

- CORONER: (1) Shall use reason in determining his statutory jurisdiction to hold an inquest.
(2) Who shall pay inquest fees.

March 25, 1935.

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58

Dr. T. M. Mathews
Coroner of Pike County
Bowling Green, Missouri

Dear Sir:

Your request for an opinion, dated March 21, 1935, is as follows:

"Mr. Guy Meek, who has an estate, was found dead with a bullet hole through his head. The circumstances indicated suicide.

"1st. Who is the judge as to the propriety or necessity of holding an inquest?

"2nd. Who should pay the Statutory fees of the inquest?"

As to your first question:

Before the burial of dead bodies, whose death occurred in this State, the law requires a complete and satisfactory certificate of death to be filed with the officers of the State Board of Health, and Laws of 1933, page 270, Section 9044, amending Revised Statutes 1929, provides in part as follows:

"And no such burial or removal permit shall be issued by any registrar until a complete and satisfactory certificate of death has been filed with him as hereinafter provided:"

The Legislature provides for said certificates in separate sections, and Section 9047 R.S. Mo. 1929, provides:

"In case of any death occurring without medical attendance, it shall be the duty of the undertaker to notify the registrar of such death, and when so notified, the registrar shall inform the local health officer and refer the case to him for immediate investigation and certification, prior to issuing the permit: Provided, that when the local health officer is not a qualified physician, or when there is no such official, and in such cases only, the registrar is authorized to make the certificate and return from the statement of relatives or other persons having adequate knowledge of the facts: Provided further, that if the circumstances of the case render it probable that the death was caused by unlawful or suspicious means, the registrar shall then refer the case to the coroner for his investigation and certification. And any coroner whose duty it is to hold an inquest on the body of any deceased person, and to make the certificate of death required for a burial permit, shall state in his certificate the name of the disease causing death, or the means of death; causes or violence, and whether (probably) accidental, suicidal, or homicidal, as determined by the inquest; and shall, in either case, furnish such information as may be required by the state registrar properly to classify the death."

Again in Section 9070, R. S. Mo. 1929, the Legislature provided:

"When a transit permit is desired for the shipment of a dead human

body, the physician attending the deceased in the last illness shall furnish a certificate showing the name of the deceased, the age, the time and place of death, the cause of death, and whether of a contagious or infectious disease. If there was no attending physician, the coroner of the county in which the death occurred shall make the certificate.

Thus we see that the "certificate of death", which is required by law before removal or burial of dead bodies, can be legally made out by the attending physician, but where there be no attending physician then it becomes the coroner's duty to make out the required certificate

The coroner is not privileged at all events to make a "certificate of death" necessary to a burial permit. On the other hand he has the duty to take inquests of all violent and casual deaths occurring in the county, and Section 11608 R. S. Mo. 1929, provides as follows:

"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."

The purpose of an inquest is to have a jury to view any dead body and inquire whether death came by violence or casualty, and how and by whom he came to his death, and 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."

The coroner's jury is required, after being charged on oath, to declare whether the death of the person be by his own act and the manner and means thereof, and the circumstances relating thereto, and Section 11617 R. S. Mo. 1929, provides:

"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. "

In order that we may understand the object of a coroner's inquest, we look to *Houts v. McCluney* 102 Mo. 13, 14 S.W. 766, where the Supreme Court said:

"The object of the coroner's inquest is to ascertain whether the person died by felony or accident; and, if by felony, to discover the guilty person or persons.* * * *"

CONCLUSION AS TO FIRST QUESTION.

It is the opinion of this office that it is within the sound discretion of the coroner, and he alone, as to the propriety or necessity of calling a coroner's jury and holding an inquest over a dead body discovered in his county, where the circumstances indicate a death by violence or casualty.

His duty to take inquests is a duty independent of his duty to make out death certificates, which must be exercised with sound discretion and with an object of serving the people in those statutory matters, on which he is bound to charge the jury to determine. Ulterior purposes, other than the statutory purposes of a coroner's inquest, would not justify the coroner in holding an inquest but an inquest made in good faith over a dead body is the statutory duty of one holding the office of coroner.

It is the opinion of this office that, where circumstances reasonably indicate a death by "violence and casualty" it is up to the coroner to hold an inquest. The object of such an inquest is to determine the cause of death. The sovereign has lost a subject; the question arises, was the death by accident or natural causes or was a life taken by felony (which is without due process of law)? If by felony, to discover the guilty person or persons, there is good reason to hold statutory inquests, even though it may work embarrassment on the immediate family of deceased. The state has a vital interest in knowing how people come to their death when all indications are that death was by "violence or casualty."

The statute provides that even in case of suicide the coroner's jury are to determine the manner and means, and circumstances relating thereto. The Legislature intended suicide to be inquired into as a death by "violence or casualty" or they would not have made it a subject of inquiry.

As to your second question:

The following sections show that in some instances the county, and in other instances interested parties, are liable for the statutory fees incurred during an inquest.

Section 11630 R. S. Mo. 1929 provides:

"If an inquest be held over the body of a minor, the parent, guardian or master of the same shall be liable for the costs and expenses, if there be any such person able to pay the same. If the person over whose body an inquest shall be held shall have any estate, the cost and expenses of inquest and burial shall be paid out of his estate; but where there is no person liable and able to pay such expenses, they shall be allowed by the county court out of the county treasury."

Section 11632 R.S. Mo. 1929 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, the 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."

Section 11634 R. S. Mo. 1929 provides:

"Whenever any known person shall have died from any cause other than violence or casualty, and a certificate of the cause of death is necessary for the burial of the body of such person, the coroner shall, at the request of the relatives or friends of such person, hold a view or inquest on the body, and the person making such request shall pay all costs, fees and expenses of such inquest or view, nor shall the county be liable for any of them unless it shall appear to the county court that in such a view or inquest there appeared reasonable cause to suspect that said dead person came to his death by violence or casualty, in which case the costs, fees and expenses of such view or inquest shall be paid as in ordinary cases; and although such person may have died from disease or natural cause, where, under this section, the county is not liable for the fees, costs and expenses of a view or inquest, and the same cannot be made out of the person requesting the same, or out of the estate of the deceased, the county court may, in its discretion, allow and pay the fees of necessary witnesses at the view or inquest; but all services of the coroner, constable and other officers in or about the same shall be rendered gratuitously, as in the case of a suit by a plaintiff permitted to sue as a poor person."

Section 11635 R. S. Mo. 1929 provides:

"Any coroner who shall knowingly charge to any person, or present to the county court for allowance, any items of fees, costs and expenses not authorized by law, or for any service not actually performed,

shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall forthwith be removed from office. Such removal shall be declared in the judgment for such misdemeanor, and thereupon the office of such coroner shall be declared vacant, and his successor appointed according to law."

Our Supreme Court, in construing Section 11632, supra, said, in the case of Carmack v. County 127 Mo. 527, 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, 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."

Section 11633 R. S. Mo. 1929 provides that in certain instances the coroner's fees are not to be allowed by the county court as a charge upon the county; said section reads:

"No costs or fees to the coroner shall be allowed by the county court, in any case of the view of or inquest on a dead body, unless it appears to the court that the coroner, either before or during the view or inquest, had reasonable cause to believe that such body was that of a person who had come to his death by violence or casualty, or who, being unknown, was found dead within such county; but where any such inquest or view has been held by the coroner, on a notification by some person, without reasonable cause to suppose that such dead body was that of a person unknown, or who had come to his death by violence or casualty, the person giving such notification, without reasonable cause, as aforesaid, shall be liable to pay all the costs, fees and expenses of such view or inquest."

CONCLUSION AS TO SECOND QUESTION.

Fees for performing duties of a public office were not allowable by common law and if they be allowable in this day it is because the Legislature has so provided.

The Legislature has provided for coroner's fees in the statutes set out supra, but his right to same depends entirely on the construction of the statutes allowing same. The Supreme Court in the Houts case construed the above sections to mean that the county is liable for legitimate coroner's fees 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 opinion of this office that the liability of the county has not changed since the holding in the Houts case. The above question states the law as it relates to a county's liability.

On the other hand, the general liability of the county is not without exception. Where an inquest be held on notification of a person without reasonable cause to suppose a death by violence or casualty, the person so notifying is then liable, and not the county. Section 11633, supra, so provides.

There is another exception to county liability. Where an inquest is held under the provisions of Section 11634, supra, the county is liable under the general rule above laid down, but the general rule, by the very terms of said section, does not apply in cases of death by "disease or natural" causes. By the terms of said section it is possible for the coroner to be called upon to make out a "certificate of death" and it becomes his duty to view the body and look to the person who requested his assistance for his fees. In such a case the necessary witness fees may be paid at the discretion of the county court, but the fees of the coroner, constable and other officers, by the very terms of the statute, are gratuitous.

When the coroner is called in under the provisions of this statute to perform his duty, the Legislature did not intend to deny to the coroner the general power which they had vested in him to reasonably hold inquests when the occasion demands. They recognized in him his right to perform his duty, even when called in originally by relatives only for the purpose of making a "certificate of death," when, after answering such a call and under his view he sees a dead body which, from all appearances came to its death by "casualty and violence." That is why the Legislature said in said section that he shall "hold a view or inquest," whichever the occasion reasonably demands. If it turns out that he held an inquest when in all reason a "view" would have sufficed to have shown death from disease or other causes, then the county is not liable for costs and fees under the provisions of this section.

Since, under the statutes, liability for coroner's

Dr. T. M. Mathews

-11-

March 25, 1935.

fees depends upon the facts of each case, it is impossible for this office to go beyond stating the general rule of liability set out in the statutes and cases, and the statutory exceptions thereto.

Recapitulating our conclusion to your second question: Where an inquest is reasonably held, the county is liable for coroner's inquest fees. Where inquest be unreasonably held, the county is not liable but service fees are to be paid by the informant (except for witness fees which county court may allow) or are gratuitous.

In the final analysis, legal liability, for fees in an inquest held by a coroner, depends on the facts of each case and must prevail or fail on its own particular facts.

Respectfully submitted

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APPROVED:

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