

vided by Section 4929. In other words, the statute makes no distinction between a justice of the peace on a fee basis and a justice of the peace on a salary basis. Section 4852 provides:

"If the office of coroner is vacant, or he is absent or unable to attend, the duties of his office may be discharged by any justice of the peace of the county, with the like authority and subject to the same obligations and penalties as the coroner."

It will be seen that the word "may" and not "must" is used. It is quite essential that the duties of coroner be performed. Since a justice of the peace cannot be compelled to discharge the duties of the coroner we think he should have the inducement of receiving the fees of that office in case he does discharge those duties. We think this is the intent of said Section 4852 and no other section declares otherwise. The provision in Section 4929 "and justices of the peace in such townships shall receive no other additional fees or compensation whatever, except that they may receive and keep those fees designated as 'miscellaneous fees' by section 4927 of this code," has reference to the fees a justice of the peace would ordinarily receive for services as such. Section 4852 is in no wise amended thereby.

Opinion No. 247.

Justice of the Peace—Coroner—Absence of Coroner—Duties of Justice of the Peace—Fees—Sections 4852, 4929.

HELD: A justice of the peace on a salary basis, acting as coroner, is entitled to the fees of the coroner.

August 1, 1940.

Mr. H. B. Landoe
County Attorney
Bozeman, Montana

Dear Mr. Landoe:

You have submitted the question whether a justice of the peace, when on a salary basis, is entitled to the fees allowed by law to the coroner when he acts as coroner.

We find no statute changing the general rule that a justice of the peace is entitled to the fees of the coroner when he discharges the duties of that office, in case he is on a salary basis, as pro-