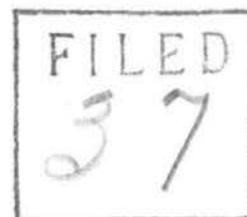


CORONER: RE: The coroner should hold an inquest in connection with the performing of an autopsy & it is within the discretion of the county court to pay for the performance of a post-mortem examination.

SHERIFFS: RE: Whether the sheriff is entitled to a fee for driving insane persons, who have escaped from another state to the Missouri State line.

September 24, 1945



Honorable Leo J. Harned
Prosecuting Attorney
Sedalia, Missouri

Dear Mr. Harned:

Your letter of September 5, 1945, requesting an opinion of this department has been received. Your letter reads as follows:

"Will you give me an opinion on the following:

"1. Does the coroner have to hold an inquest prior to doing a post-mortem examination or vice-versa?

"2. Where the coroner performs a post-mortem, is it within the discretion of the County Court to refuse to pay for the same?

"3. Also, where inmates of an insane asylum escape into this State from another State, and the State refuses to come and get them, is the Sheriff entitled to a fee for delivering said inmates to the State line, which the County Court has to pay."

For purposes of clarity we will consider each of the questions which you propounded in your letter separately.

Question I

Regarding question (1) of your letter, we refer you to the following sections of the Revised Statutes of Missouri, 1939.

Section 13231, R. S. Mo. 1939, 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."

Section 13257, R. S. Mo. 1939, reads as follows:

"Whenever the coroner, being himself a physician or surgeon, shall conduct a post-mortem examination of the dead body of a person who came to his death by violence or casualty, and it shall appear to the county court that such examination was necessary to ascertain the cause of such person's death, the county court may allow the coroner therefor an additional fee, not exceeding twenty-five dollars, to be paid as his other fees in views and inquests; but section 13250 shall not be construed to apply to any such examination when made by the coroner himself."

Section 13258, R. S. Mo. 1939, reads as follows:

"Whenever an inquest shall be held, and the coroner shall have good reason to believe that the deceased came to his death by poison administered by the hand of some person other than the deceased, he may, at the request of the jury, cause chemical analysis and microscopical examination of the body of the deceased, or any part of it, to be made; and the testimony of medical and chemical experts may be introduced for the purpose of showing how and in what manner the deceased came to his death;* * *"

The cases hold that the coroner has no authority to perform or have performed an autopsy unless it is in connection with an inquest. (Patrick v. Employers Mut Liability Ins. Co. et al. 118 S. W.(2d) 116, 233 Mo. App. 251; Crenshaw v. O'Connell, (1941 Mo.) 150 S. W. (2d) 489, 235 Mo. App. 1085.

The Crenshaw case was one in which the coroner of St. Louis County was sued for damages for performing an illegal autopsy and causing the plaintiff, wife of the deceased, mental suffering and anguish. The coroner himself performed the autopsy without first ordering an inquest. The jury in the trial court returned a \$5,000.00 verdict against the defendant. Defendant appealed. The St. Louis Court of Appeals affirmed the judgment but reduced the damages to \$1500.00. In referring to the authority of the Coroner in relation to autopsies, the court said:

"(1) The coroner, as we know him in this state, is a constitutional officer, Mo. St. Ann. Const. art 9, Sections 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. Sections 11608-11649, pp. 4279-4290.

"The above sections of the statutes have but recently been construed (and we think correctly so) by the Kansas City Court of Appeals in the case of Patrick v. Employers Mutual Liability Insurance Co., 233 Mo. App. 251, 118 S. W. (2d) 116, an action by a widow against a compensation insurer for damages sustained on account of the mutilation of her deceased husband's body in connection with an autopsy which the coroner unlawfully permitted to be performed at the instance and for the benefit of the defendant insurer.

"(2-5) That case holds squarely that under such circumstances as confronted defendant in the case at bar, the law invests the coroner with no authority to have an autopsy performed except in connection with, and as an incident to, an inquest to be held before a jury upon the body of a person supposed to have come to his death by violence or casualty, the purpose of the inquest being to inquire, upon a view of the body, how and by whom such person came to his death; that while the coroner acts judicially, and has a discretion, with respect to determining whether an inquest shall be held, neither the inquest itself, nor the calling and holding of an autopsy in

connection with it, is a proceeding judicial in character so as to relieve the coroner from civil liability for his acts in relation to it; that it was never intended that the coroner should have the right to order an autopsy performed in any case where, in his mere judgment, an autopsy might be deemed proper for any such reason as the advancement of science or the like; and that while it might or might not be thought desirable that the coroner should have the power to hold an autopsy in order to determine whether an inquest should be held, the law gives him no such authority, so that in the case at least of a person who is merely supposed to have come to his death by violence or casualty, an autopsy performed except in connection with an inquest is unlawful and illegal, regardless of what might be the coroner's good faith in the exercise of a mistaken authority in the matter."

Sections 13231, supra, 13257, supra, and 13258, supra, all deal with the same general subject and are in pari materia. In order to ascertain the legislative intent, statutes in pari materia must be construed in connection with each other and the legislative intent gathered from a reading of all of them together. (Holder v. Elms Hotel Co., 92 S. W. (2d) 620, 338 Mo. 857; State ex rel. McKittrick v. Carolene Products Co. 346 Mo. 1049, 144 S. W. (2d) 153 Sharp v. Producer's Produce Co. 47 S. W. (2d) 242, 226 Mo. App. 189.)

Section 13231, supra, prescribes the first duty of the Coroner. He must "* * *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, * * *make out his warrant, directed to the constable * * *, requiring him forthwith to summon a jury of six good * * *men, * * *to inquire, * * *, how and by whom he came to his death." This section leaves no doubt but that the inquest is to be held at once and without delay. The section also indicates the purpose of holding an inquest. The duty of determining the cause of death is placed squarely upon the inquest jurors, not upon the coroner. It follows that any autopsy should, therefore, be held as an incident to the inquest.

Section 13257, supra, provides additional compensation for the coroner where he performs an autopsy himself. This section provides

that it must appear to the County Court that such autopsy was necessary. If the inquest jurors could determine the cause of death without an autopsy such autopsy would obviously not be necessary. It is patent, therefore, that an autopsy must be held as an incident to and part of an inquest.

Section 13258, supra, deals with procedure in poison cases. It provides that in such cases, the coroner may cause an investigation of any part of a body (an autopsy) at the request of the inquest jurors and that it shall be performed, "Whenever an inquest shall be held, and the coroner shall have good reason to believe that the deceased came to his death by poison* * *." Clearly, under this section, the autopsy must be held as an incident to the inquest. The statute provides that the inquest jurors may request it during their examination of the cause of death.

From an examination of these three sections together we think it is clear that the intention of the legislature was that an inquest should be started before an autopsy is performed and the autopsy should be an incident to the inquest. The Crenshaw and Patrick cases, holding as they do, that an autopsy must be held in connection with an inquest and making it unlawful to do otherwise, provide further authority for arriving at such a conclusion.

Question II

Regarding question (2) we refer you to Section 13257, R. S. Mo. 1939, which reads as follows:

"Whenever the coroner, being himself a physician or surgeon, shall conduct a post-mortem examination of the dead body of a person who came to his death by violence or casualty, and it shall appear to the county court that such examination was necessary to ascertain the cause of such person's death, the county court may allow the coroner therefor an additional fee, not exceeding twenty-five dollars, to be paid as his other fees in views and inquests; but section 13250, shall not be construed to apply to any such examination when made by the coroner himself."

Whether the county court may refuse to pay for an autopsy performed by the coroner turns upon the determination of whether the above section is mandatory or directory. It will be noticed that this section uses the word "may" in allowing the coroner an additional fee for performing an autopsy.

In determining whether a statute is directory or mandatory the

prime object is to ascertain the legislative intention disclosed by statutory terms and provisions in relation to subject of legislative and general object. (State ex rel. Hay v. Flynn, 147 S.W. (2d) 210, 235 Mo. App. 1003; Kansas City v. J. I. Case Thrashing Machine Co., 87 S. W. (2d) 195; State ex rel. Ellis v. Brown, 33 S.W. (2d) 104, 326 Mo. 627.

The words "may," "must," and "shall," are used interchangeably in statutes without regard to their literal meaning and are to be given the effect which is necessary to carry out the intention of the Legislature as determined by ordinary rules of construction. (Kansas City v. Case Thrashing Machine Co., supra.) Section 13257, supra, must be construed according to the above canons of statutory construction.

We think it is clear that the legislature intended that Section 13257, supra, should be mandatory in regard to the payment of a fee to the coroner for conducting an autopsy provided that the performing of same was necessary and was in connection with an inquest. To conclude that the Legislature intended that the county court could arbitrarily refuse to pay a coroner when he performed additional work, is not tenable. There is no provision in the other statutes allowing the coroner compensation for this additional work and therefore it cannot be said that he has already been compensated for such service. We think the Legislature did not expect the coroner to do extra work and not be compensated therefor. Furthermore, to take the view that the payment of the fee was arbitrarily vested in the county court would render section 13257, supra, mere surplusage and the effect would be to render nugatory the provisions of that section since its purpose obviously was to provide compensation for extra work which was to be performed. A statute will not be construed so as to make an act of the Legislature a vain and useless one or to render it nugatory. (State v. Ball, 1943 Mo. App.) 171 S. W. (2d) 787; State ex rel. McAlister v. Dunn (Mo. 1919) 209 S. W. 110.)

We are, therefore, of the opinion that the legislative intent regarding section 13257, supra, was that it was the duty of the county court to pay the coroner for conducting a necessary autopsy in connection with an inquest. By the terms of the section, however, the county court does have discretion in the matter of whether or not a post-mortem examination was necessary to ascertain the cause of a person's death. This discretion is vested in the county court by the expressed terms of the statute and lies nowhere else.

Question III

We refer you to section 13411, R. S. Mo. 1939, relating to the fees allowed the sheriff for the performance of his duty in civil cases, which reads as follows:

"Fees of sheriffs shall be allowed for their services as follows:

For summoning a standing jury	\$8.40
For serving every summons or original writ and returning the same for each defendant.....	1.00
For serving a writ of <u>scire facias</u> or attachment for each defendant.	1.00
For taking and returning every bond required by law.50
For serving a writ or order of injunction for each defendant.	1.00
For serving a <u>habere facias possessionem</u> or sequestration	2.00
for levying every execution.	1.00

* * * * *

"For making, executing and delivering a sheriff's deed to be paid by the purchaser, all tracts of land purchased at the same sale to be included in one deed, if the purchaser desires it.	\$2.50
For every return of <u>non est</u> on a writ original of judicial.50
For return of <u>nulla bona</u>50
For executing a writ of <u>ad quod damnum</u> in any case drawing the inquisition and returning the same.	2.00
For each mile actually traveled in serving any venire summons, writ, subpoena or other order of court when served more than five miles from where the court is held, provided that such mileage shall not be charged for more than one witness subpoenaed or venire summons or other writ served in the same cause on the same trip10
For summoning a jury in case and calling the same at trial.-	1.00
For executing and returning a special <u>venire facias</u>	2.00
For summoning each witness .0----	.50
For return of <u>non est</u> on a subpoena25

For serving every notice or rule of court, notice to take depositions or citation. ----	.50
For attending each court of record or criminal court and for each deputy actually em- ployed in attendance upon such court the number of such deputies not to exceed three per day. -----	3.00
Except in cities and counties having a populat- ion of one hundred thousand inhabitants or over in which each deputy shall be allow- ed for each day during the term of said court. -----	3.00
For every action called at each term. -----	.05
For calling each party. -----	.05
For calling each witness. -----	.05
* * *	

Section 9355, R. S. Mo. 1939, provides compensation of sheriffs for removing patients to or from a state hospital, and reads as follows:

"To the Sheriff or other person for taking a patient to a state hospital or removing one therefrom upon the warrant of the Clerk, mileage going and returning, at the rate of ten cents per mile, and \$1.00 per day for the support of each patient on his way to or from the hospital shall be allowed; to each assistant allowed by the clerk and accompanying the Sheriff, or other person acting under the warrant of the clerk, \$4.00 per day for the time actually consumed in making said trip said sum, to include all expenses of such assistant. The computation of mileage in each case is to be made from the place of arrest to hospital by the nearest route usually traveled; Provided, that the said Sheriff shall furnish all necessary means of transportation without charge other than as above allowed. The cost specified in this Section shall be paid out of the County Treasurer of the proper county."

Section 497, R. S. Mo. 1939, relating to guardians and curators of insane persons, reads as follows:

"If any person, by lunacy or otherwise, shall be furiously mad, or so far disordered in his mind as to

endanger his own person or the person or property of others it shall be the duty of his or her guardian, or other person under whose care he or she may be, and who is bound to provide for his or her support, to confine him or her in some suitable place until the next sitting of the probate court for the county, who shall make such order for the restraint, support and safekeeping of such person as the circumstances of the case shall require."

Article II, Chapter 51, R. S. Mo. 1939, deals with the admission of patients to the state hospitals for the insane, and provides generally for the procedure of commitment and the requirements of admissibility of persons to the state hospitals.

Section 9356 of that Article provides in part as follows:

"No person shall be entitled to the benefit of the provisions of this article as a county patient, except persons whose insanity has occurred during the time such person may have resided in the state, and except the insane poor under sentence as criminals, as provided in Sections 9348 to 9352, inclusive, of this article.* * *"

An examination of Sections 9355 and 13411, supra, will reveal that there is no specific provision allowing the sheriff fees or mileage for transporting a person under the circumstances presented in your question III. A diligent search of the statute reveals that there are no other sections which give the sheriff any compensation in such a case.

It is a well settled rule that the right of a public official to compensation must be founded on a statute and that he may not receive compensation in addition to that provided by law. (Maxwell v. Andrew County, 146 S. W. (2d) 621, 347 Mo. 156; Smith v. Pettis County, 136 S. W. (2d) 282, 345 Mo. 839; Nodaway County v. Kidder, 129 S. W. (2d) 857, 344 Mo. 795.) It follows, therefore, that a sheriff is not entitled to a fee for performing the act set out in question three (3) of your letter.

CONCLUSION

It is, therefore, the opinion of this department, in regard to Question I of your letter, that a coroner must perform post-mortems

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in connection with an inquest and that the autopsy should be performed subsequent to the beginning of the inquest, and that such autopsy must be performed only in connection with an inquest.

It is, therefore, the opinion of this department in regard to Question II that it is within the discretion of the county court to determine whether an autopsy was necessary to determine the cause of death of the deceased person and that if it determines that the autopsy was not necessary it may refuse to pay the coroner the fee provided in Section 13257, R. S. Mo. 1939, but that the county court is required to pay such fee where the determination has been that the autopsy was necessary and in connection with an inquest.

It is, therefore, the opinion of this department, regarding Question III of your letter, that the sheriff is not entitled to any fee for transporting the inmate of a foreign state insane asylum to the state line of Missouri.

Respectfully submitted,

SMITH N. CROWE, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

SNC:mw