

CORONERS:
CORONER'S INQUEST:
DEAD BODIES:

Coroner has authority to exhume body buried before an inquest when he has reasonable grounds to suspect foul play. Coroner has authority to perform autopsy only if necessary to determine cause of death.

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June 12, 1957

Honorable Paul Knudsen
Prosecuting Attorney
Caldwell County
Kingston, Missouri

Dear Mr. Knudsen:

This is in answer to your request for an official opinion from this office which reads as follows:

"I am writing you to request an opinion in reference to the powers of the coroner to have a body exhumed and an autopsy performed on said body when the coroner has reasonable belief by reason of his investigation to suppose that said person died as the result of an attempted illegal operation.

"The facts of this particular case are that on May 23rd of this year a young girl age 23 together with two men entered a doctor's office in this county presumably in good health, and within two to two and one-half hours afterwards she had died in the doctor's office. The doctor signed the death certificate as death caused from coronary thrombosis and did not report the same to the coroner. The girl's parents were notified who in turn had a mortician pick up the body and prepare same for burial. The death occurred on May 23rd and burial was performed on the afternoon of May 25th. Same was never reported to the coroner by the parents nor to the Sheriff's office nor to my office until the evening of Saturday May 25th after the burial at which time inquiries were made from the Sheriff of an adjoining county as to the cause of death. The coroner immediately, together with the Sheriff, conducted an investigation and from their investigation they have strong reason to believe that the girl died as the result of an attempted abortion.

"My inquiry is as to the powers of the coroner in having the body exhumed and a post mortem examina-

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tion made by a pathologist. And also, as to his duties in calling an inquest after burial where he was not called to view the body and the death certificate was signed by the attending physician who is a practicing doctor of osteopathy in this county."

In this opinion we shall assume that the nearest of kin to the deceased have refused to give consent to the exhumation, and that the coroner has reasonable grounds to believe the buried girl came to her death by foul means.

Before answering your question we think it necessary to point out that it is almost universally held that upon interment a body becomes a part of the ground to which it has been committed and is in the custody of the law. Only in cases of the gravest necessity should a body be disinterred. This is made clear in 25 C.J.S. 1020, where it says:

"It is the policy of the law, except in cases of necessity or for laudable purposes, that the sanctity of the grave should be maintained, and that a body once suitably buried should remain undisturbed; and a court will not ordinarily order or permit a body to be disinterred unless there is a strong showing that it is necessary and that the interests of justice require it. However, there is no universal rule applicable, each case depending on its own facts and circumstances; and for a valid reason, upon application by a proper person, the removal of a body will be permitted." (Emphasis ours)

The foregoing, however, does not answer the question whether the coroner has the authority to exhume a body. In Missouri there is no statutory authority expressly authorizing a coroner to exhume a body, furthermore, the courts of Missouri have never decided this problem.

At common law the rule was apparently to the effect that "Where the body has been buried before the coming of the coroner, or before an opportunity has been given for a view by himself and jury, it ought to be exhumed". 13 C.J. 1249. We think, however, that the answer to this question here in Missouri is to be found in our statutes relating to coroners and inquests.

Upon reading these statutes, the conclusion seems inescapable that the presence of the body at every inquest is contemplated. (Emphasis ours)

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Section 58.300, RSMo 1949, provides:

"The coroner shall administer an oath or affirmation to the jurors, in the following form:

"You solemnly swear (or affirm) that you will diligently inquire and true presentment make, how and by whom the person who here lies dead came to his death, and you shall deliver to me, coroner of this county, a true inquest thereof, according to such evidence as shall be laid before you and according to your knowledge."
(Emphasis ours)

The oath required of witnesses at the inquest is set out in Section 58.340, RSMo 1949. That section reads as follows:

"He shall administer to them an oath or affirmation in form as follows:

"You do swear (or affirm) that the evidence you shall give to the inquest, concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth."
(Emphasis ours)

Section 58.360, RSMo 1949, relating to the verdict and its form, provides as follows:

"The jury, having viewed the body, heard the evidence, and made all the inquiry in their power, shall draw up and deliver to the coroner their verdict upon the death under consideration, in writing under their hand, and the same shall be signed by the coroner."

Thus, it becomes apparent that if the foregoing statutes are to be complied with, the body must necessarily be present. Section 58.260, RSMo 1949, provides in part that when a person comes to his death by violence or casualty, the coroner shall summon a jury to appear at the inquest and view the body. In our case here, it appears as if the buried girl came to her death by foul means or as the statute says, "by violence."

Therefore, in requiring the presence of the body at the inquest, the statutes we have just cited, impliedly at least, give the coroner the authority to exhume the body upon which the inquest is to be held. We have based the foregoing upon the case of *Sejrup v. Shepard et al.*, Minn. Sup., 275 N.W. 687, decided in 1937, wherein the Supreme Court of Minnesota in interpreting its statutes, which are very similar to ours, held the coroner had the implied authority to exhume a body when he had reasonable grounds to believe the deceased came to his death by foul means.

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In addition, we think that what the court said at l.c. 688 is very applicable to our problem here, and serves as a warning to all coroners. It said:

"We are not unmindful of the duty owed to the dead and the regard which must be had for the feelings of relatives and friends. The disturbance of the resting place of those who have passed on is not a matter to be lightly taken. However, the interest of the state and its citizens in enforcement of the laws must prevail over these considerations when it appears likely that a crime has been committed.

"We do not mean to hold that coroners may ex-hume bodies indiscriminately, even for the purpose of holding an inquest. It might appear that, because of the passage of time or because of other factors tending to destroy the evidences of the cause of death, the inquest would not accomplish its purpose, or sufficient cause for holding the same did not exist, or, because of considerations of public health and welfare, it would not be advisable to permit the exhumation of a dead body. In such cases, or in any other case where a proper showing was made, an injunction to prevent such exhumation should, and undoubtedly would, issue. However, this is not such a situation." (Emphasis ours)

The next problem is whether the coroner has the authority to perform an autopsy upon a body to determine the cause of death. The statutory duties regarding inquests [in Missouri it is a judicial determination whether the coroner will call an inquest, but the inquest and the autopsy itself are not judicial proceedings] which have been imposed upon coroners of the various counties are set forth in Section 58.260, RSMo 1949, which 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 sheriff of the county where the dead body is found, requiring him forthwith to summon a jury of six good and lawful citizens of the county, 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."

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In construing this statute it has been judicially held that in connection with an inquest a coroner may have an autopsy performed. To this effect see Crenshaw v. O'Connell, Mo. App., 150 S.W.2d 489. However, an autopsy even in such circumstances may not be performed upon the mere whim of the coroner, regardless of his motives, but only when necessary to assist in the determination of the cause of death. Under no circumstances may an autopsy be performed for the mere purpose of determining whether an inquest should be held.

CONCLUSION

It is, therefore, the opinion of this office that if a person is buried before a coroner's inquest determined the cause of death, and thereafter, the coroner has reasonable grounds to believe such person came to his death by foul means, the coroner has the implied authority to exhume the body, if the body has not been interred so long that an autopsy would not disclose the evidence the coroner is seeking.

It is further our opinion that a coroner, in connection with an inquest before a jury, may perform an autopsy upon a body only if it is necessary to determine the cause of death.

The foregoing opinion, which I hereby approve, was prepared by my assistant, George E. Schaaf.

Very truly yours,

John M. Dalton
Attorney General

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