

AUTOPSY: :Section 194.115 (Senate Bill No. 237), enacted
CORONERS: :by the 67th General Assembly, does not repeal
PHYSICIANS: :Section 58.560, RSMo 1949, and does not require
:consent when an autopsy is authorized by the
:persons, and in the manner, provided by law.
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June 26, 1953

Honorable Lane Harlan
Prosecuting Attorney
Cooper County
Boonville, Missouri

Dear Mr. Harlan:

In your letter of June 16, 1953, you request
an official opinion as follows:

"I would appreciate it very much if
your office can send to me an opinion
interpreting Section 194.115 as it
may affect Section 58.560. Under the
case of Patrick vs. Employers Mutual
Liability Insurance Company, 118 S.W.
2nd 116, and the case of Crenshaw vs.
O'Connell, 150 S.W. 2nd 489, it is
strongly indicated that the coroner
has authority to order an autopsy
only in connection with an inquest,
and Section 58.560 apparently gives
the coroner or Magistrate acting as
coroner the authority to order an
autopsy in such instances.

"In the event that Section 194.115
would supersede Section 58.560 and the
Crenshaw and Patrick cases we would
have a situation which I am sure no
law enforcement officer would appre-
ciate as there might be a good many
instances where the performance of an
autopsy would be of definite assist-
ance in determining the cause of death
and the surrounding circumstances."

You inquire whether Section 194.115, enacted by
the 67th General Assembly, absolutely prohibits autopsies
unless the consent required by that section is obtained,
and whether such consent is necessary before an autopsy
can be performed when ordered by Coroners and Magistrates
in cases wherein Coroners and Magistrates are empowered
to order an autopsy.

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Section 194.115, Senate Bill No. 237, reads as follows:

"194.115. Autopsy--consent required--
penalty for violation

"1. It shall be unlawful for any licensed physician and surgeon to perform an autopsy or post-mortem examination upon the remains of any person without the consent of one of the following:

"(1) The deceased, if in writing, and duly signed and acknowledged prior to his death;
or

"(2) The surviving spouse; or

"(3) If the surviving spouse through injury, illness or mental incapacity is incapable of giving his or her consent, or if the surviving spouse is unknown, or his or her address unknown or beyond the boundaries of the United States, or if he or she has been separated and living apart from the deceased, or if there is no surviving spouse, then any surviving child, parent, brother or sister, in the order named; or

"(4) If no surviving child, parent, brother or sister can be contacted by telephone or telegraph, then any other relative, by blood or marriage; or

"(5) If there are no relatives who assume the right to control the disposition of the remains, then any person, friend or friends who assume such responsibility.

"2. If the surviving spouse, child, parent, brother or sister hereinabove mentioned is under the age of twenty-one years, but over the age of sixteen years, such minor shall be deemed of age for the purpose of granting the consent hereinabove required.

"3. Any licensed physician and surgeon performing an autopsy or post-mortem examination

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with the consent of any of the persons enumerated in subsection 1 of this section shall use his judgment as to the scope and extent to be performed, and shall be in no way liable for such action.

"4. It shall be unlawful for any licensed physician, unless specifically authorized by law, to hold a post-mortem examination on any unclaimed dead without the consent required by section 194.170, RSMo.

"5. Any person not a licensed physician performing an autopsy or any licensed physician performing an autopsy without the authorization herein required shall upon conviction be adjudged guilty of a misdemeanor, and subject to the penalty provided for in section 194.180, RSMo. Laws 1953, p. ___, S.B. No. 237, § 1."

Section 58.560, RSMo 1949, reads as follows:

"58.560. Surgeon's fee for post-mortem examination, how paid.--When a physician, surgeon or pathologist shall be called on by the coroner, or any magistrate of the county acting as the coroner, to conduct a post-mortem examination, the county court of said county shall be authorized to allow such physician, surgeon or pathologist to be paid out of the county treasury, such fees or compensation as shall be deemed by said court to be just and reasonable."

The St. Louis Court of Appeals in *Crenshaw vs. O'Connell*, 150 S.W. (2d) 489, makes this statement as to the power of a Coroner under Section 58.560, to order an autopsy, 1.c. 491, 492:

"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

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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."

The subject of autopsy is further treated by Chapter 194, Section 120, et seq. Therein, provision is made for the performance of autopsies by educational institutions of the State for the purpose of advancing anatomical knowledge and science.

To aid in determining the intent of the Legislature in enacting the statute in question we are guided by certain fundamental rules of construction. Whenever two or more enactments of the Legislature deal with the same subject and are seemingly conflicting or repugnant, they must be considered in *pari materia*. The Kansas City Court of Appeals in

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In re McArthur's Estate, 207 S.W. (2d) 546, l.c. 550, stated this doctrine thusly:

"* * * Statutes in pari materia must be read and construed together in order to keep all provisions of the law on the same subject in harmony so as to work out and accomplish the central idea and intent of the lawmaking branch of our state government. * * *"

Another guide is the disfavor of the Courts to construe a new statute as repealing a former statute by implication. The St. Louis Court of Appeals in Templeton et al. vs. Insurance Co. of North America of Pennsylvania, 201 S.W. (2d) 784, discussed repeals by implication as follows, l.c. 789:

"* * * However, repeals by implication are not favored (State ex rel. St. Louis Police Relief Ass'n v. Igoe, 340 Mo. 1166, 107 S.W. 2d 929); and in the absence of express terms, a later statute will not be held to have repealed a former one unless there is such a manifest and total repugnance between their respective provisions that the two could not possibly stand together. State ex rel. and to use of Geo. B. Peck Co. v. Brown, 340 Mo. 1189, 105 S.W. 2d 909; Graves v. Little Tarkio Drainage Dist. No. 1, 345 Mo. 557, 134 S.W. 2d 70."

Thus, when all of the legislative enactments concerning autopsies are considered together, as they must be, it becomes clear that the legislative intent in enacting Section 194.115 was not to remove from Coroners the power to order autopsies in certain instances. This conclusion is buttressed by the fact that in some deaths under suspicious circumstances, the person from whom consent is required under the new enactment may be suspected of causing the death. It is difficult to believe that the Legislature intended to so hinder the enforcement of law and apprehension of murderers.

The type of wrong which the Legislature intended to remedy may be illustrated by an examination of the facts in the Patrick vs. Employers Mutual Liability Ins. Co. and Grenshaw vs. O'Connell cases which you cite in your letter

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of inquiry. In the Patrick case an autopsy was performed on the deceased without a notification to the widow, who was the plaintiff. The autopsy was performed by a Pathologist employed by an insurance company to determine the cause of death; the findings to be used as evidence in compensation proceedings. In the O'Connell case the Coroner made a practice of sending bodies to the Department of Pathology in the Medical School of Washington University. In this particular case the autopsy was performed by a certain doctor of the Medical School in the presence of a group of students. No criminal law prohibited such autopsies.

The nearest of kin of a dead person are entitled to the right of sepulture. The obvious intent of the Legislature was to prohibit autopsies except where lawfully authorized.

CONCLUSION

It is, therefore, the opinion of this office that Section 194.115 (Senate Bill No. 237) enacted by the 67th Session of the General Assembly, does not repeal Section 58.560, RSMo 1949, and does not require consent when an autopsy is authorized by the persons and in the manner provided by law.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

JOHN M. DALTON
Attorney General

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