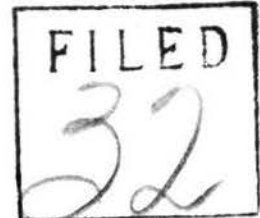


CORONER:

It is the duty of the coroner to have witnesses subscribe to transcript of testimony given in a coroner's inquest.

May 7, 1938

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Dr. G. W. Gaines,
Coroner of Ray County,
Richmond, Missouri.

Dear Sir:

This will acknowledge receipt of your request dated May 3, 1938, for an official opinion from this department which request is as follows:

"Please give me a ruling on section 11621, pertaining to witnesses in coroners' inquest, signing their testimony.

After the testimony has been taken in shorthand and later typewritten, it is quite a chore to hunt up the witnesses and have them sign the testimony, especially where the witness lives a long distance away."

Section 11612, R.S. Mo. 1929, 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 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."

Under this section it is the duty of every coroner to call a jury to inquire into the cause of death by violence of casualty of any one found within his county. Section 11621, R.S. Mo. 1929, reads as follows:

"The evidence of such witnesses shall be taken down in writing and subscribed by them, and if it relate to the trial of any person concerned in the death, then the coroner shall bind such witnesses, by recognizance, in a reasonable sum for their appearance before the court having criminal jurisdiction of the county where the felony appears to have been committed, at the next term thereof, there to give evidence; and he shall return to the same court the inquisition, written evidence and recognizance by him taken."

This section is mandatory and it is compulsory for the coroner to have the evidence of witnesses testifying that a coroner's inquest taken down in writing and subscribed by them.

In the payment of duties performed in compliance with Section 11621, R.S. Mo. 1929, Section 11628, R.S. Mo. 1929, provides as follows:

"For taking down the testimony at an inquest, the coroner shall be allowed ten cents for every hundred words, and twenty-five cents for certifying the same."

"Shall" as used in Sections 11621, 11612 and 11628

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is mandatory. The word "shall" in the statutes directing that public body shall do certain acts * * * was construed as mandatory and in a permissive sense. Grant v. City of Newark, 28 New Jersey Law, 491, 497.

It is the duty of the coroner to compel the testimony of the witnesses before a coroner's inquest to be taken down in writing and also require that the transcript of a testimony be subscribed by them. In your letter you suggest that it requires some effort on your part to hunt up the witnesses and have them sign the testimony and as a suggestion under the law of the state of Missouri in reference to payment of witnesses before a coroner's inquest, the coroner must pay the witnesses in cash out of money allotted to him by the county court and the witnesses need not wait until the witness fees have been paid into the court. As a suggestion to help in your work, I would suggest that you hold the cash payment of the witness until he has finally completed his testimony by subscribing to the transcript of his testimony. This action would cause many of them to return within a reasonable time and sign the transcript of their testimony.

CONCLUSION

In view of the above sections and suggestions, it is the opinion of this department that the transcript of the shorthand notes of witnesses testifying before a coroner's inquest must be subscribed by them, and it is the duty of the coroner to follow this mandatory section in detail.

Respectfully submitted

W. J. BURKE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

WJB:DA