

DEAD BODIES: WARDEN: Prisoners who die in the Penitentiary should be turned over to Anatomical Board when they are to be buried at public expense.

---

May 7, 1935.

39



Honorable J. M. Sanders  
Warden of Penitentiary  
Jefferson City, Missouri

Dear Mr. Sanders:

This is to acknowledge your letter as follows:

"Under date of April 8th last, I received from the Hon. S. B. Hunter, Director State Penal Board, a letter written to him by M. D. Overholser, M. D., Secretary, Missouri State Anatomical Board, concerning the disposal of unclaimed bodies of inmates of this institution.

"Since the entire matter is in question, allow me to quote from the letter of M. D. Overholser, M. D. Quote:- 'In my letter of April 2nd I did not mean that we were to take the body before it had been reasonably established that it was unclaimed. When a death occurs in the Penitentiary it can usually be ascertained within a few hours whether the body is to be claimed or not. If the body is claimed it is turned over to the undertaker; however, if no claimant is found (within 24 hours at the most) I should be notified and a truck will be sent for the (unembalmed) body. In other words the undertaker is not to be called unless the Warden has established that the body is to be claimed. In only exceptional cases is a body re-claimed from the Anatomical Board. For instance, when the Warden has

May 7, 1935.

reasonably established that the body is unclaimed by having the body refused by the known relatives it is then turned over to us. However, should some unknown relative make a claim for the body at a later date it may be re-claimed from us. This, as I say, happens very rarely - once or twice out of every 100 unclaimed bodies in our experience." End of quote.

"We have been in the practice of calling the undertaker immediately upon the death of an inmate; the undertaker embalming the body and locating the relatives by wire. If the body is not claimed, the State Anatomical Board is notified accordingly.

"The undertaker is called and the body embalmed for two reasons: - 1. We do not have a place to keep an unembalmed body for any length of time. 2. The time necessary to locate the relatives of a deceased inmate is rather indefinite, in that it takes at least a day and oftentimes several days. This is due to the fact that many of the inmates live in rural districts and where telegraph service, etc., is rather slow. In all fairness to the deceased, we feel that the relatives should be located and informed of the death, even though it take several days to do so.

"Under these circumstances and in view of the contents of Mr. Overholser's letter, we feel that some legal decision is necessary in the matter. Must I, as Warden, comply with the request of the State Anatomical Board as set down in the letter; or, am I within my duties to handle the bodies of deceased inmates of this institution, as stated above?

Honorable J. M. Sanders

-3-

May 7, 1935.

"A reply at your earliest convenience will be appreciated."

This department has twice previously, to-wit, on May 15, 1934 and on April 23, 1935, rendered opinions concerning disposition of dead bodies. As these opinions are exhaustive it is unnecessary to again establish the premises as to the disposition of dead bodies. Copies of these opinions are herewith enclosed.

The question presented in your letter is whether or not the Warden of the Penitentiary has a right to direct the embalming of a dead body pending the determination of whether or not the body of a deceased convict shall be buried at public expense, that is, whether or not the relatives of the deceased convict will bury the body or whether or not the body of the deceased convict will be buried at public expense.

If the body of the deceased convict will be buried by the relatives, then of course, under our previous rulings, the anatomical Board has no right or authority over the body except, perhaps, if an autopsy is to be performed. If the body of a deceased convict is to be buried at public expense, then, clearly, under the statutes the Anatomical Board has a right to the body and the disposition thereof.

You desire to keep the body until you determine to your own satisfaction whether or not the relatives of the deceased, if any, will claim the body and bury it. The establishing of the fact as to whether or not an inmate's body is to be buried at public expense is a question of fact, and under your powers and regulations as to inmates of the Penitentiary, you undoubtedly have the right to establish that fact before you dispose of the body in any particular, that is, whether or not you turn it over to the Anatomical Board or hold the body pending determination as to whether or not the body is to be buried at public expense.

However, in your investigation to determine if the body is to be buried at public expense or by relatives of the deceased, you have no right to incur indebtedness to the state by embalming, purchase of casket, outfittings, etc. It neces-

Honorable J. M. Sanders

-4-

May 7, 1935.

serily follows that if you cause the body to be embalmed, then someone will have to, or should, pay the undertaker. In other words, if you order a body embalmed and the relatives claim the body for burial, such would not have to pay for the unauthorized embalming if they did not wish to do so, and if the body is to be buried at public expense the State, likewise, would not have to pay for the embalming, because bodies buried at public expense must be turned over to the Anatomical Board. It thus follows that in no event will the State ever be liable for the payment of any burial expense rendered to dead bodies in your custody.

Thus, if you order a body embalmed and it turns out that the body is to be buried at public expense, we know of no way that the embalmer could be reimbursed unless you be personally liable for the charges. Therefore, we suggest that you follow the suggestions outlined in Dr. Overholser's letter, as such appears to us to be the most practical solution of your problem.

While it seems to be a harsh rule that one who has departed this life and has to be buried at public expense, must be turned over to the Anatomical Board to have such person's dead body done with at the will of such Board, yet, the Legislature has prescribed such a course and we do not comment on the justness or unjustness of such a law. We are only interpreting the law as it is written, without regard to any sentimental feeling entering into the discussion.

Respectfully submitted,

WILLIAM ORR SAWYERS  
Assistant Attorney General

APPROVED:

---

ROY McKITTRICK  
Attorney General

WOS:H