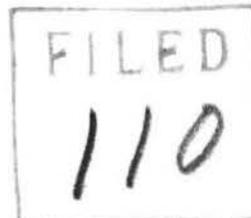


BLOOD SAMPLES: Neither the Greene County Coroner nor members
CORONERS: of the Highway Patrol have authority to with-
AUTOPSY: draw a sample of blood from the body of an
individual killed in an automobile accident
when no inquest is held.

OPINION NO. 487 (1965)
OPINION NO. 110 (1966)

April 27, 1966

Honorable Don E. Burrell
Prosecuting Attorney - Greene County
Court House
Springfield, Missouri 65802



Dear Mr. Burrell:

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

"Would you please be so kind as to give me the
benefit of your thinking as to whether or not
the coroner has the authority to authorize the
Highway Patrol to withdraw a sample of blood
from the deceased body [resulting from an auto-
mobile accident for which no inquest was held],
or if the coroner does not have this authority,
does the Highway Patrol in its investigative
capacity in regard to accidents occurring on
the highway, have the authority to withdraw a
sample of blood from the deceased for a purpose
of analyzing it for alcohol content."

Prior to considering the questions posed we feel it necessary
to point out that the term autopsy is discussed in a separate
opinion (Opinion No. ~~28327~~, dated March 3, 1966, to Honorable Daniel
O'Brien, Prosecuting Attorney, St. Louis County). Opinion No. ~~327~~ 28
rules that the removal of a blood sample from a dead body by a
coroner constitutes an autopsy.

This opinion does not discuss the collecting of blood samples
from the scene of the accident. Since this blood is distinctly
and irretrievably separate from the body, it is difficult to accept
any argument to the effect that collection of such samples violates
any right of sepulture held by the deceased's next of kin.

Honorable Don E. Burrell

While Opinion No. ~~327~~²⁸ deals with coroners of first class counties much of it is applicable to coroners of all counties in this state. While this is a separate opinion it is to be considered in light of Opinion No. ~~28327~~. This opinion considerably overlaps 327 but is not inconsistent with that opinion but deals with counties other than counties of the first class.

I.

The first question we will consider is whether or not the Greene County Coroner has the authority to withdraw a sample of blood from the body of an individual killed in an automobile accident when no inquest is held, or if he may authorize the Highway Patrol to remove such samples.

The primary statutory authority for the coroner is §58.260 RSMo 1959, as it applies to all coroners in the state. The principal case construing this section is Crenshaw v. O'Connell, 150 S.W. 2d 489, 235 Mo. App. 1085 (St. L. 1941).

Citing and approving the case of Patrick v. Employers Mutual Liability Insurance Company, (Mo), 118 S.W. 2d 116, the Court restricts coroners' authority to direct or order an autopsy to cases where an inquest has been held. It is stated in 150 S.W. 2d 1.c. 491:

"* * * 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 who is supposed to have come to his death by violence or casualty, the purpose of the inquest being to inquire, upon the view of the body, how and by whom such person came to his death."

In particular types of violent deaths the coroner of Jackson County, St. Louis County and St. Louis City have certain additional prerogatives (§58.451) not possessed under the pre-existing general statute as discussed in Opinion ~~327~~²⁸.

The Court in Crenshaw points out the extent of the coroner's civil liability. In language particularly applicable to the present situation, the Court stated its conclusion 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?"

Honorable Don E. Burrell

The Court proceeds to point out the nature of an autopsy conducted without an inquest:

"* * * 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."

Opinion No. ~~37~~²⁸ to Honorable Daniel O'Brien, holds that the removal of blood samples from dead bodies constitutes an autopsy. The coroner cannot remove, nor can he authorize anyone else to remove, blood samples without an inquest. There is no statutory authority permitting the coroner to take such samples under any situation other than as an autopsy. The coroner possesses no legal right with respect to dead bodies except as prescribed by law. If the coroner removes blood samples, or attempts to authorize the Highway Patrol to remove blood samples, he is doing so without legal authority, even if such samples are collected from the embalmer. The coroner can be held civilly liable for trespass on a quasi-property right in the body held by some third party. It is stated in Hill v. Travelers Insurance Co. (Tenn.) 294 S.W. 1097, 1099, a case cited by the Court in the Patrick case, that:

"The damages recoverable in such a case are not for the injury done to the dead body, but are for the wrong or trespass on the plaintiff's right to the undisturbed possession and control of the body, measured by the mental anguish and suffering of the plaintiff occasioned thereby."

In Crenshaw, supra, the Court allowed damages for mental suffering even though the illegal autopsy was conducted in a scientific manner and no mutilation of the body, visible to the eye, occurred.

In view of the fact that a person entitled to the right of sepulture may be able to maintain an action against a coroner who has violated such right, and because we find no statutory authority permitting coroners to remove blood samples unless it is done as part of a legal autopsy, this office holds that a coroner cannot remove such samples nor can he authorize removal of such samples by the Highway Patrol.

II.

In response to the second question as to whether or not the Highway Patrol has the authority to take blood samples from the body, it is our opinion that the Patrol has no such authority.

Honorable Don E. Burrell

Section 43.025, RSMo 1959, provides the Patrol shall enforce traffic (laws) and promote safety.

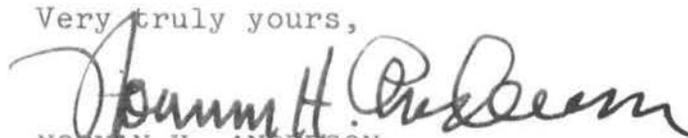
Section 43.220, RSMo 1959, limits the authority of the Patrol to those services and duties set out in Chapter 43. No autopsy power is provided.

Section 194.115, RSMo 1959, renders unlawful autopsies by anyone, under any situation, other than licensed physicians, and provides that any unlicensed person performing an autopsy is guilty of a misdemeanor.

CONCLUSION

It is the opinion of this office that neither the Greene County Coroner nor members of the Highway Patrol have authority to withdraw a sample of blood from the body of an individual killed in an automobile accident when no inquest is held.

Very truly yours,



NORMAN H. ANDERSON
Attorney General