

EMBALMING  
CORONER

: Authority of coroner to send dead body  
to undertaker.

May 4, 1945



State Board of Embalming  
Monett, Missouri

Attention: Mr. Floyd C. Callaway, Secretary

Gentlemen:

This will acknowledge receipt of your request for an official opinion under date of March 21, 1945, which reads:

"Owing to the many complaints we have over the State regarding the authority or power of the Coroners, the members of the State Embalming Board has asked me to write you for an opinion on same.

"What we want to know, can a Coroner turn a body over to any certain undertaker?

"Can he authorize a dead human body to be embalmed, without consent of next of kin?

"Can he refuse to release a body to the next of kin?"

The coroner in the State of Missouri is a constitutional officer who can exercise only such powers as are limited by the statutes. In *Crenshaw v. O'Connell*, 150 S.W. (2d) 489, l.c. 491, the court said:

"The coroner, as we know him in this State, is a constitutional officer, Mo. St. Ann. Const. art. 9, Secs. 10 and 11, whose powers and duties with respect to the holding of inquests and autopsies are more or less specifically

defined and limited by statute, the same being Sections 13227-13268, R.S. Mo. 1939, Mo. St. Ann. Secs. 11608-11649, pp. 4279-4290."

Section 9766, Revised Statutes of Missouri 1939, places the burden upon the attending physician to prepare a certificate of death, stating in detail the cause of the death and contributory causes for any violence; its nature shall be stated and whether accidental, suicidal, or homicidal. Section 9766 reads as follows:

"The certificate of death shall contain the following items:

(1) Place of death, including state, county, township, city, the ward, street and house number. If in a hospital or other institution, the name of the same to be given instead of the street and house number. If in an industrial camp, the name of the camp to be given.

(2) Full name of decedent. If an unnamed child, the surname preceded by 'unnamed.'

(3) Sex.

(4) Color or race - as white, black (negro or negro descent), Indian, Chinese, Japanese or other.

(5) Conjugal condition - as single, married, widowed or divorced.

(6) Date of birth, including the year, month and day.

(7) Age, in years, months and days.

(8) Place of birth; city, or town, state or foreign country.

(9) Name of father.

(10) Birthplace of father; state or foreign country.

- (11) Maiden name of mother.
- (12) Birthplace of mother; city or town, state or foreign country.
- (13) Occupation. The occupation to be reported of any person who had any remunerative employment, women as well as men.
- (14) Signature and address of informant.
- (15) Date of death, including the year, month and day.
- (16) Statement of medical attendant of decedent, fact and time of death, including the time last seen alive.
- (17) Cause of death, including the primary and contributory causes or complications, if any, and duration of each.
- (18) Signature and address of physician or official making the medical certificate.
- (19) Length of residence at place of death and in state. Special information concerning deaths in hospitals and institutions, and of persons dying away from home, including the former or usual residence, and place where the disease was contracted.
- (20) Place of burial or removal.
- (21) Date of burial or removal.
- (22) Signature and address of undertaker.
- (23) Official signature of registrar, with the date when certificate was filed, and registered number.

"The personal and statistical particulars (items 1 to 13) shall be authenticated by the signature of the informant who may be any competent person acquainted with the facts.

"The statement of facts relating to the disposition of the body shall be signed by the undertaker or person acting as such.

"The medical certificate shall be made and signed by the physician, if any, last in attendance on the deceased, who shall specify the time in attendance, the time he last saw the deceased alive and the hour of the day at which the death occurred. And he shall further state the cause of death, so as to show the course of disease or sequence of causes resulting in the death, giving the primary cause, and also contributory causes, if any, and the duration of each. Indefinite and unsatisfactory terms, indicating only symptoms of disease or conditions resulting from disease, will not be held sufficient for issuing a burial or removal permit; and any certificate containing only such terms as defined by the state registrar shall be returned to the physician for correction and definition. Causes of death, which may be the result of either disease, or violence, shall be carefully defined; and, if from violence, its nature shall be stated, and whether (probably) accidental, suicidal, or homicidal. And in case of deaths in hospitals, institutions, or away from home, the physician shall furnish the information required under this head (item 19), and shall state where, in his opinion, the disease was contracted."

Section 9764, Revised Statutes of Missouri 1939, requires said certificate of death to be filed with the local or state registrar before a permit of removal or burial be issued by said registrar, with one exception, that no removal permit shall be required when a dead body is removed for the purpose of preparing same for burial, but under no circumstances shall said body be interred, deposited in a vault or tomb, cremated or otherwise disposed of until the permit of the registrar has been properly issued. Section 9764 reads:

"The body of any person whose death occurs in the state shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of, or removed from or into any registration district until a permit for burial, removal or other disposition shall have been properly issued by the local registrar of the registration district in which the death occurs:  
Provided, no such removal permit shall be required when a dead body is removed for

the purpose of preparing such body for burial, but no such body shall be interred, deposited in a vault or tomb, cremated or otherwise disposed of until a permit so to do has been properly issued by the local registrar of the registration district in which the death occurs. 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: Provided, that when a dead body is transported by common carrier into a registration district in Missouri for burial, then the transit and removal permit, issued in accordance with the law and health regulations of the place where the death occurred, when said death occurs outside of the state of Missouri, shall be accepted by the local registrar of the district, into which the body has been transported for burial or other disposition, as a basis upon which he shall issue a local permit, in the same way as if the death occurred in his district, but shall plainly enter upon the face of the burial permit the fact that it was a body shipped in for interment, and give the actual place of death; but a burial permit shall not be required from the local registrar of the district in which interment is made when a body is removed from one district in Missouri to another in the state, for purpose of burial or other disposition, either by common carrier, hearse, or other conveyance; and no local registrar shall, as such, require from undertakers or persons acting as undertakers any fee for the privilege of burying dead bodies."

In case of no medical attendants, the duty falls upon the undertaker to notify the registrar, then the registrar shall notify the local health officer, whoever that may be, for investigation before any permit shall be issued. However, when it is probable that death was caused by unlawful or suspicious means, the matter should be referred to the coroner for investigation and certification. Under any circumstances, in the final analysis the burden is upon the undertaker to see that the death certificate is properly filed with the registrar. Section 9767 reads as follows:

"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."

Section 9768, Revised Statutes of Missouri 1939, reads:

"The undertaker, or person acting as undertaker, shall be responsible for obtaining and filing the certificate of death with the local registrar of the district in which the death occurred, and securing a burial or removal permit prior to any disposition of the body. He shall obtain the personal and statistical particulars required from the person best qualified to supply them, over the signature and address of his informant. He shall then present the certificate to the attending physician, if any, or to the health officer or coroner, as directed by the local registrar, for the medical certificate of the cause of death and other particulars necessary to complete the record, as specified in section 9767. And he shall then state the facts required relative to the date and place of burial,

over his signature, and with his address, and present the completed certificate to the local registrar, who will issue a permit for burial, removal or other disposition of the body. The undertaker shall deliver the burial permit to the sexton, or person in charge of the place of burial, before interring or otherwise disposing of the body; or shall attach the transit permit containing the registration removal permit to the box containing the corpse, when shipped by any transportation company; said permit to accompany the corpse to its destination, where, if within the state of Missouri, it shall be delivered to the sexton or other person in charge of the place of burial."

In *Crenshal v. O'Connell*, supra, the court at l.c. 492 said:

"As to this, suffice it to say that under the statute having to do with the coroner's duties in respect to registration of deaths, Sec. 9767, R.S. Mo. 1939, Mo. St. Ann. Sec. 9047, p. 4191, the coroner is authorized to make a certificate of death only when the case is referred to him by the local registrar as one without an attending physician and one where the circumstances of the case render it probable that the death was caused by unlawful or suspicious means. The purpose of such reference is, of course, to have an investigation by the coroner as the officer whose duty it is to hold an inquest on the body of any deceased person; and when such a case is properly referred to the coroner, he conducts his investigation, and then executes the certificate of death required for a burial permit, stating therein the disease causing death or the means of death, and otherwise making the same conform to the requirements of the statute. *O'Donnell v. Wells*, 323 Mo. 1170, 21 S.W. 2d 762; *Patrick v. Employers Mutual Liability Insurance Co.*, supra; *Gilpin v. Aetna Life Insurance Co.*, 234 Mo. App. 566, 132 S.W. 2d 686."

Section 13227, Revised Statutes of Missouri 1939, designates the coroner as the conservator of the peace in his respective county and provides that he shall take inquest in violent and casual deaths. Said section reads 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."

Section 13231, Revised Statutes of Missouri 1939, requires the coroner to summon a jury of six men to view the body, whenever it comes to his attention that any person in the county has come to his death by violence or casualty.

Whenever an inquest shall be held and there shall be no relative or friend of the deceased, nor any person willing to bury the body, or any person whose duty it is to do same, the coroner shall procure a coffin and attend to the burial, for which he shall be reimbursed by the County Court. Section 13245, Revised Statutes of Missouri 1939, reads:

"Whenever an inquest shall be held, if there be no relative or friend of the deceased, nor any person willing to bury the body, nor any person whose duty it is to attend to such burial, the coroner shall procure a cheap, plain coffin, and cause a grave to be dug and the body to be conveyed thereto and buried. It shall be the duty of the coroner, in so doing, to avoid all unnecessary expense, and to render to the court an accurate statement of all money expended by him for such purpose; and the county court shall make to him a reasonable allowance for his actual expenses in procuring the coffin, hauling the body to the grave, digging the grave and burying the body; and also a reasonable allowance, according to the circumstances, for his own time and services in attending to such preparations and burial."

The only time that a coroner has anything whatsoever to do with a dead body is when he has notice of violence or casualty. It is then within his discretion and it becomes a judicial matter for him to determine whether an inquest shall be held.

Your requests are not very specific, in that you do not state the circumstances and facts surrounding the particular case you have in mind. The law is well established in this State that the next of kin is entitled to the dead body, and we think

the next of kin may send the body to whatever undertaker they may choose. In *Wall v. Railroad*, 184 Mo. App. 127, l.c. 132, the court said:

" \*\*It is true that a corpse is not property in the commercial sense of that term, but the most tender affections of the human heart cluster about the bodies of one's loved ones who have passed. Therefore, in accord with high and lofty sentiment, the courts have come to recognize and declare what is termed a quasi property right, which entitles the husband or wife or next of kin to the possession or control of the body for the purpose of decent sepulture. (See *Litteral v. Litteral*, 131 Mo. App. 306, 111 S.W. 872; *Wilson v. St. Louis & S. F. R. Co.*, 160 Mo. App. 649, 142 S. W. 775.) In this view, one may recover for any injury done to, or indignity committed upon, the body of his deceased as though a property right with respect thereto obtained in him. (*Wilson v. St. Louis & S. F. R. Co.*, 160 Mo. App. 649, 142 S.W. 775; *Larson v. Chase*, 47 Minn. 307, 14 L. R. A. 85; *Douglass v. Stokes*, 149 Ky. 506, 149 S.W. 849.) \* \* \* \* "

See also *Patrick v. Employers Mut. Liability Ins. Co.*, 118 S. W. (2d) 116, l.c. 121, 122, wherein the court said:

"It is also insisted that the petition affirmatively alleges facts showing that plaintiff's remedy was exclusively under the compensation act. In view of this contention it is well to inquire into the nature of the cause of action in cases of this kind. In such cases the widow does not sue on the theory that the corpse is property in the commercial sense, but rather that she has a quasi property right in the remains of her husband, entitling her to the possession and control of the body for the purpose of preparing and interring it decently. *Wall v. St. Louis San Francisco R. R. Co.*, 184 Mo. App. 127, 168 S.W. 257; *Litteral v. Litteral*, 131 Mo. App. 306, 111 S.W. 872; *Wilson v. Railroad Co.*, 160 Mo. App. 649, 142 S.W. 775."

Volume 17, C. J., Sections 4 and 5, page 1139, read:

"Upon the death of a married person, the surviving spouse has the paramount right as to the custody of the remains of the deceased and its burial.

"If there is no surviving spouse, the right to select a place of burial and to see to the proper interment of the deceased rests primarily with the next of kin rather than with a stranger to the blood. The right of burial by the next of kin is in the order of their relation to the decedent, as children of proper age, parents, brothers, and sisters and more distant kin. If the next of kin is a minor, then the right devolves upon the next of kin of full age. If the surviving spouse is absent, the next of kin are entitled to exercise the right of burial. The consent of the next of kin to the burial of a deceased relative by another, in order to constitute a waiver of their rights, must be fully and voluntarily given."

Therefore, it is the opinion of this department, in view of the foregoing citations and statutory provisions, that a coroner has no legitimate reason for having anything to do with a dead body in the absence of violence or casualty, and in such case it may be possible that in order to determine the cause of death, for instance the writer has in mind death caused by taking poison, that an inquest be held before the body is embalmed. However, we think that after the inquest is held the next of kin would have a legal right to the possession of said body within a reasonable time, and, in the absence of any statutory provision authorizing the coroner to send it to some certain embalmer, that the next of kin would have the right to determine where to send the dead body. Also, in view of Section 13245, supra, when there is no relative or next of kin willing to bury said body and defray the expense thereof, the coroner shall send the body to any undertaker for burial purposes.

All of your questions are closely related and we believe we have fully covered your requests.

Respectfully submitted,

APPROVED:

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

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J. E. TAYLOR  
Attorney General