

CORONERS
DEAD BODIES
PERSONAL PROPERTY
MORGUES

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As it relates to the Coroner of Jackson County, Sec. 58.260 spells out the scope of the coroner's authority in violence or casualty cases, excepting homicide and abortion cases. Sec. 58.451 spells out the somewhat broader scope of authority of the Coroner of Jackson County in homicide and abortion cases.

Sec. 58.240 does not apply to the City of Kansas City.

Temporary custody of property at the scene or on the body is to be taken by the sheriff or police, except in the limited case in which the coroner calls an inquest, in which event the coroner takes custody only of the property found on the body.

Opinion No. 271

August 23, 1963

Honorable Jasper M. Brancato, State Senator
11th District, Jackson County
601 West 12th Street
Kansas City, Missouri

Dear Senator Brancato:

This is in answer to your opinion request dated, June 19, 1963.

Our study of your rather lengthy inquiry produces the following specific questions which we have paraphrased as follows:

- (1) What is the jurisdiction or authority of the Jackson County Coroner relative to the right to take charge of a dead body?
- (2) Whether or not Sec. 58.240, RSMo 1959 is applicable to Jackson County or the City of Kansas City?
- (3) Who is responsible for property found on or near dead bodies?

I

What is the jurisdiction or authority of the Jackson County Coroner relative to the right to take charge of a dead body?

Sec. 58.260, RSMo 1959, provides 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." (Emphasis added.)

This statute applies to all coroners in the state, and, prior to the enactment of Sec. 58.451 in 1957, was the only statute applicable to Jackson County relative to the coroner's power and authority.

Sec. 58.260 does not impose the duty upon anyone to notify the coroner of the finding of a dead body. This was held in the case of State v. Stringer, 211 SW 2d 925, 930, in the following language:

"* * * In the second place, the argument erroneously assumes that there was some legal duty on the general public and particularly upon the accused to report the child's death to the coroner. An examination of the statutes does not reveal any such general public duty. Mo.R.S.A. ss 9767, 13227-13268, 14839. The statute requiring the coroner to summon a jury '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,' (Mo. R.S.A. s. 13231) does not necessarily impose any such specific duty upon an accused or, for that matter, upon the general public." (Emphasis added.)

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In analyzing the import of what is now Sec. 58.260, the Kansas City Court of Appeals in Patrick v. Employers Mutual Liability Insurance Co., 118 S.W. 2d 116, 122-123 made the following observations:

"Under the provisions of these sections it seems apparent that the coroner has no authority to perform an autopsy under the circumstances here present, or have one performed, except in connection with an inquest to be held before a coroner's jury." (Emphasis added.) at p. 122 of the opinion.

"In no place in the chapter is the coroner authorized to hold an autopsy under the circumstances here present except in connection with an inquest, to be held before a jury, of persons supposed to have come to their deaths by violence or casualty, the latter term including accidents." (Emphasis added.) at p. 122 of the opinion.

"In this state a coroner acts judicially in respect to determining whether an inquest shall be held." at p. 123 of the opinion.

Thus, although under Sec. 58.260 no one has an affirmative duty to report the finding of a dead body to the coroner, yet if the coroner in some fashion learns of a death caused by violence or casualty, he has reasonable discretion (which discretion should be expeditiously exercised) to order an inquest.

We note that nothing in Sec. 58.260 authorizes the coroner to take charge of the body.

Sec. 58.260, as we stated earlier, is the general statute applying to all coroners in the state.

We now turn to Sec. 58.451, RSMo 1959 which in certain types of violent deaths gives the coroner of Jackson County (and St. Louis County and St. Louis City as well) certain additional prerogatives which he did not possess under the pre-existing general statute.

Sec. 58.451 reads as follows:

"1. When any person in any city of seven hundred thousand or more inhabitants, or in any county of the first class, dies and there is reasonable ground to believe that such person died by criminal

violence or following abortion, it shall be the duty of any person having knowledge of the death immediately to notify the coroner of the known facts concerning the time, place, manner, circumstances and cause of the death. Immediately upon receipt of the notification, the coroner shall go to the dead body and take charge of same. Upon taking charge of the dead body and before moving the same the coroner shall notify the police department, of any city in which the dead body is found, or if the dead body is found in the unincorporated area of a county governed by the provisions of sections 58.451 to 58.457, the coroner shall notify the county sheriff and county highway patrol and cause the body to remain unmoved until the police department, sheriff or county highway patrol has inspected the body and the surrounding circumstances and carefully notes the appearance, the condition and position of the body and records every fact and circumstance tending to show the cause and manner of death with the names and addresses of all known witnesses, and shall subscribe the same and make such record a part of his report.

"2. If on view of the dead body and after personal inquiry into the cause and manner of death, the coroner and police officials have reasonable ground to believe that the death was caused by criminal agency and that a further examination is necessary in the public interest, the coroner on his own authority may make or cause to be made an autopsy on the body. The coroner may on his own authority employ the services of a pathologist, chemist, or other expert to aid in the examination of the body or of substances supposed to have caused or contributed to death, and if the pathologist, chemist, or other expert is not already employed by the city or county for the discharge of such services he shall, upon

written authorization of the coroner, be allowed reasonable compensation, payable by the city or county, in the manner provided in section 58.530. The coroner shall, at the time of the autopsy, record or cause to be recorded each fact and circumstance tending to show the condition of the body and the cause and manner of death.

"3. If on view of the dead body and after personal inquiry into the cause and manner of death the coroner considers a further inquiry and examination necessary in the public interest, he shall make out his warrant directed to the sheriff of the city or county requiring him forthwith to summon six good and lawful citizens of the county to appear before the coroner, at the time and place expressed in the warrant, and to inquire how and by whom the deceased came to his death."
(Emphasis added.)

The term "criminal violence" as used in this section we equate to the word "homicide." Thus, in homicide or abortion cases, duties evolve which are different from the responsibilities which existed under the aforementioned general statute.

First, in homicide and abortion cases, there is a duty imposed on the public and law enforcement officials to notify the coroner. See subsection 1 of Sec. 58.451.

Second, in homicide and abortion cases, the coroner takes charge of the dead body although he cannot remove the body from the scene until the police have completed their on-the-scene investigation. See subsection 1 of Sec. 58.451.

Third, in homicide and abortion cases, the coroner can perform an autopsy even without calling an inquest. See subsection 2 of Sec. 58.451. (Contrast this with the Patrick Case previously quoted wherein under the general statute, Sec. 58.260, the Kansas Court of Appeals ruled that a coroner could not perform an autopsy without calling an inquest.)

To summarize thus far, we have the following inter-relationship of old section 58.260 and new section 58.451, both of which sections apply in their limited spheres to the Coroner of Jackson County.

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Sec. 58.260 gives limited authority to the Jackson County Coroner in violent deaths of the non-homicide or non-abortion types (e.g., industrial deaths, automobile deaths, etc.). Sec. 58.451 specifically grants the somewhat broader authority as discussed previously to the Jackson County Coroner in homicide and abortion deaths.

It almost goes without saying that under either section, if there is the slightest possibility that the victim is still alive, there should not be a moment lost in getting the victim in the hands of competent medical authorities at a hospital, doctor's office, etc. Common sense and garden-variety decency dictate that the saving of a human life should not be jeopardized by a ghoulish, jurisdictional dispute over who takes charge of a body which as yet may not have become a corpse.

II

Whether or not Sec. 58.240, RSMo 1959, is applicable to Jackson County or the City of Kansas City?

Sec. 58.240, RSMo 1959 reads as follows:

"Any city in this state now or hereafter having five hundred thousand inhabitants or more is authorized and empowered to provide by ordinance that the morgue or mortuary as established by such city shall be under the control and management of the coroner of such city."

The 1960 census of Kansas City was 475,539. Therefore, this section obviously does not apply to Kansas City.

III

Who is responsible for property found on or near dead bodies?

This inquiry relates to the respective duties of coroners, sheriffs and police concerning property found on or near dead bodies.

In *Adey v. Adey*, 58 Mo. App. 408, 409-410, the St. Louis Court of Appeals stated the rule with respect to descent of personal property in the following language:

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"It is the established law of this state that on the death of the owner, personal property descends to his or her personal representative * * *"

See also Eisiminger v. Stanton, 107 S.W. 46.

This is likewise the rule of the recent probate code, as expressed in Sec. 473.260 and Sec. 473.263, RSMo 1959. Therefore, while it is the established law of this state that personal property go directly and immediately to the personal representatives of the deceased (executors, administrators, or widows, etc.), there still remains the problem of temporary custody of personal property found at the scene or on or near a dead body.

At common law and traditionally under the law of this state, the sheriff and the local police are the conservators of the peace. As such, they have the duty not only to arrest those who have violated the law, but also to protect the lives and property of the citizens. This is not only traditional, it is likewise confirmed in our statutes. See Sec. 57.110, RSMo 1959, relating to sheriffs, and Sec. 84.420, RSMo 1959, relating to Kansas City police.

It is therefore our opinion that the sheriff or police, as the case may be, would have the duty to protect the property of a deceased person during the interim period between the discovery of the deceased and the take over of personal property by the deceased's personal representatives.

There is, however, one definite exception to this rule. This is the situation presented by Sec. 58.490, RSMo 1959. This section provides as follows:

"The coroner, within thirty days after an inquest, upon a dead body, shall deliver to the county or city treasurer any money or other property that may be found upon the body, unless claimed in the meantime by the legal representatives of the deceased. If he fails to do so, the treasurer may proceed against him for its recovery by a civil action in the name of the state for the use of the county or city." (Emphasis added.)

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The primary purpose of this section manifestly is to direct the coroner with respect to the disposition of money or property which he finds upon a dead body, but only in those cases where the coroner holds an inquest.

While this statute does not in express terms place any duty upon the coroner to take charge of property found on a dead body, we think it is fairly implied that the coroner has the duty to take charge of property found on a dead body, if and only if, the coroner calls an inquest. In the event the coroner does not call an inquest, then manifestly this statute confers no duty or obligation upon the coroner respecting temporary custody of such property.

Practical application of this statute would appear to operate somewhat in the following manner.

When the coroner receives notice or information concerning a dead body within the orbit of his authority, as spelled out in Secs. 58.260 or 58.451, it is contemplated that the coroner will make an expeditious decision as to whether or not he will hold an inquest.

If the coroner decides to hold an inquest, then Sec. 58.490 applies and property found upon the dead body may be retained in the temporary custody of the coroner for later delivery to the personal representatives of the deceased.

If the coroner decides not to have an inquest, then the sheriff or police, as conservators of the peace, would be charged with the duty of retaining temporary custody of all the property upon the dead body as well as the property apparently belonging to the deceased near or around the dead body. Of course, this does not mean that the property necessarily need to be removed from the place where same is located, provided adequate safeguards are taken to preserve the property pending its being claimed by the deceased's personal representative.

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CONCLUSION

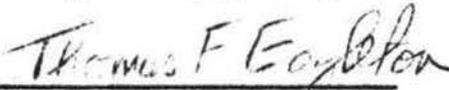
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(2) Sec. 58.240 does not apply to the City of Kansas City.

(3) Temporary custody of property at the scene or on the body is to be taken by the sheriff or police, except in the limited case in which the coroner calls an inquest, in which event the coroner takes custody only of the property found on the body.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Clyde Burch.

Very truly yours,


THOMAS F. EAGLETON
Attorney General