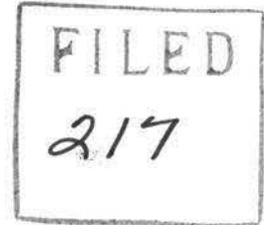


AUTOPSY: The 1961 amendment to Section 194.115, V.A.M.S.,
CORONERS: does not authorize a coroner of a Class III county
PHYSICIAN: to order an autopsy performed without the consent
of the next of kin or without having been so directed by a coroner's jury.

OPINION NO. 217

June 22, 1965

Honorable Bill D. Burlison
Prosecuting Attorney
Cape Girardeau County
Cape Girardeau, Missouri



Dear Mr. Burlison:

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

"Does §194.115 V.A.M.S. now give a coroner of a Class III county authority to authorize an autopsy without the consent of the next of kin or without having been so directed by a coroner's jury?"

The duties and authority of the county coroner are set out in Chapter 58, RSMo. The primary statutory authority of the coroner relating to an inquest and coroner's jury is stated in Section 58.260. This section has been construed to allow the coroner to order an autopsy performed 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. Crenshaw v. O'Connell, 235 Mo. App. 1085, 150 S.W.2d 489, 491; Patrick v. Employers Mutual Liability Insurance Company, 233 Mo. App. 215, 118 S.W.2d 116. These cases also ruled that the coroner may not order an autopsy to be performed without the consent of the next of kin in the absence of statutory authorization. Except in cities of 700,000 or more population and first class counties (Section 58.451, RSMo 1959) no authorization is given a coroner to order an autopsy except as a result of an inquest, with one possible exception.

The courts, in the Crenshaw and Patrick cases, specifically reserved any ruling on the question of whether Section 58.610 authorizes a coroner to order an autopsy to be performed without an inquest when some creditable person shall have declared under oath that a person came to his death by violence or other criminal act of another. This opinion is not intended to make any ruling upon this question.

Honorable Bill D. Burlison

Section 194.115, does not provide the coroner with any additional authority to order an autopsy to be performed. This section provides in part, as follows:

"1. Except when directed by a public official or agency authorized by law to order an autopsy or post-mortem examination it is unlawful for any licensed physician or surgeon to perform an autopsy or post-mortem examination upon the remains of any person without the consent of one of the following: * * *"
(Emphasis added.)

The underlined portion of this paragraph was inserted as an amendment in 1961. Prior to that time, there was some question as to whether a licensed physician or surgeon could perform an autopsy without a proper consent from the next of kin even if authorized by a coroner's jury. This office answered this question in the affirmative on June 26, 1953, in an opinion to Lane Harland, Prosecuting Attorney of Cooper County, which we have enclosed. In our opinion, this amendment merely places statutory approval upon our conclusion and does not in any way enlarge the power of a coroner to order an autopsy to be performed.

CONCLUSION

It is the opinion of this office that, with the possible exception herein noted, a coroner of a county of the third class is not authorized to order an autopsy to be performed without the consent of the next of kin except in conjunction with an inquest held before a coroner's jury.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John H. Denman.

Very truly yours,

NORMAN H. ANDERSON
Attorney General

Enclosure