including his own fees, and fees of jurors, witnesses, constables and others

entitled to fees for which the county is liable; and the county court shall audit and allow the same, and shall make a certified copy of the same, without delay, and deliver such copy to the county treasurer, which copy shall be deemed a sufficient warrant or order on the treasurer for the payment of the fees therein specified to each person entitled to such fees. The county treasurer shall pay to each person on demand, or to his legal representatives, the fees to which he is thus entitled, and shall take the proper receipt therefor, and produce the same in his settlements with the county court as vouchers for the money so paid out by him."

In construing the provisions of the above section our Supreme Court said in *Carmack v. Dade County*, 127 Mo. 527, l. c. 529; 30 S. W. 162:

"By section 2462, Revised Statutes, 1889, it is made the duty of the officer holding the inquest to present to the county court of the county in which the inquest is held a certified statement of all the costs and expenses of said inquest, including his own fees, the fees of jurors, witnesses, constables and others entitled to fees for which the county is liable. The certificate of the coroner in this case was in evidence, was prima facie evidence that the services were rendered for which fees were charged as therein stated, and in the absence of proof to the contrary, was all that was necessary to justify the finding and judgment of the court. The judgment is affirmed."

Our Supreme Court construed together sections 11802 and 11632, *supra*, in the case of *Houts v. McCluney* 102 Mo. 13, l. c. 16; 14 S. W. 766, and said:

"In the first place, no costs are allowed by the common law. They are, with us, creatures of the statute. They must be paid in the amounts and in the manner specified in the statute. Sections 5156 and 5613 are clear and unambiguous. They make the county liable for the fees allowed the coroner, jurors, witnesses and the constable in all inquests where the coroner has reasonable cause to believe that the person, over whose body the inquest is held, came to his death by violence or casualty."

It is the constable's duty to attend the coroner at inquests.

Section 11612 R. S. Mo. 1929 provides:

"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."

Section 11613 R. S. Mo. 1929 provides:

"Every such constable to whom such warrant shall be directed shall forthwith execute the same, and shall repair to the place where the dead body is, at the time mentioned, and make return of the warrant, with his proceedings thereon, to the coroner who granted the same."

Section 11614 R. S. Mo. 1929, provides:

"Every constable failing to execute such warrant or to return the same shall forfeit and pay the sum of eight dollars."

The constable's fees are allowable under the provisions of Section 11777, which provide:

"Constables shall be allowed fees for their services as follows:

"For serving a summons, rule, notice or order of a justice of the peace in any case.....\$0.60

"For serving warrant in any criminal case, for each defendant. . . . . 1.00

"For summoning each jury before a justice of the peace. . 1.00

"For taking a criminal to jail . 1.00

"And for every mile traveled in taking a criminal to jail and returning therefrom, provided the distance so traveled be more than five miles, the sum of, per mile. . . . . .10

"For serving each execution . . 1.00

"For taking every bond required by law to be taken. . . . . .50

"For subpoenaing a witness . . . .50

"For serving a writ of attachment. . . . . . 1.00

"For each mile actually traveled in serving any process . . . .10

"For each day or part thereof required in erecting the booths, taking them down, and attending any election in his township, when required to do so by the judges of election, per day. . . . . \$3.00

"For serving a writ of restitution . . . . . 1.00

"For every return on non est on a writ, original or judicial. . . . . .25

"For return of nulla bona . . . . .25

"For issuing garnishee summons on execution. . . . . .35

"For receiving and keeping property taken on execution or attachment, or under the order of the justice, such compensation as may be awarded by the justice making such order or from whom the process issued. For collecting after suit brought, and paying over to the plaintiff for all sums collected on executions or other process, where property has been levied on, three per cent. and one and one-half per cent. where money is paid to the constable on summons, execution or other process, without levy, or to the person entitled thereto, his agent or attorney, to be paid by the debtor: Provided, however, that in all townships having more than seventy-five thousand inhabitants the constable shall receive the same fees and compensation as are allowed by law to sheriffs and marshals of such counties."

Fees allowable to jurors at a coroner's inquest are set out in Section 11797 R. S. Mo. 1929, which provide in part:

"Jurors shall be allowed fees for their services as follows:

"For each juror attending a view inquest or execution of a writ of ad quod damnum, per day. . . . \$1.00  
\* \* \* \* \*

Fees allowable to witnesses at a coroner's inquest are set out in Section 11798, R. S. Mo. 1929, which is in part as follows:

"Witnesses shall be allowed fees for their services as follows: For attending any court of record, reference, arbitrators, commissioner, clerk or coroner, at any inquest or inquiry of damages, within the county where the witness resides, each day, \$1.50. For or like attendance out of the county where witness resides, each day, \$2.00. For traveling each mile in going to and returning from the place of trial, .05. \* \* \* \* "

In the case of *Magener v. Pulitzer Publishing Company*, 172 Mo. App. 436, l. c. 451; 158 S. W. 54, the Appellate Court said:

"Preliminary to an inquiry whether it was privileged, it is important to say whether it was plaintiff's official duty as the sheriff of the county to attend the coroner's inquest. We conclude it was not. The statute makes it the duty of the constable of the township to attend the coroner at an inquest."

Section 12109 R. S. Mo. 1929, provides as follows:

"If a claim against a county be for work and labor done, or material furnished in good faith by the claimant, under contract with the

county authorities, or with any agent of the county lawfully authorized, the claimant, if he shall have fulfilled his contract, shall be entitled to recover the just value of such work, labor and material, though such authorities or agent may not, in making such contract, have pursued the form of proceedings prescribed by law."

#### CONCLUSION.

It is the opinion of this office that all persons or officers attending a coroner's inquest must be able to point to the Statute allowing them fees for services at said inquest before said inquest fees can be said to support a legal demand against the County. As was said in the Houts case, supra, costs in a coroner's inquest are "creatures of Statute".

The certified statement of the coroner, which you submitted with your request, is required by virtue of 11632, supra. This Section also requires that it is the duty of the County Court to audit said statement, and after auditing the same against illegal and unearned fees it becomes the court's duty to certify a copy of the correct audited statement to the County Treasurer who is then to pay the allowed claims.

It is our further opinion that the coroner's statement of legal inquest costs does not prove itself. Said statement to be properly audited must be checked against the different statutes allowing fees to coroners, jurors, witnesses, constables and others entitled to fees for which the county is liable.

In auditing the coroner's statement against the fee statutes, set out supra, it is our opinion that the following corrections should be made by the County Court in the coroner's statement now before us for consideration, viz:

If there were twenty-eight subpoenas issued by the coroner, he would be entitled to the \$7.00 claim which he presents. If twenty-eight persons were subpoenaed on

one subpoena, then the \$7.00 claim should be corrected to read \$0.25. You state in your letter that only one subpoena was issued. The coroner is entitled to \$0.25 per subpoena, and not \$0.25 per person subpoenaed under provisions of Section 11802, supra.

The claim of \$105.00 for seven days service at \$15.00 per day should be corrected by a disallowance, as there is no provision in the Statute allowing a per diem for services of the coroner at an inquest. The coroner's services for which he can charge are listed in the Statutes.

We find the other claims of the coroner for fees to be statutory and allowable, if the services were performed. The total of \$119.25 should be corrected to total only statutory fees payable by County Treasurer after the Court's audit, and even then the fees should not be allowed unless the statutory service was rendered.

In auditing the Constable's fees, presented in the coroner's statement, it is our opinion that the following corrections should be made by the County Court, viz:

The charge of \$3.00 for summoning jury of inquest is not allowable under the provisions of Section 11777, supra, and should be corrected by a disallowance. It is true that Sections 11612, 11613, and 11614 make it the duty of the coroner to summons the jury and attend the coroner's inquest, but where no fee for the service is provided, it is a gratuitous service required by law, and the cases so hold.

The constable's charge of \$18.00 for attending an inquest for six days should be corrected by a disallowance. There is no provision in the Statute allowing a per diem to the constable for this service. It is just another one of those gratuitous services required by law.

We find the other fees claimed by the coroner, to the use of the constable, to be statutory and allowable if the service was performed. The total claim of \$35.00 should be corrected to total only statutory fees payable by County Treasurer after an audit, and even then the fees should not be allowed unless the service was performed.

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We find the fees claimed by the coroner, to the use of each jurymen, in accord with Section 11797, supra. If the services were rendered the jurors' fees should be allowed.

We find the fees claimed by the coroner, to the use of witnesses, to be only \$1.00 per day. Section 11798, supra, provides that said witness fees should be \$1.50 per day. This claim should be changed allowing each witness \$0.50 more per day after which the total witness fees which now reads \$36.00 should be changed to correspond to the corrected total.

The fees which the coroner has claimed to the use of The Rex Studio, C. U. Alexander, Sheriff Edwin D. Lloyd, C. C. Frane and O. R. Rooks are not statutory inquest fees, and should not be allowed by the Court in auditing fees chargeable to this inquest. These services are extraneous to services for which inquest fees have been provided for by Statute. As claims against the County they should be audited as other claims against the County are audited by the County Court, but not as the statement of the coroner presenting legal claim due from a coroner's inquest.

The grand total now showing total fees and expenses to be \$359.15 should be changed to include the correct total of only fees allowed by the Court's audit.

Respectfully submitted

WM. ORR SAWYERS  
Assistant Attorney General.

APPROVED:

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ROY McKITTRICK  
Attorney General.

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