

CORONER'S INQUEST:

Body of person killed on railroad right of way should be removed and some representative of railroad left with remains until coroner arrives.

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Hon. Jasper DeMaria
Attorney for Coroner
815 Lathrop Building
Kansas City, Missouri

Dear Mr. DeMaria:

We are in receipt of your request for an official opinion from this department. This request reads as follows:

"As the attorney for Dr. Cecil Leitch, Coroner for Jackson County, Missouri, I am respectfully asking you for an opinion under the following facts:

"When a train kills some person upon its right of way, should the progress of the train be delayed until the coroner arrives to remove the remains, or should the body be removed from the tracks in order that the train may proceed, and a representative of the railroad be left with the remains until the coroner arrives.

"This question is of unusual importance in the present day emergency, in view of the absolute necessity of trains meeting schedules in the transportation of the personnel of the armed forces, and equipment and property belonging to the armed forces.

"In so far as I have been able to ascertain, the question is not covered or in any way touched upon in the statutes pertaining to coroners. We have heretofore allowed them to remove the body and

leave a representative with the information, and for the train to proceed, but I would appreciate very much an official opinion from you under these particular facts."

At the outset, we wish to set forth Sections 13231, 13232 and 13236, Revised Statutes of Missouri, 1939, which provide as follows:

"Sec. 13231. - 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 constable of the township where the dead body is found, requiring him forthwith to summon a jury of six good and lawful men, householders of the same township, 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."

"Sec. 13232. - Every such constable to whom such warrant shall be directed shall forthwith execute the same, and shall repair to the place where the dead body is, at the time mentioned, and make return of the warrant, with his proceedings thereon, to the coroner who granted the same."

"Sec. 13236. - As soon as the jury shall be sworn, the coroner shall give them a charge, upon their oaths, to declare of the death of the person, whether he died by felony or accident; and if of felony who were the principals and who were

accessories, and all the material circumstances relating thereto; and if by accident, whether by the act of man, and the manner thereof, and who was present, and who was the finder of the body, and whether he was killed in the same place where the body was found, and, if elsewhere, by whom, and how the body was brought there, and all other circumstances relating to the death; and if he died of his own act, then the manner and means thereof, and the circumstances relating thereto."

It will be noted from a reading of each of the above sections, as well as other sections contained in Chapter 91, Laws of Missouri 1939, which chapter has to do with inquests of Coroners, that the law makes no provision or direction that the dead body be left at the scene and a jury summoned and an inquest held at that place, but said sections provide that the coroner shall make a warrant, and in said warrant is directed the time and place of the inquest, and at the place designated the body is to be present in order that the jury may view the body.

We wish further to point out that there does not appear in the statute at any place, either under Chapter 91, supra, or the several sections having to do with railroads, any provision whereby the body must remain at the scene of the tragedy until a coroner's inquest is held. A section comparable to Section 8401, Par. (f), R. S. Missouri, 1939, which is found under the Motor Vehicle Laws, (Leaving the scene of an accident section) is not contained in the statutes with reference to railroads.

We are mindful, however, of Section 5621, R. S. Missouri, 1939, which provides as follows:

"The commission shall investigate the cause of all accidents on any railroad or street railroad within this state which result in loss of life or injury to persons or property, and which in its judgment shall require investigation.

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Every common carrier, railroad corporation and street railroad corporation is hereby required to give immediate notice to the commission of every accident happening upon any line of railroad or street railroad owned, operated, controlled or leased by it, within this state in such manner as the commission may direct. Such notice shall not be admitted as evidence or used for any purpose against such common carrier, railroad corporation or street railroad corporation giving such notice in any suit or action for damages growing out of any matter mentioned in said notice."

From a reading of the section above, it is our view that there is no direct duty upon a railroad company to hold the train where a person is killed by a train in this state. However, it is unthinkable that the railroad officials and employees would leave the person upon the right of way without some agent or official of the railroad with the body, in order that full details and information could be furnished the county coroner, and a complete list of witnesses in order that the coroner might cause to be subpoenaed such persons to appear to give testimony at the inquest when one is had.

In the case of State v. Bartley, 337 Mo. 229, 84 S. W. (2d) 637, 1. c. 639, the court said:

"* * * A coroner's inquest is not a part of a criminal prosecution, whether the prosecution be by indictment or information. * * * * *"

CONCLUSION

From the foregoing it is the opinion of this department that when a train kills some person upon its right of

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way, the progress of the train need not be delayed until the coroner arrives to remove the remains, but such body should be removed from the right of way and some agent or official of the railroad left with the remains until the coroner arrives.

Respectfully submitted,

B. RICHARDS CREECH
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

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