

PENAL INSTITUTIONS: Permission for autopsy in State Penitentiary must be received from Secretary of the Missouri State Anatomical Board.

June 22, 1942.

6-25



Dr. Hugh W. Maxey
Prison Physician
Missouri State Penitentiary
Jefferson City, Missouri

Dear Dr. Maxey:

Your letter of June 18th addressed to this Department, requesting an opinion, has been referred to me. Your request, omitting the caption and signatures, is as follows:

"I have been informed that my predecessor, Dr. Marshall W. Kelly, requested your office for an opinion as to performing autopsies within the Prison. This information has evidently been misplaced for I am unable to find it in our files.

"I am very much in need of this information and I would appreciate it if your office would give me an opinion as to performing autopsies within the Prison. Is it permissible? If so, how do I get permission to perform an autopsy within the Prison."

On April 23, 1935, Mr. J. E. Taylor, who at that time was an Assistant in this office, wrote an opinion touching this matter, but in 1939 the Legislature repealed the provisions of the Revised Statutes of Missouri for 1929 dealing with this subject and in lieu thereof enacted new provisions which can be found at page 510 of the Laws of Missouri for 1939.

Section 9998, R. S. Mo. 1939, provides as follows:

"That the heads of departments of anatomy, professors and associate professors of anatomy at the educational institutions of the State of Missouri which are now or may hereafter become incorporated, and in which said educational institutions human anatomy is investigated or taught to students in attendance at said educational institutions, shall be and hereby are constituted the Missouri State Anatomical Board, hereinafter referred to in this article as the 'Board.' The Board shall have exclusive charge and control of the disposal and delivery of dead human bodies, as hereinafter described, to and among such educational institutions as under the provisions of this article are entitled thereto. The Secretary of the Board shall keep an accurate record of all bodies received and distributed by the Board, showing the dates of receipt and distribution, the sources from which they came to the Board, and the name and address of the educational institution to which the same were sent, which record shall be at all times open to the inspection of each member of the Board and of any prosecuting attorney or circuit attorney of any county or city within the State of Missouri."

In the Revised Statutes of Missouri, 1939, Section 10,000, will be found the following:

"Superintendents or wardens of penitentiaries, houses of correction and bridewells, hospitals, insane asylums and poor houses, and coroners, sheriffs, jailers, city and county undertakers, and all other state, county, town or city officers having the custody of the body

of any deceased person required to be buried at public expense, shall be and hereby are required immediately to notify the secretary of the Board, or the person duly designated by the Board or by its secretary to receive such notice, whenever any such body or bodies come into his or their custody, charge or control, and shall, without fee or reward, deliver, within a period not to exceed thirty-six (36) hours after death, except in cases within the jurisdiction of a coroner where retention for a longer time may be necessary, such body or bodies into the custody of the Board and permit the Board or its agent or agents to take and remove all such bodies, or otherwise dispose of them; Provided that each educational institution receiving a body from the Board shall hold such body for at least thirty (30) days, during which time any relative or friend of any such deceased person or persons shall have the right to take and receive the dead body from the possession of any person in whose charge or custody it may be found, for the purpose of interment, upon paying the expense of such interment. Each educational institution securing a dead body shall pay all necessary expense incurred in the delivery thereof, including cost of notice to the secretary of the Board or his agent, which notice shall be by telegraph, when necessary to insure immediate notice. A correct record of all such bodies, including the name and date of death, shall be kept in a book provided for that purpose by the county clerk of the county in which such person died, and by the city Health Commissioner of the City of St. Louis, and such record shall be promptly furnished said officer by the person or persons reporting said

bodies to the secretary of the Board or his agent. Whenever any person fails to give the notice and deliver the body of a deceased person as required by this act, and by reason of such failure such body shall become unfit for anatomical purposes, and is so certified by the duly authorized officer or agent of the Board, such body shall be buried at the expense of the person so failing to notify and deliver such body."

Section 10002 of the R. S. of Missouri, 1939, provides as follows:

"Bodies required to be buried at public expense shall be under the exclusive custody and control of the Board. It is hereby declared unlawful for any person or persons to hold any autopsy on any dead human body subject to the provisions of this article without first having obtained the consent of the secretary of the Board or his accredited agent. The consent of any person for an autopsy on his or her body shall not in any way prevent or affect the application of this article."

In your letter you did not state as to whether or not the autopsies are to be performed upon the bodies of paupers incarcerated in your institution. But for the purpose of this opinion we will assume that such is the fact.

Under the authority cited above it would appear that upon the death of any inmate, where the body is not claimed by relatives and which body is to be buried at public expense, it is your duty to notify the Secretary of the Missouri State Anatomical Board and deliver such body within thirty-six hours to said Board. It also appears from Section 10002 aforesaid that the exclusive custody of the bodies of inmates dying in your institution shall be in such Board. The law provides that if any autopsy is performed upon any dead human body without first having obtained permission of the

June 22, 1942

Secretary of the aforesaid Board or his accredited agent that the parties performing such autopsy shall be deemed guilty of a misdemeanor. It is also provided that the fact that the consent of the person is obtained before his death for such autopsy will not affect the provisions of this article.

Conclusion

Therefore, it is the conclusion of this Department that in the case of a pauper dying in the Missouri State Penitentiary an autopsy cannot be performed upon such inmate's body until permission has been granted for such autopsy by the Secretary of the Missouri State Anatomical Board or his accredited agent, and the consent of the deceased given before his death to such autopsy will in no case affect the provisions stated above.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

JSP:EG