

**County Coroner—Duty to Sign Death Certificate—Per Diem for Investigating Cause of Death.**

Section 8368 of the Revised Codes of 1907 construed to authorize the Coroner to sign death certificates under certain circumstances.

The County Coroner is not authorized to charge per diem for going to the place where he is called to investigate the cause of death without holding an inquest.

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My dear Mr. Allen:

I am in receipt of an inquiry from the Coroner of your county as to whether he must sign the death certificate under certain circumstances.

There is no doubt under Section 8368 of the Revised Codes of 1907 that the Legislature contemplated that the Coroner should sign the death certificate under certain circumstances.

This section provides as follows:

“Every person who buries or inters, or causes to be buried, or interred, the dead body of any human being or any human remains without first having obtained a certificate of cause of death from a regular practicing physician of the State or the coroner of the county in which the death occurred is guilty of a misdemeanor. Any practicing physician of the State or any coroner in any county who fails to file a certified copy of every certificate of the cause of death which he shall issue in the office of the County Clerk and Recorder of the county in which the death occurs, within three days from time said certificate is issued, shall be guilty of a misdemeanor.

“Upon information or knowledge of any infraction of this law the coroner shall immediately investigate the circumstances and make complaint against the offenders. Every person who buries or inters, causes to be buried or interred the dead body of any human being or any human remains in any place within the corporate limits of any city or town in this State, except in a cemetery or place of burial now existing under the laws

of this State and in which interments have been made, or that is now or may hereafter be established or organized by the board of county commissioners of the county, or other legal authority, in which such city or town is situate is guilty of a misdemeanor."

However, as a matter of precaution, if no inquest is held by the Coroner, I would advise the procuring of a certificate by a duly licensed physician whenever possible.

The question was also submitted as to whether the Coroner may charge per diem for time spent in investigating the cause of death when no inquest is held.

Our statute regulating the fees of a Coroner is found in Section 3173, Revised Codes of 1907, and provides as follows:

The coroner is entitled to receive and collect for his own use the following fees:

"For each day engaged in holding an inquest, five dollars.

"For subpoenaing each witness, including copy of subpoena, thirty cents.

"For summoning each juror, including copy of summons, thirty cents.

"For each oath administered, five cents.

"For making transcript of testimony, per folio, fifteen cents.

"For each mile actually traveled in the performance of any duty, ten cents.

"For filing papers, each, five cents.

"A justice of the peace, acting as coroner, is allowed the same fees as the coroner, and no more.

"If acting as sheriff, the coroner is allowed the same fees as sheriff or constable for like services."

Under this section of our statute, I do not believe that a coroner may charge per diem for going to the place where he is called to investigate the cause of the death when no inquest has been held.

The Supreme Court of this State has repeatedly held that unless there is some express statutory authority for the recovery of certain fees, then they cannot be allowed.

State ex rel. Payne v. District Court, 53 Mont. 350;

State ex rel. Roe, v. District Court, 44 Mont. 318;

Leggatt v. Prideaux, 16 Mont. 205.

In the absence of express statutory authority it is my opinion that the coroner may not charge per diem for going to where he is called to investigate the cause of death without holding an inquest.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.