CORONERS: May not order autopsy except in connection with inquest.

EMPLOYEES OF STATE CANCER HOSPITAL: Not prohibited from performing autopsies for county coroners.

October 18, 1945

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Honorable Thomas G. Woolsey
Prosecuting Attorney
Cooper County
Boonville, Missouri

Dear Mr. Woolsey:

Under date of September 13, 1945, you wrote the Attorney General the following letter requesting an opinion upon the questions contained therein:

> "My County Court requests an opinion from your office as to whether a state employee can legally charge a county for services rendered in connection with county business. Here are my facts:
>
> "Louis Evans, a colored boy, was an inmate of the Missouri Training School. He died on or about the 29th day of July, 1945. Dr. Tincher, the training school physician, called Mr. J. R. Smith, the Coroner, out to the training school to view the body of the deceased. The coroner ordered an autopsy to determine the cause of death. (The body was found in the hospital and the doctor estimated that he had been dead four or five hours when found.) The coroner engaged Lauren V. Ackerman, consulting pathologist of the Ellis Fischel State Cancer Hospital at Columbia, Missouri, to perform the autopsy. Mr. Ackerman rendered his bill to Cooper County for $10.00 for performing the autopsy and making a statement as to what caused the death of the boy.

> "Query. (a) If Dr. Ackerman is an employee of the state, and I assume that he is since he is on the staff of the Missouri Cancer Hospital, can he charge Cooper County for performing the autopsy? (b) Would the coroner have the right or authority to order the autopsy?"

The questions will be discussed in the order in which they are placed in your letter.

> (1) May an employee of the State Cancer Hospital make a charge against a county for performing an autopsy in said county, which autopsy is not one of the regular duties of the employee for which he receives compensation from the State Hospital?

In order to reach the solution of this question it is necessary first to examine the statutes to ascertain if there is a general statute which would prevent a state employee from rendering a service to a county, which service is not a portion of the regular work of the employee, and we find no statute of this nature. A further examination of the statutes with particular reference to the State Cancer Hospital reveals only one section which would prohibit an employee of the State Cancer Hospital from receiving additional compensation. This is Section 15151, R.S. Mo. 1939, as follows:

> "No compensation shall be charged or received by any officer of the hospital, or by any physician or surgeon or nurse or other employee in its employment, who shall treat or care for any patient in said hospital, other than the compensation provided for such person by the cancer commission of the State of Missouri."

It is apparent this section of the statutes has no bearing on your question. Hence, there is no statute which would prohibit the employee of the State Cancer Hospital from rendering a service, outside of his regular duties, to Cooper County, charging a fee for such servide and receiving the fee.

As no statute governing such a situation has been found, it is necessary to examine textbooks and cases. These shed no light upon the question, for nothing has been found touching the right of an employee to accept extra employment, which does not interfere with the performance of his regular duties, from a second employer. The nearest approach to the problem is found in the cases dealing with dual office holding and the courts have held that absent statutory or constitutional prohibition a person may hold more than one office, where the duties of the office are not incompatible. The leading case in Missouri on this subject is State ex rel. Walker v. Bus, 135 Mo. 325, in which case it was held by the Supreme Court that the same person might hold the offices of deputy sheriff and school director.

As previously pointed out there is no statute applicable nor is there any constitutional provision.

While not squarely in point, if the reasoning of the Bus case, supra, is followed it leads to the conclusion that, absent constitutional or statutory prohibition, there would be no legal restriction upon an employee of the State Cancer Hospital which would prevent such employee from rendering a service, outside of his regular duties, to a county and making a charge for such service and receiving compensation therefor, if such extra service did not interfere with the performance of the regular duties of the employee.

In arriving at the foregoing conclusion, the rules and regulations of the State Cancer Hospital, if any, have not been considered as we do not have them.

(2) Does a coroner have the right or authority to order an autopsy?

The powers and duties of a coroner are prescribed by statute. And your attention is directed to the following sections from the Revised Statutes of Missouri, 1939, which are pertinent to your question.

Section 13231, R.S. Mo. 1939, authorizes the coroner to summon a jury for the purpose of conducting an inquest over the dead body of a person supposed to have come to his death

by violence. Section 13236, R.S. Mo. 1939, authorizes the coroner to charge the jury.

Section 13257, R. S. Mo. 1939, authorizes the payment of a fee to a coroner for conducting a post-mortem examination of a dead body when the coroner is a physician or surgeon. This section is as follows:

> "Whenever the coroner, being himself a physician or surgeon, shall conduct a post-mortem examination of the dead body of a person who came to his death by violence or casualty, and it shall appear to the county court that such examination was necessary to ascertain the cause of such person's death, the county court may allow the coroner therefor an additional fee, not exceeding twenty-five dollars, to be paid as his other fees in views and inquests; but section 13250 shall not be construed to apply to any such examination when made by the coroner himself."

Section 13250, R. S. Mo. 1939, authorizes payment of a fee to a physician employed to conduct a post-mortem examination of a dead body when called in by a coroner. This section is 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."

These sections, while not specifically authorizing post-mortem examinations, recognize the necessity of such examinations, in order to determine the cause of death in some cases. With this recognition of the necessity for such examinations and provisions being made for paying fees for services

rendered in making post-mortem examinations, unquestionably a coroner has the right and duty to make a post-mortem examination or to employ a physician to make a post-mortem examination if the coroner is not a physician or surgeon qualified to make the post-mortem examination.

There remains one question to be determined - When may a post-mortem examination be conducted? The statutes relating to the duties of the coroner do not specifically set out when a post-mortem examination may or may not be held. However, there are two comparatively recent cases which discuss and rule on this question. These cases are: Patrick v. Employers Mut. Liability Ins. Co., 118 S.W. (2d) 116, 233 Mo. App. 251; and Crenshaw v. O'Connell, 150 S. W. (2d) 489, 235 Mo. App. 1085.

The Patrick case, supra, was decided by the Kansas City Court of Appeals and was a suit for damages against an insurance company for causing an unauthorized autopsy or post-mortem examination to be performed. In discussing the power of a coroner to conduct a post-mortem examination, the court used the following language at l. c. 260 (Mo. App.):

> "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 be 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."

The sections of the statutes referred to are Sections 11608, 11612 and 11631, R.S.Mo 1929. Sections 11612 and 11631 are now Sections 13231 and 13250, R.S.Mo. 1939.

The Crenshaw case, supra, was a suit for damages against a coroner for conducting an unauthorized autopsy. From this case we quote at length, beginning on l. c. 1090 (Mo. App.):

> "The coroner, as we know him in this State, is a constitutional officer (Mo. Const., art. 9, secs. 9, 10 and 11), whose powers and duties with respect to the holding of inquests and autopsies are more or less

specifically defined and limited by statute, the same being sections 13227-13268, Revised Statutes of Missouri, 1939 (Mo. State. Ann., secs. 11608-11649, pp. 4279-4290).

"The above sections of the statutes have but recently been construed (and we think correctly so) by the Kansas City Court of Appeals in the case of Patrick v. Employers Mutual Liability Insurance Co., 233 Mo. App. 251, 118 S. W. (2d) 116, an action by a widow against a compensation insurer for damages sustained on account of the mutilation of her deceased husband's body in connection with an autopsy which the coroner unlawfully permitted to be performed at the instance and for the benefit of the defendant insurer.

"That case holds squarely that under such circumstances as confronted defendant in the case at bar, 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 supposed to have come to his death by violence or casualty, the purpose of the inquest being to inquire, upon a view of the body, how and by whom such person came to his death; that while the coroner acts judicially, and has a discretion, with respect to determining whether an inquest shall be held, neither the inquest itself, nor the calling and holding of an autopsy in connection with it, is a proceeding judicial in character so as to relieve the coroner from civil liability for his acts in relation to it; 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; and that while it might or might not be thought desirable that the coroner should have the power to hold an autopsy in order to determine whether an inquest should be held, the law gives him no such authority, so that in the case at least of a person who is merely supposed to have come to his death by violence or casualty, 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.

"It is true, as was noted in the course of the Patrick case, that certain sections of the statutes, and particularly Section 13255, Revised Statutes of Missouri, 1939 (Mo. Stat. Ann., sec. 11636, p. 4286), would seem to contemplate that in a case where the dead person is not merely 'supposed' to have come to his death by violence or casualty, but where some credible person has 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 may dispense with a jury and himself view the body and declare the cause of death. We observe, however, that the court, in the Patrick case, reserved its decision upon the question of whether, under such circumstances, the coroner would have the authority to conduct an autopsy, and neither shall we determine the point, since in the case at bar, just as in the Patrick case, there was no declaration under oath by any person as to the circumstances under which the deceased had come to his death so as to have entitled defendant to refrain from holding an inquest, and, upon a coroner's view of the

body, himself declare the cause of death.

"Of course, if plaintiff, as the one entitled to the right of sepulture, had given her consent to the autopsy, there would have been no liability on defendant's part (in the absence of a performance of the autopsy in an improper manner), even though no inquest was held or basis afforded for defendant himself to have declared the cause of death upon a mere coroner's view of the body. However, neither plaintiff, nor any one for her, gave such consent, and consequently the autopsy must be held to have been unlawfully and illegally performed, unless it should be, as defendant also contends, that he was justified in ordering the autopsy so as to be able to sign a death certificate.

"As to this, suffice it to say that under the statute having to do with the coroner's duties in respect to registration of deaths (Sec. 9767, R. S. Mo. 1939 (Mo. Stat. Ann., Sec. 9047, p. 4191)), the coroner is authorized to make a certificate of death only when the case is referred to him by the local registrar as one without an attending physician and one where the circumstances of the case render it probable that the death was caused by unlawful or suspicious means. The purpose of such reference is, of course, to have an investigation by the coroner as the officer whose duty it is to hold an inquest on the body of any deceased person; and when such a case is properly referred to the coroner, he conducts his investigation, and then executes the certificate of death required for a burial permit, stating therein the disease causing death or the means of death, and otherwise making the same conform to the requirements of the statute. (O'Donnell v. Wells, 323 Mo. 1170, 21 S. W.

(2d) 762; Patrick v. Employers' Mutual Liability Insurance Co., supra; Gilpin v. Aetna Life Insurance Co., 234 Mo. App. 566, 132 S. W. (2d) 686.)

"In the case at bar, not only was the deceased receiving treatment from a doctor for high blood pressure up to the very time of his death, but, in addition, the case was concededly not referred to defendant by the registrar for his investigation and certification. Neither was defendant requested by the relatives or friends of the deceased to hold a view or inquest on the body for the purpose of issuing a certificate of the cause of death (Sec. 13253, R. S. Mo. 1939 (Mo. Stat. Ann., sec. 11634, p. 4285)), and so for the want of any of the circumstances empowering the coroner to make a death certificate, the autopsy performed upon the body of the deceased is not to be justified upon any such ground."

Under the statement of facts in your letter the two cases cited seem to be squarely in point, and the autopsy performed, as set out in your letter, was not lawfully performed.

Conclusion

It is, therefore, the opinion of the Attorney General that: (1) there is no statutory or constitutional provision, nor any decision, which would prevent an employee of the State Cancer Hospital from performing an autopsy or post-mortem examination, for a county coroner, and receiving compensation from the county for such service, if the conducting of the autopsy did not interfere with the performance of his regular duties or conflict with them; (2) the coroner did not have the authority to order the autopsy under the statement of

facts contained in your letter.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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