CORONERS: May perform autopsies only at inquests where a jury is called.

December 16, 1940

FILED 96

Dr. R. Ned White
Coroner
Greene County
Springfield, Missouri

Dear Sir:

We are in receipt of your request for an opinion dated December 9th, 1940, as follows:

> "Having been elected Coroner of Greene County, after filling out the term of the preceeding Coroner, there are a few points concerning the duties of this office I would like to clarify. I have consulted the prosecuting Attorney of this County but would like to get your opinion.
>
> "Briefly, the problem is; to what limits may I perform Autopsies without permission of families? It has been my custom to do these on all cases in which there is any question of death by violence.
>
> "It is my understanding there is some litigation in Jackson County as a result of doing Autopsies on any and all cases coming under the Coroner's jurisdiction. Does one have the right to do Autopsies on (1) auto accident victims to determine the means of death, (2) in which there is difficulty in making an assumption of

death by any natural cause, and (3) questionable deaths from alcoholism?

"It is my remembrance from interne days in St. Louis that any case turned over to the Coroner could be posted without permission. Naturally I do not think it wise, even if medically, desirable, to post all cases but I do feel that it would be a great advantage to do more than we are now doing. Just how far am I entitled to go and still be free of any danger of law suits."

In considering the questions presented, the following statutes regarding the office of the Coroner should be considered - Section 11608 R. S. Missouri, 1929, which reads as follows:

"A coroner shall be a conservator of the peace throughout his county, and shall take inquests of violent and casual deaths happening in the same, or where the body of any person coming to his death shall be discovered in his county, and shall be exempt from serving on juries and working on roads."

And, Section 11612 R. S. Missouri, 1929, 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 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."

Also, Section 11631 R. S. Missouri, 1929, which reads as follows:

> "When a physician or surgeon shall be called on by the coroner, or any magistrate of the county acting as the coroner, to conduct a post-mortem examination, the county court of said county shall be authorized to allow such physician or surgeon to be paid out of the county treasury any sum as a fee not exceeding ten dollars, to such physician or surgeon who may be engaged in said examination."

And, Section 11636 R. S. Missouri, 1929, which reads as follows:

> "The county court may authorize and require the coroner to pay, at the view or inquest itself, the legal fees due to jurors, witnesses and

interpreters at the same, out of money to be advanced to him, from time to time, out of the county funds, and for the legal disbursement of which he and his sureties shall be liable on his official bond, in any county in which such order shall have been made by the county court thereof; jurors, witnesses and interpreters, at any view or inquest, shall receive only such fees as are allowed by law, for the time being, for like services in a civil case before a justice of the peace; and the county court may prescribe the form and manner in which the coroner shall make proof to it of his payment of such fees. It shall be the duty of the coroner to summon to the view or inquest only such number of witnesses as, from a preliminary inquiry into the nature of the case, and the cause of the death, may reasonably appear sufficient to prove the essential facts thereof; and if it shall appear to the county court that any witness had been unnecessarily summoned to testify at a view or inquest, the fees paid as aforesaid to such witness shall not be allowed in favor of the coroner in the settlement of his account for the money so advanced to him as aforesaid, except in a case in which some credible person shall have declared, under oath, to the coroner, that the person whose body is to be viewed came to his death by violence, or other criminal act of another, the coroner shall not summon any jury, but shall himself view the body and declare the cause of death."

We are able to find only one case in which the power of a coroner to perform an autopsy has been discussed at length. In Patrick v. Employers Mut. Liability Ins. Co., 118 S. W. (2d) 116, a decision by the Kansas City Court of Appeals, the duties of a coroner were the subject of discussion. In that case the facts were that John Patrick, the husband of plaintiff, died while attending a fire in his official capacity as fireman for the City of Macon, Missouri. The deceased was taken to an undertaking establishment and there a physician, at the request of the insurance company carrying the Workmen's Compensation insurance for the city, performed an autopsy. The coroner was present and orally stated that he was ordering the autopsy. The action was one for damages because of the alleged wrongful mutilation of the body of the deceased. It was admitted that the physician performed the autopsy in a scientific and careful manner.

In the opinion, having quoted the statutes above set out, the court defined the powers of a coroner as follows: (l. c. 122)

> "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. It could hardly be said that section 11631, even standing alone, authorizes an autopsy, under any circumstances that the coroner might in his judgment see fit to hold it for; on its face, it does not purport to be an authorization of that kind, but merely a section dealing with fees for the performance of an autopsy. Of course,

it is beyond the realm of probability that the legislature ever intended to confer upon a coroner the right to perform an autopsy in any case that, in his judgment, he might deem proper, for this would empower him to enter the homes of our citizens indiscriminately and over their protests remove corpses under any circumstances, regardless of the cause of death, provided that the coroner thought an autopsy, in a particular case, would further the advance of science or some purpose believed desirable by him. The legislature had no intention to confer any such authority upon the coroner. Section 11631 must read in connection with the whole chapter in which it appears relating to 'inquests and coroners'. 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. In view of the circumstances surrounding Patrick's death the coroner, in his discretion, might have conducted an inquest but there was none held and, therefore, the coroner had no authority to hold an autopsy. Indeed, there was evidence that it was not the intention of the coroner to hold an inquest as he testified that the autopsy was performed merely that he might have information upon which to make out a death certificate but, aside from this, while it might be desirable for the coroner to hold an autopsy to ascertain if an inquest should be held, the statute gives him no such authority."

By the use of the words "these sections" in the opening sentence in the above quotation, the Judge referred to Sections 11608, 11612, and 11631 R. S. Missouri, 1929, (supra), which he had just quoted. The opinion continues as follows:

> "* * * * * * * * * * * * * * * * *
>
> There is conflict in the authorities as to the capacity (judicial or ministerial) in which a coroner acts in performing his duties. Some of the authorities are to the effect that they are judicial in character, others quasi judicial and others ministerial, depending what the act performed. In this state a coroner acts judicially in respect to determining whether an inquest shall be held. Boisliniere v. The Board of County Commissioners, 32 Mo. 375. However it was stated in Queatham v. Modern Woodmen, 148 Mo. App. 33, 48, 127 S. W. 651, that aside from this, there is nothing in the statute according the force and effect of a judicial proceeding to an inquest, itself. If this is true, of course, there is nothing judicial about the calling or holding of an autopsy. However, we are not concerned with this matter, for, as we have already stated, the coroner had no authority, so far as the facts in this case are concerned, to hold an autopsy except in connection with an inquest before a jury and in performing the one in question the coroner was not acting in any capacity but entirely outside of his office."

In another portion of the opinion, Section 11636, supra, is discussed in the following language:

> "Defendant relies upon that part of section 11636 beginning with the word 'except' as follows: In this connection defendant urges that this part of section 11636 directs that the coroner shall not call a jury but shall himself view the body and declare the cause of death, unless the death was caused by violence (which is not this case) and, since, in this case the coroner was of the opinion that it was necessary to perform an autopsy in order for him to declare the cause of the death and since, in this state, a coroner is necessarily clothed with discretion in the performance of his duties which are judicial in character, plaintiff's testimony shows affirmatively that the autopsy was legally and properly held by him.
>
> "Section 11636 is primarily, if not exclusively, a fee statute. That part of the section beginning with the word 'except' is very unusual not only in its construction, as to the language used, but in the way it is connected with the rest of the section. While it apparently recognizes the power in the coroner to dispense with a jury and declare the cause of death himself when some credible person shall declare under oath that the person whose body is to be viewed came to his death by violence, the whole section is one on the subject of fees and the proper construction of that part beginning with the word 'except' would seem to be that it shall not

> be considered that witnesses are unnecessarily summoned where the coroner elects, under the circumstances mentioned in the statute, to declare, himself, the cause of the death of course under such circumstances, the necessity of a hearing of testimony by a jury is obviated.
>
> " In the case at bar there was no oath of any person that the deceased came to his death by violence and that part of section 11636 in question has no application. Consequently, it is unnecessary for us to say whether the coroner would have authority to hold an autopsy where no jury is summoned under the circumstances mentioned in that part of section 11636 in controversy."

We may arrive at the conclusion from the above that a coroner would be justified in performing an autopsy in connection with any inquest held before a jury, but that it is doubtful that a coroner in any instance should order or perform an autopsy in any case where he,himself, declares the cause of death without the assistance of the jury.

CONCLUSION.

It is therefore the conclusion of this department that a coroner may perform, or cause to be performed, by a competent physician an autopsy at any inquest where a coroner's jury is duly summoned for the purpose of aiding the decision of such jury, and his authority is limited to such cases only.

Respectfully submitted,

APPROVED:

ROBERT L. HYDER
Assistant Attorney General

COVELL R. HEWITT
(Acting) Attorney General

RLH:RW