

CORONER'S INQUEST: Jury must be summoned by constable in the township where the body is found, unless constable is unable to perform the duty.

August 13, 1938

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Dear Sir:

This is to acknowledge receipt of your request for an opinion under date of July 9, 1938, which is as follows:

"I wish that your office would give me an opinion on Section 11612, R. S. Missouri on this situation:

"On several instances in this county the coroner has, under Section 11612, made out his warrant directed to the sheriff of Lincoln County, Mo., to summons a jury of six good and lawful men to appear before the coroner and hear the evidence and view the body; and it is contended by the constable that it is mandatory that the coroner direct the warrant, in each instance, to him when he is present in the township. (2) There have been instances when the bodies have been removed from the scene and taken to an undertakers establishment in a distant township, and the inquest held where the body lay at the undertaker's office. Is this permissible under the statutes?

"(3) Is it mandatory that the coroner must seek out and get the constable even though he lives quite a distance from where the body was, when the sheriff and other householders are present whom

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he could immediately call upon and deliver the summons as is provided under Sec. 11625? In other words, are these sections mandatory on the coroner?

"(4) If it is ruled by your department that Section 11612 is a mandatory section, then should the constable and sheriff who have collected fees from summoning juries out of their township be required to turn said fees so collected over to the constable of the township where the body was found?"

Under the general law, the sheriff of the county has statewide jurisdiction on the service of certain processes, and the constable has general jurisdiction throughout the county which contains the township in which he is elected. Section 11756, R. S. Mo. 1929, reads as follows:

"Constables may serve warrants, writs of attachments, subpoenas and all other process, both civil and criminal, and exercise all other authority conferred upon them by law through their respective counties."

The above section is the general jurisdiction of the constable for the service of all writs and processes. Under this section the constable is limited to the summoning of coroner's juries in the township in which he is elected and the body involved in the inquest has been found.

Section 11612, R. S. Mo. 1929, in regard to the summoning of a coroner's jury, reads as follows:

"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

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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."

It has always been the rule that where a general jurisdiction is conferred upon a certain officer and also a special jurisdiction has been conferred upon a certain officer, the special law applies in preference to the general law. In the case of State v. Brown, 68 S. W. (2d) 55, 1. c. 59, the court held as follows:

"It will be observed that section 4556, except the last proviso which is not pertinent to the matter here in controversy, relates to corporations in general, while section 5613 relates only to a particular class of corporations, to wit, building and loan associations. In such case the rule applicable is that 'where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute.'"

In construing the intention of the Legislature, one must read sections covering the same or similar matter in order to determine the intention of the passage of any section of the statute. Section 11756, supra, is the general law and Section 11612 is the special law in reference to the summoning of a coroner's jury. It will be noticed that in Section 11612 it provides that the coroner shall make out his warrant, directed to the constable of the township where the dead body is found. It also requires that he summon a jury of six men from the same township. This section, being a special section limiting the general section as to the summoning of a coroner's jury by the constable,

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must be construed to mean that only the constable shall summon the coroner's jury.

59 C. J., page 961, in reference to the construction of a statute, states as follows:

"In construing a statute to give effect to the intent or purpose of the legislature, the object of the statute must be kept in mind, and such construction placed upon it as will, if possible, effect its purpose, and render it valid, even though it be somewhat indefinite. To this end it should be given a reasonable or liberal construction; and if susceptible of more than one construction, it must be given that which will best effect its purpose rather than one which would defeat it, even though such construction is not within the strict literal interpretation of the statute, and even though both are equally reasonable. Where there is no valid reason for one of two constructions, the one for which there is no reason should not be adopted. The legislature cannot be held to have intended something beyond its authority in order to qualify the language it has used." (Citing *Betz v. Columbia Telephone Co.*, (App.) 24 S. W. (2d) 224.

Section 11612, supra, does not mention the sheriff, but only the constable. This section is also limited further by Section 11625, R. S. Mo. 1929, which reads as follows:

"If the constable of the proper township is unable to execute the duties required by this chapter, the officer taking the inquest may direct his warrant to any householder of the county, who shall perform the duties of constable, be subject to the same penalties, and entitled to the same fees."

It will be noticed that this section does not set out that the sheriff shall summon the jury where the constable is unable to execute his duties. Under both Sections 11612 and 11625 it is mandatory that either the constable of the township where the body is found shall summon a jury from the township, or else the duties shall be performed by any householder of the county. Section 11625 does not limit the appointment of the householder to any particular township, but only prescribes that the householder be a resident of the county and not of the township where the body was found.

In your request you inquire whether or not the constable and sheriff who have collected fees from summoning juries out of their township are required to turn these fees so collected over to the constable of the township where the body was found. In answering this inquiry, as set out under the above authorities, one must take into consideration the fact that in order that an officer should collect fees for the performance of his duties, it would be necessary that he put his finger on the statute authorizing their taxation. In the case of Ring v. Paint & Glass Co., 46 Mo. App. 1. c. 377, the court said:

"It may be stated that the entire subject of costs, in both civil and criminal cases, is a matter of statutory enactment; that all such statutes must be strictly construed, and that the officer or other person claiming costs, which are contested, must be able to put his finger on the statute authorizing their taxation."

In other words, such statutes are strictly construed in reference to the payment of fees and costs.

Under Section 11612, supra, the only one entitled to payment of fees for the summoning of a coroner's jury is the constable in the township where the body involved in the inquest was found. It would be unlawful, under the above authorities, to remove the body to a different township and hold an inquest before a jury summoned by the constable of another township.

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As to the summoning of a coroner's jury by the sheriff, it would be unlawful for his summoning the jury as an official, but in case the constable is not available the coroner may in his official capacity appoint the sheriff as a householder of the county.

Any fees obtained by the constable of another township or the sheriff of the county in the unlawful summoning of a coroner's jury would not be returnable to the constable in the township where the inquest should lawfully be held for the reason that the constable had not performed any duties in the summoning of the coroner's jury, but the constable or sheriff who unlawfully assumed the duties of the proper constable for the summoning of the coroner's jury would be subject to suit by the county court for the return of the fees to the county treasurer.

#### CONCLUSION

In view of the above authorities, it is the opinion of this department that Section 11612, R. S. Mo. 1929, should be construed as mandatory; that the coroner should direct his warrant for the summoning of a coroner's jury to the constable in the township where the body involved in the inquest is found. This section must be followed unless the constable is not available, in which case the coroner shall direct his warrant for the summoning of the coroner's jury to any householder of the county.

It is also the opinion of this department that under the above authorities, no body should be removed from the township where it is found for the purpose of a coroner's inquest. If the coroner is unable to find the constable, then he may appoint the sheriff or any other officer in the capacity of a householder for the summoning of a coroner's jury.

It is further the opinion of this department that any fees collected by constables or sheriffs who have unlawfully summoned a coroner's jury cannot be returned to

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the constable of the township where the body was found and who should lawfully have summoned the coroner's jury, but that the county court, by proper proceeding, may collect the fees that the constable or sheriff obtained in an unlawful summoning of a jury for a coroner's inquest.

Respectfully submitted

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APPROVED:

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