

Coroner, Duty Of. Inquest, When to Be Held. Autopsy, When Advisable.

Duty of coroner to hold inquest under Section 2790, Penal Code, is limited to cases where he has reason to believe that death was caused by criminal means, and an autopsy should not be ordered except when necessary to obtain evidence for the purpose of determining whether death had been caused by some criminal means.

Helena, Montana, March 11, 1908.

Hon. Board of County Commissioners,
Dillon, Montana.

Gentlemen:—

I am in receipt of your favor of the 5th inst., in which you submit for the consideration of this office the following questions:

1. "Should the coroner order an inquest to be held in cases of presumable accidental death to determine the exact cause, or to ascertain whether the accident might have been caused by negligence other than that of the diseased?"

2. "Should the coroner order an autopsy to be made in case of probable homicide; for example, in cases of gun shot or knife wounds, injury from any other homicidal cause, even though there be upon the body visible signs which might account for the death, to determine the course of the bullet, direction and character of wound, or to remove bullet if embedded?"

When, and under what circumstances, is it the duty of the coroner to hold an inquest, were considered by this office in an opinion to Hon. Frank P. Whicher, County Attorney of Carbon County, Montana, December 19, 1907, a copy of which opinion is herewith enclosed for your consideration.

The holding of an autopsy by a coroner is not justified except when it is necessary to enable him to determine whether the diseased met his death by criminal means, either by his own hand or that of another. Whether such autopsy is necessary is a matter which must be determined from the circumstances of the particular case, and therefore rests

largely in the judgment of the coroner. Autopsies cannot legally be held and expense incurred, for the purpose of deciding questions which cannot and do not give to the coroner information necessary to enable him to determine whether the deceased met his death by criminal means; for example, if it were first determined that the deceased met his death as the result of a gunshot wound, an autopsy to determine the course of the bullet would not be justified, for it could add nothing to the information already in the possession of the coroner. However, if it were apparent that the crime had been committed by another, the course of the bullet might be necessary evidence to the prosecution. So that no rule can be given as to just when an autopsy should be held.

The duty of the coroner with respect to holding autopsies, and the fees relating thereto, have heretofore been discussed by this office, which you will find in the printed volume of official opinions of the Attorney General, 1905-06, at pages 171 and 172. This book you can find in the office of the county attorney or the office of the county clerk.

Very truly yours,

ALBERT J. GALEN,

Attorney General.